

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Electric Quarterly Reports	Docket No. ER02-2001-005
Capital Power, Inc.	Docket No. ER03-622-000
Energy Investments Management, Inc.	Docket No. ER02-2338-000
New Light Energy, LLC	Docket No. ER04-683-000
Premier Energy Marketing, LLC	Docket No. ER03-101-000
Sprague Energy Corp.	Docket No. ER02-1499-000
TME Energy Services	Docket No. ER02-1595-000

ORDER ON INTENT TO REVOKE MARKET-BASED RATE AUTHORITY

(Issued February 17, 2006)

1. Section 205 of the Federal Power Act (FPA), 16 U.S.C. § 824d (2000), and 18 C.F.R. Part 35 (2005), 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 review of the Electric Quarterly Report submittals has revealed that a number of public utilities with authority to sell electric power at market-based rates have failed to file their Electric Quarterly Reports through the third quarter of 2005. Thus, this order notifies these public utilities that their market-based rate authorizations will be revoked unless they comply with the Commission's requirements within 15 days of the date of issuance of this order.

¹*Revised Public Utility Filing Requirements*, Order No. 2001, 67 Fed. Reg. 31043, FERC Stats. & Regs. ¶ 31,127 (April 25, 2002), *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).

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 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 or withdrawn the market-based rate tariffs of several market-based rate sellers that failed to submit their Electric Quarterly Reports.⁴ Further, the Commission has instituted proceedings under section 206 of the Federal Power Act against companies that failed to file.⁵

6. Commission staff review of the Electric Quarterly Report submittals has identified a number of public utilities that previously had been granted authority to sell power at market-based rates that have failed to file Electric Quarterly Reports through the third quarter of 2005. Commission staff has contacted all non-filing utilities via email to remind them of their regulatory obligations. None of the public utilities listed in the caption of this order has met those obligations.⁶

²Order No. 2001 at P 222.

³*Id.* at P 223.

⁴ See *Electric Quarterly Reports*, 107 FERC ¶ 61,310 (2004); *Electric Quarterly Reports*, 69 Fed. Reg. 57,679 (September 27, 2004); *Electric Quarterly Reports*, 105 FERC ¶ 61,219 (2003); and *Electric Quarterly Reports*, 104 FERC ¶ 61,139 (2003).

⁵ See *Electric Quarterly Reports*, 113 FERC ¶ 61,305 (2005).

⁶ According to the Commission's records, the companies subject to this order last

7. Accordingly, this order notifies these public utilities that their market-based rate authorizations will be revoked unless they comply with the Commission's requirements within 15 days of the issuance of this order.

8. In addition, the above-captioned companies' failure to comply with their Electric Quarterly Report filing requirements provides a basis for the Commission to institute proceedings under section 206 of the FPA. These proceedings will determine appropriate refunds in the event these companies continue to make wholesale power sales at market-based rates. In cases where, as here, the Commission institutes a section 206 investigation on its own motion, section 206(b) of the FPA, as recently amended by section 1285 of the Energy Policy Act of 2005,⁷ requires the Commission to establish a refund effective date that is no earlier than the date of publication of notice of its initiation of the investigation, but no later than five months subsequent to that date. Thus, we will set the refund effective date as the date of publication of this order in the *Federal Register*.

9. In the event that any of the above-captioned market-based rate sellers has already filed its required Electric Quarterly Reports in compliance with the Commission's requirements, its inclusion herein is inadvertent. Any 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.

10. If any of the above-captioned market-based rate sellers does not wish to continue having market-based rate authority and does not foresee entering into any contracts to sell power at market-based rates, it may file a notice of cancellation with the Commission pursuant to section 205 of the FPA to cancel its market-based rate tariff and end its obligation to submit further Electric Quarterly Reports.

filed their Electric Quarterly Reports in the quarters and years shown below:

Respondent	Last Quarter Filed
Capital Power, Inc.	2005 Quarter 1
Energy Investments Management, Inc.	2005 Quarter 1
New Light Energy, LLC	2005 Quarter 1
TME Energy Services	2005 Quarter 1
Premier Energy Marketing, LLC	2005 Quarter 2
Sprague Energy Corp.	2005 Quarter 2

⁷ Energy Policy Act of 2005, § 1285, Pub. L. No. 109-58, 119 Stat. 980 (2005).

The Commission orders:

(A) Within 15 days of the date of issuance of this order, each public utility listed in the caption of this order shall file with the Commission all delinquent Electric Quarterly Reports. If a public utility fails to make this filing, the Commission will revoke that public utility's authority to sell power at market-based rates and 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 utilities whose tariffs have been revoked for failure to comply with the requirements of this order and the Commission's Electric Quarterly Report filing requirements.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), the Commission hereby institutes proceedings to determine the appropriate refunds if the above-captioned companies continue to make wholesale power sales at market-based rates.

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

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.