

125 FERC ¶ 61,203
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Electric Quarterly Reports
Flat Earth Energy, LLC

Docket No. ER02-2001-009
Docket No. ER07-559-000

ORDER ON INTENT TO REVOKE MARKET-BASED RATE AUTHORITY

(November 20, 2008)

1. Section 205 of the Federal Power Act (FPA), 16 U.S.C. § 824d (2000), and 18 C.F.R. Part 35 (2008), require, among other things, that all rates, terms, and conditions of jurisdictional services be filed with the Commission. In Order No. 2001, the Commission revised its public utility filing requirements and established a requirement for public utilities, including power marketers, to file Electric Quarterly Reports summarizing the contractual terms and conditions in their agreements for all jurisdictional services (including market-based power sales, cost-based power sales, and transmission service) and providing transaction information (including rates) for short-term and long-term power sales during the most recent calendar quarter.¹

2. Commission staff's review of the Electric Quarterly Report submittals indicates that one utility with authority to sell electric power at market-based rates has failed to file its Electric Quarterly Reports. This order notifies this public utility that its market-based rate authorization will be revoked unless it complies with the Commission's requirements within 15 days of the date of issuance of this order.

3. In Order No. 2001, the Commission stated that,

[i]f a public utility fails to file a[n] Electric Quarterly Report (without an appropriate request for extension), or fails to report an agreement in a report, that public utility may forfeit its market-based rate authority and

¹*Revised Public Utility Filing Requirements*, Order No. 2001, FERC Stats. & Regs. ¶ 31,127, *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reconsideration and clarification denied*, Order No. 2001-B, 100 FERC ¶ 61,342, *order directing filings*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002) *order directing filings*, Order No. 2001-D, 102 FERC ¶ 61,334 (2003).

may be required to file a new application for market-based rate authority if it wishes to resume making sales at market-based rates.^[2]

4. The Commission further stated that,

[o]nce this rule becomes effective, the requirement to comply with this rule will supersede the conditions in public utilities' market-based rate authorizations, and failure to comply with the requirements of this rule will subject public utilities to the same consequences they would face for not satisfying the conditions in their rate authorizations, including possible revocation of their authority to make wholesale power sales at market-based rates.^[3]

5. Pursuant to these requirements, the Commission has revoked the market-based rate tariffs of several market-based rate sellers that failed to submit their Electric Quarterly Reports.⁴

6. As noted above, Commission staff's review of the Electric Quarterly Report submittals identified one public utility with authority to sell power at market-based rates that failed to file Electric Quarterly Reports through the third quarter of 2008. Commission staff contacted this entity to remind it of its regulatory obligations.⁵ Nevertheless, the public utility listed in the caption of this order has not met those obligations.⁶ Accordingly, this order notifies this public utility that its market-based rate authorization will be revoked unless it complies with the Commission's requirements within 15 days of the issuance of this order.

7. In the event that the above-captioned market-based rate seller has already filed its Electric Quarterly Report in compliance with the Commission's requirements, its

²Order No. 2001 at P 222.

³*Id.* at P 223.

⁴ See, e.g., *Electric Quarterly Reports*, 73 Fed. Reg. 31,460 (June 2, 2008); *Electric Quarterly Reports*, 115 FERC ¶ 61,073 (2006), *Electric Quarterly Reports*, 114 FERC ¶ 61,171 (2006).

⁵ See *Flat Earth Energy, LLC*, Docket No. ER07-559-000 (October 7, 2008) (unpublished letter order).

⁶ According to the Commission's records, the company subject to this order last filed its Electric Quarterly Reports for the 1st quarter of 2008.

inclusion herein is inadvertent. Such market-based rate seller is directed, within 15 days of the date of issuance of this order, to make a filing with the Commission identifying itself and providing details about its prior filings that establish that it complied with the Commission's Electric Quarterly Report filing requirements.

8. If the above-captioned market-based rate seller does not wish to continue having market-based rate authority, it may file a notice of cancellation with the Commission pursuant to section 205 of the FPA to cancel its market-based rate tariff.

The Commission orders:

(A) Within 15 days of the date of issuance of this order, the public utility listed in the caption of this order shall file with the Commission all delinquent Electric Quarterly Reports. If the public utility fails to make this filing, the Commission will revoke that public utility's authority to sell power at market-based rates and will terminate its electric market-based rate tariff. The Secretary is hereby directed, upon expiration of the filing deadline in this order, to promptly issue a notice, effective on the date of issuance, listing the public utility whose tariff has been revoked for failure to comply with the requirements of this order and the Commission's Electric Quarterly Report filing requirements.

(B) The Secretary is hereby directed to publish this order in the *Federal Register*.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.