

or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at <http://www.ferc.gov>, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502-8222 or TTY, (202) 502-8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E3-00354 Filed 11-21-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL01-118-000 and EL01-118-001]

Before Commissioners: Pat Wood III, Chairman; William L. Massey, and Nora Mead Brownell, Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations; Order Amending Market-Based Rate Tariffs and Authorizations

Issued November 17, 2003.

1. In an order dated June 26, 2003, the Commission, acting pursuant to section 206 of the Federal Power Act (FPA),¹ proposed to condition all new and existing market-based rate tariffs and authorizations on sellers' compliance with six proposed Market Behavior Rules.² The need for these Market Behavior Rules, we stated, was informed by the types of behavior that had been observed in the Western markets during 2000 and 2001; by Commission Staff's Final Report concerning these markets (Western Markets Report);³ by our experience in other markets, including

the organized spot markets in the East; and by the comments filed in response to our initial proposal in this proceeding.⁴

2. In the June 26 Order, we also stated that in formulating our proposed Market Behavior Rules, we were required to strike a careful balance among a number of competing interests. We noted, for example, that while market participants must be given an effective remedy in the event anticompetitive behavior or other market abuses occur, sellers should be provided "rules of the road" that are clearly-delineated. We noted that while regulatory certainty was important for individual market participants and the marketplace in general, the Commission must not be impaired in its ability to provide remedies for market abuses whose precise form and nature cannot be envisioned today. We sought comments on whether our proposed rules achieved the appropriate balance among these competing interests.⁵

3. The vast majority of the comments we received in response supported the Commission's overall objectives in this proceeding, *i.e.*, the need to establish clear guidelines applicable to market-based rate sellers' conduct in the wholesale markets. In addition, we received a number of constructive suggestions for fine-tuning the specific language embodied in our proposed rules. Based on these comments and based on our further consideration of the issues discussed below, we find that sellers' existing tariffs and authorizations, without clearly-delineated rules of the road to govern market participant conduct, are unjust and unreasonable. Without such behavioral prohibitions, the Commission will not be able to ensure that rates are the product of competitive forces and thus will remain within a zone of reasonableness. We further find that our Market Behavior Rules, as

⁴ In an order issued in this proceeding on November 20, 2001, we proposed to condition all new and existing market-based rate tariffs and authorizations to include a broad prohibition against "anticompetitive behavior" and the "exercise of market power." See Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations, 97 FERC ¶ 61,220 (2001) (Initial Order). Numerous responsive pleadings were filed in which it was asserted, among other things, that the Commission's proposed tariff provision was vague and over-broad, and that without greater specificity and guidance, our proposed tariff provision would create uncertainty in the marketplace. In the June 26 Order, we noted that our revised proposal was designed to identify more precisely and comprehensively than we had in our Initial Order the transactions and practices that would be prohibited under sellers' market-based rate tariffs and authorizations. See June 26 Order, 103 FERC ¶ 61,349 at P6.

⁵ June 26 Order, 103 FERC ¶ 61,349 at P7.

modified in Appendix A to this order, are just and reasonable and will help ensure that rates are the product of competitive forces and thus remain just and reasonable.

Background

4. In the June 26 Order, we noted that as part of our ongoing responsibility to provide regulatory safeguards to ensure that customers are protected from market abuses, we were required to balance the following three goals: first, the need to provide for effective remedies on behalf of customers in the event anticompetitive behavior or other market abuses occur; second, the need to provide clearly-delineated "rules of the road" to market-based rate sellers while, at the same time, not impairing the Commission's ability to provide remedies for market abuses whose precise form and nature cannot be envisioned today; and third, the need to provide reasonable bounds within which conditions on market conduct will be implemented so as not to create unlimited regulatory uncertainty for individual market participants or harm to the marketplace in general. We also noted that a stable marketplace with clearly defined rules would benefit both customers and market participants and would create an environment that will attract much-needed capital.⁶

5. Based on these objectives, we proposed six specific Market Behavior Rules to govern sellers' conduct in the wholesale market:

- **Unit Operation:** We proposed that sellers be required to operate and schedule generating facilities, undertake maintenance, declare outages, and commit or otherwise bid supply in a manner that complies with the rules and regulations of the applicable power market;
- **Market Manipulation:** We proposed to prohibit all forms of market manipulation;
- **Communications:** We proposed to require that sellers provide complete, accurate and factual information and not submit false or misleading information, or omit material information, in any communication with the Commission, market monitors, regional transmission organizations (RTOs), independent system operators (ISOs), or similar entities;
- **Reporting:** We proposed to apply this same standard with respect to reports made by sellers to publishers of electricity or natural gas price indices;
- **Record Retention:** We proposed to require sellers to retain for a period of three years all data and information

⁶ June 26 Order, 103 FERC ¶ 61,349 at P5.

¹ 16 U.S.C. 824e (2000).

² See Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations, 103 FERC ¶ 61,349 (2003) (June 26 Order). These Market Behavior Rules address: (i) Unit operations; (ii) market manipulation; (iii) communications; (iv) reporting; (v) record retention; and (vi) related tariff matters.

³ Final Report on Price Manipulation in Western Markets: Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices, Docket No. PA02-2-000 (March 2003).