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# FEDERAL ENERGY REGULATORY COMMISSION

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WASHINGTON, D.C. 20426

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## NEWS RELEASE

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### FOR IMMEDIATE RELEASE

November 3, 2005  
Docket Nos. ER98-3809, *et al.*  
and ER97-2846-005, *et al.* and  
EL05-111-000

### **COMMISSION ACCEPTS MARKET ANALYSIS FOR 50+ COMPANIES, REVOKES MARKET-BASED RATE AUTHORITY FOR 100+ OTHERS, ESTABLISHES PROCEDURES FOR DISGORGEMENT OF PROFITS**

The Federal Energy Regulatory Commission today accepted the updated market analyses of more than 50 companies that complied with an earlier Commission directive and is terminating the section 206 proceeding instituted with regard to those entities (ER02-1084, *et al.* and EL05-111). With today's action, these companies may continue to sell wholesale electric power at market-based rates and, as required by FERC regulation, are directed to file an updated market analysis in three years.

In a separate order, the Commission revoked the market-based rate authority of more than 100 companies for failing to comply with past Commission orders requiring updated market analyses.

"The Commission is charged with ensuring that wholesale electric rates are just and reasonable. Authorization to charge market-based rates is a privilege, not a right. We will not tolerate abuse of this privilege," said Commission Chairman Joseph T. Kelliher. "At the same time, the Commission will be fair and reasonable in reviewing the market-based rate reauthorization requests when companies follow our requirements."

Today's actions stem from a May 31, 2005, order in which the Commission directed companies that were delinquent in filing an updated market power analysis to file such an analysis within 60 days or have their market-based rate authority revoked (Docket Nos. ER98-3809, *et al.*, and EL05-111). In today's order, the Commission revoked the market-based rate authority of more than 100 companies that failed to comply with that order. In addition, the Commission revoked the market-based rate authority of Questar Energy Trading (ER96-404-018) and Tiger Natural Gas Inc. (ER01-373-002) for "patently deficient" filings. For those companies that complied with the Commission's directive and satisfy the Commission's four-prong market-based rate

analysis, their ability to sell electric power at market-based rates will continue.

The Commission directed the companies listed in the revocation order to file a report within five days stating whether they made any sales under their market-based rate tariffs after the refund-effective date established by the May 31 order. If a company has made any such sales, or if a company fails to respond, the Commission will set the matter for hearing and settlement judge procedures to determine whether, and in what amount, that company should be required to disgorge its profits from those sales.

The Commission strongly encourages use of settlement talks in all of these proceedings. The Commission directed the settlement judge to file a status report with the Commission and Chief Administrative Law Judge within 60 days of today's order.

The Commission allows wholesale electric 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 by other suppliers. The Commission also considers whether there is evidence of affiliate abuse or reciprocal dealing. As a condition of a company's authorization to sell power at market-based rates, the company must file an updated market power analysis every three years in order for the Commission to ensure that rates remain just and reasonable.

In April 2004, the Commission adopted two new generation market power screens that provide a preliminary assessment of whether a seller is a pivotal supplier and how much market share a seller has compared to other competitors (Docket No. ER96-2495-016, *et al.*).

Failure of one or both of the Commission's generation market power screens provides the basis for the Commission to order further proceedings under section 206 of the Federal Power Act. Initiation of a section 206 proceeding does not revoke a company's market-based rates or impose mitigation. The proceeding provides refund protections to wholesale customers while allowing the applicants to submit additional evidence and analysis to demonstrate they do not have market power. In addition, companies can adopt the default cost-based rates or propose tailored mitigation for Commission consideration.