

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suedeem G. Kelly.

El Paso Electric Company

Docket Nos. ER99-2416-001  
ER99-2416-002  
ER99-2416-003  
ER99-2416-004

ORDER ACCEPTING UPDATED MARKET POWER ANALYSIS AND REVISED  
TARIFF SHEETS

(Issued December 17, 2004)

1. In this order we accept an updated market power analysis filed by El Paso Electric Company (El Paso). We also accept certain revised tariff sheets filed by El Paso. As discussed below, we conclude that El Paso satisfies the Commission's standards for market-based rate authority for sales outside of its own control area and in the adjacent area of southern New Mexico. This order benefits customers by reviewing the conditions under which market-based rate authority is granted, thus ensuring that the prices charged for jurisdictional sales are just and reasonable. El Paso's next updated market power analysis is due three years from the date of this order.

**Background**

2. On January 21, 2003, El Paso filed an updated market power analysis utilizing a Supply Margin Assessment pursuant to the Commission's order granting El Paso authority to sell electric energy and capacity at market-based rates.<sup>1</sup> El Paso stated that it satisfies the Commission's standards for generation market power, transmission market power, barriers to entry, and affiliate abuse or reciprocal dealing. El Paso also stated that it does not have nor does it seek market-based rate authority in its own control area or in the adjacent area of southern New Mexico.

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<sup>1</sup> *El Paso Electric Co.*, 87 FERC ¶ 61,219 (1999).

3. On August 11, 2004, as amended November 17, 2004,<sup>2</sup> El Paso submitted for filing a revised updated market power analysis pursuant to the Commission's order issued on May 13, 2004.<sup>3</sup> The May 13 Order addressed the procedures for implementing the generation market power analysis announced on April 14, 2004, and clarified on July 8, 2004.<sup>4</sup> El Paso notes that the Commission approved a settlement under which El Paso agreed to suspend its market-based rate authority through December 31, 2004, and states that this updated market analysis is intended to support El Paso's ability to make market-based rate sales outside of its home control area and outside of the southern New Mexico area beginning on January 1, 2005.<sup>5</sup>

4. On November 2, 2004, El Paso submitted revised tariff sheets<sup>6</sup> to its market-based rate tariff to include the Commission's market behavior rules.<sup>7</sup> El Paso also filed ministerial changes to its tariff to update it in accordance with Order No. 614.

5. El Paso is an electric utility providing service for 320,000 customers in the Rio Grande Valley in west Texas and southern New Mexico. El Paso states that it does not have any electric or gas affiliates.

### **Notice and Responsive Pleadings**

6. Notice of El Paso's January 21, 2003, filing was published in the *Federal Register*, 68 Fed. Reg. 5,013 (2003), with protests and interventions due by January 31, 2003. None was filed.

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<sup>2</sup> El Paso submitted supporting data and workpapers on November 18, 2004.

<sup>3</sup> *Acadia Power Partners, LLC*, 107 FERC ¶ 61,168 (2004) (May 13 Order). On August 24, 2004, El Paso submitted additional workpapers that support its August 11, 2004 compliance filing.

<sup>4</sup> *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004) (July 8 Order).

<sup>5</sup> *El Paso Electric Co.*, 104 FERC ¶ 61,115 (2003). The southern New Mexico market refers to the markets served by the southern New Mexico Transmission System (SNMTS). The transmission lines that define the SNMTS are the West Mesa-Arroyo 345 kV line, the Springerville-Luna 345 kV line, the Greenlee-Hidalgo 345 kV line and the West Mesa-Belen 115 kV line.

<sup>6</sup> FERC Electric Tariff, First Revised Volume No. 2 (superseding Original Volume No. 2).

<sup>7</sup> *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218 (2003), *order on reh'g*, 107 FERC ¶ 61,175 (2004).

7. Notice of El Paso's August 11, 2004, filing was published in the *Federal Register*, 69 Fed. Reg. 52,005 (2004), with protests and interventions due by August 24, 2004. On August 31, 2004, Pinnacle West Capital Corporation, Arizona Public Service Company, Pinnacle West Energy Corporation, APS Energy Services Company, Inc. (collectively, the Pinnacle West Companies), and Public Service Company of New Mexico (PNM) filed motions to intervene out-of-time raising no substantive issues.

8. Notice of El Paso's November 2, 2004, filing was published in the *Federal Register*, 69 Fed. Reg. 67,568 (2004), with protests and interventions due by November 23, 2004. None was filed.

9. Notice of El Paso's November 17, 2004, filing was published in the *Federal Register*, 69 Fed. Reg. 69,597 (2004), with protests and interventions due by December 7, 2004. None was filed.

## **Discussion**

### **Procedural Matters**

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the Commission will grant the motions to intervene out-of-time filed by the Pinnacle West Companies and PNM given their interest in this proceeding and the absence of undue prejudice or delay.

### **Market-Based Rate Authorization**

11. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, market power in generation and transmission and cannot erect other barriers to entry. The Commission also considers whether there is evidence of affiliate abuse or reciprocal dealing.<sup>8</sup>

12. As discussed below, we conclude that El Paso satisfies the Commission's standards for market-based rate authority for sales outside of its own control area and in the adjacent area of southern New Mexico.

### **Generation Market Power**

13. In the April 14 Order, the Commission adopted two indicative screens for assessing generation market power, the pivotal supplier screen and the wholesale market

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<sup>8</sup> See, e.g., *Progress Power Marketing, Inc.*, 76 FERC ¶ 61,155, at 61,921-22 (1996); *Northwest Power Marketing Co., L.L.C.*, 75 FERC ¶ 61,281, at 61,899-900 (1996); *accord Heartland Energy Services, Inc.*, 68 FERC ¶ 61,223, at 62,062-63 (1994).

share screen. El Paso has prepared the pivotal supplier and the wholesale market share screens for its interconnected first-tier control areas of Arizona Public Service Company, Tucson Electric Power Company, Southwestern Public Service Company, and Public Service Company of New Mexico – Northern Zone.<sup>9</sup> El Paso did not provide a generation market power analysis for its home control area or the adjacent area of southern New Mexico because it does not have nor does it seek market-based rate authority in those markets.

14. The Commission has reviewed El Paso's generation market power screens for the first-tier control areas and has determined that El Paso passes the screens in those control areas. Accordingly, the Commission finds that El Paso satisfies the Commission's generation market power standard for the grant of market-based rate authority.

### **Transmission Market Power**

15. When a transmission-owning public utility seeks market-based rate authority, the Commission has required the public utility to have an open access transmission tariff (OATT) on file before granting such authorization. El Paso states that it has an OATT on file with the Commission. We note that El Paso's OATT was accepted by Commission order in Docket No. OA96-200. El Paso also states that it does not own or operate significant transmission facilities outside of its home control area. Further, no intervenors have raised transmission market power concerns. Based on El Paso's representation, the Commission finds that El Paso satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

### **Other Barriers to Entry**

16. El Paso states that it does not own or control any natural gas transportation or distribution facilities. In addition, El Paso states that it does not control any barriers to entry that could be used to block potential competitors from constructing new generation capacity. Further, no intervenors have raised concerns regarding barriers to entry. Based on these representations, the Commission finds that El Paso cannot erect barriers to entry.

### **Affiliate Abuse**

17. El Paso states that it has no electric marketing affiliates and has no interest in any electric utility. Further, El Paso states that its market-based rate tariff as accepted for filing by the Commission prohibits transactions with any affiliate without receiving prior approval from the Commission. In addition, no intervenors have raised affiliate abuse

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<sup>9</sup> El Paso's analysis indicates that its market share is no greater than 8.3 percent, 8.7 percent, 9.5 percent, and 16.8 percent, respectively.

concerns. Based on these representations, the Commission finds that El Paso satisfies the Commission's concerns with regard to affiliate abuse.

### **Reporting Requirements**

18. Consistent with the procedures the Commission adopted in Order No. 2001, an entity with market-based rates must file electronically with the Commission an Electric Quarterly Report containing: (1) a summary of the contractual terms and conditions in every effective service agreement for market-based power sales; and (2) transaction information for effective short-term (less than one year) and long-term (one year or greater) market-based power sales during the most recent calendar quarter.<sup>10</sup> Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.<sup>11</sup>

19. With regard to reporting changes in status that would reflect a departure from the characteristics the Commission has relied upon in approving market-based pricing, in a Notice of Proposed Rulemaking in Docket No. RM04-14-000, the Commission is proposing to amend its regulations and to modify the market-based rate authority of current market-based rate sellers to establish a reporting obligation for changes in status that apply to public utilities authorized to make wholesale power sales in interstate commerce at market-based rates.<sup>12</sup> Accordingly, the change in status reporting obligation for El Paso is subject to the outcome of the rulemaking.

20. El Paso is directed to file an updated market power analysis within three years of the date of this order, and every three years thereafter. The Commission also reserves the right to require such an analysis at any intervening time.

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<sup>10</sup> *Revised Public Utility Filing Requirements*, Order No. 2001, 67 Fed. Reg. 31,043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127 (2002). Required data sets for contractual and transaction information are described in Attachments B and C of Order No. 2001. The Electric Quarterly Report must be submitted to the Commission using the EQR Submission System Software, which may be downloaded from the Commission's website at <http://www.ferc.gov/Electric/eqr/eqr.htm>.

<sup>11</sup> The exact dates for these reports are prescribed in 18 C.F.R. § 35.10b (2004). Failure to file an Electric Quarterly Report (without an appropriate request for extension), or failure to report an agreement in an Electric Quarterly Report, may result in forfeiture of market-based rate authority, requiring filing of a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

<sup>12</sup> *See Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, 69 Fed. Reg. 61,180 (Oct. 15, 2004), FERC Stats. & Regs. ¶ 32,576 (2004).

The Commission orders:

(A) El Paso's updated market power analysis is hereby accepted for filing, as discussed in the body of this order.

(B) El Paso's tariff sheets incorporating the market behavior rules are accepted for filing, as discussed in the body of this order.

(B) El Paso's next updated market power analysis is due within three years of the date of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.