

113 FERC ¶ 61,124  
 UNITED STATES OF AMERICA  
 FEDERAL ENERGY REGULATORY COMMISSION

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

3E Technologies, Inc.	Docket Nos. ER98-3809-000
AC Power Corporation	ER97-2867-000
ACES Power Marketing LLC	ER99-2369-000
ACN Power, Inc.	ER98-4685-000
AI Energy, Inc.	ER00-105-000
A'Lones Group, Inc.	ER97-512-000
Alrus Consulting, LLC	ER00-861-000
Atlantic Energy Technologies, Inc.	ER97-2132-000
Beacon Generating, LLC	ER01-2355-000
Black River Power, LLC	ER00-679-000
California Polar Power Broker, L.L.C.	ER98-701-000
Callaway Golf Company	ER01-1701-000
Cambridge Electric Light Company	ER02-246-000
Candela Energy Corporation	ER00-2945-000
Capital Energy, Inc.	ER01-2138-000
Chicago Electric Trading, L.L.C.	ER90-225-000
Cielo Power Market, L.P.	ER99-964-000
Colonial Energy, Inc.	ER97-1968-000
Commerce Energy Inc.	ER05-737-000
Commonwealth Electric Company	ER02-246-000
Competisys LLC	ER98-1790-000
Cumberland Power, Inc.	ER96-2624-000
Desert Power, L.P.	ER01-2071-000
Direct Electric Inc.	ER94-1161-000
Eclipse Energy, Inc.	ER94-1099-000
EGC 1999 Holding Company, L.P.	ER99-3098-000
Energy Clearinghouse Corp.	ER98-2020-000
Energy PM, Inc.	ER98-2918-000
Energy Resource Management Corp.	ER96-358-000
Energy Transfer-Hanover Ventures, LP	ER01-2221-000
EnergyOnline, Inc.	ER96-138-000
ENMAR Corporation	ER99-254-000
Environmental Resources Trust, Inc.	ER98-3233-000
EWO Marketing, L.P.	ER01-666-000
Exact Power Co., Inc.	ER97-382-000

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Federal Energy Sales, Inc.	ER96-918-000
First Electric Cooperative Corporation	ER00-1258-000
First Power, LLC	ER97-3580-000
FMF Energy, Inc.	ER02-687-000
Gelber Group, Inc.	ER96-1933-000
George Colliers, Inc.	ER01-1078-000
GNA Energy, LLC	ER01-2405-000
Golden Valley Power Company	ER98-4334-000
Hinson Power Company, LLC	ER01-3023-000
Holt Company of Ohio	ER01-2129-000
ICC Energy Corporation	ER96-1819-000
IEP Power Marketing, LLC	ER95-802-000
INFINERGY Services, LLC	ER98-3478-000
InPower Marketing Corporation	ER00-1519-000
IPP Energy LLC	ER01-688-000
It's Electric & Gas, L.L.C.	ER00-2306-000
J. Anthony & Associates Ltd	ER95-784-000
Kaztex Energy Ventures, Inc.	ER95-295-000
Kimball Power Company	ER95-232-000
Kloco Corporation	ER03-1259-000
Lambda Energy Marketing Company	ER94-1672-000
Longhorn Power, LP	ER02-30-000
Lumberton Power, LLC	ER01-1507-000
Marquette Energy, LLC	ER00-1781-000
Metro Energy Group, LLC	ER99-801-000
Michigan Gas Exchange, L.L.C.	ER99-1156-000
Mid-American Resources, Inc.	ER95-78-000
Midwest Energy, Inc.	ER96-2027-000
Monmouth Energy, Inc.	ER99-1293-000
Morrow Power, LLC	ER01-2509-000
MPC Generating, LLC	ER02-1238-000
National Power Exchange Corp.	ER94-1593-000
National Power Management Company	ER95-192-000
Natural Gas Trading Corporation	ER01-352-000
Nautilus Energy Company	ER98-2618-000
Navitas, Inc.	ER99-2537-000
New Millennium Energy Corp.	ER97-2681-000
NGTS Energy Services	ER96-2892-000
Nine Energy Services, LLC	ER98-1915-000
North American Energy Conservation, Inc.	ER94-152-000
North Atlantic Utilities Inc.	ER97-1716-000
North Carolina Power Holdings, LLC	ER01-904-000

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North Star Power Marketing, LLC	ER98-622-000
North Western Energy Marketing, LLC	ER02-41-000
Northeast Electricity Inc.	ER98-3048-000
Northeast Empire L.P. #2	ER98-1125-000
Northwest Regional Power, LLC	ER01-1479-000
Northwestern Wind Power, LLC	ER02-845-000
Oceanside Energy, Inc.	ER97-181-000
ODEC Power Trading, Inc.	ER01-2783-000
Old Mill Power Company	ER99-2883-000
Peak Energy, Inc.	ER95-379-000
Peak Power Generating Company	ER03-372-000
Power Dynamics, Inc.	ER01-1821-000
Power Management Co., LLC	ER99-3275-000
Power Providers Inc.	ER96-2303-000
Power Systems Group, Inc.	ER97-3187-000
Powertec International, LLC	ER96-1-000
Pro-Energy Development LLC	ER01-2463-000
Progas Power Inc.	ER95-968-000
PS Energy Group, Inc.	ER99-1876-000
Questar Energy Trading Company	ER96-404-018
Renewable Energy Resources LLC	ER02-809-000
SEMCOR Energy	ER96-1516-000
Strategic Power Management, Inc.	ER96-2591-000
Sunrise Power Company	ER01-2217-002
Symmetry Device Research, Inc.	ER96-2524-000
Tacoma Energy Recovery Company	ER00-1250-000
Tennessee Power Company	ER95-581-000
The Energy Group of America, Inc.	ER01-2694-000
The Legacy Energy Group, LLC	ER99-3571-000
Tiger Natural Gas, Inc.	ER01-373-002
TransAlta Centralia Generation LLC	ER00-494-000
TransAlta Energy Marketing (US) Inc.	ER98-1055-000
TransAlta Energy Marketing Corp.(US)	ER01-3148-000
Travis Energy & Environment, Inc.	ER01-2234-000
TXU Electric Delivery Company	ER04-957-000
U.S. Power & Light, Inc.	ER96-105-000
VIASYN, Inc.	ER01-1709-000
Walton County Power, LLC	ER02-1046-000
Western Energy Marketers, Inc.	ER98-537-000
	EL05-111-000

ORDER REVOKING MARKET-BASED RATE AUTHORITY, ESTABLISHING  
HEARING AND SETTLEMENT JUDGE PROCEDURES, AND TERMINATING  
SECTION 206 PROCEEDING

(Issued November 3, 2005)

1. In this order, the Commission revokes the market-based rate authority of the companies that failed to comply with the Commission's May 31, 2005 Order<sup>1</sup> and the conditions under which the Commission granted them market-based rate authority. In addition, the Commission will revoke the market-based rate authority of two entities who responded to the May 31 Order, but did so in a patently deficient manner. The market-based rate tariffs of these entities are terminated effective on the date of issuance of this order. Furthermore, we will direct these entities to inform the Commission whether they have made any sales pursuant to their market-based rate tariffs after the refund effective date established in this proceeding, and, for those entities that have made such sales or that fail to respond, we will establish hearing and settlement judge procedures to determine whether and in what amount these entities should be required to disgorge their profits from these sales. In addition, this order accepts filings notifying the Commission that certain entities were inadvertently included in the May 31 Order.<sup>2</sup>

**Background**

2. As a condition of receiving market-based rate authority, the Commission requires market-based rate sellers to submit an updated market power analysis every three years<sup>3</sup> to allow the Commission to evaluate the reasonableness of their charges and to provide for ongoing monitoring of their ability to exercise market power. In the absence of an updated market power analysis, the Commission cannot exercise its statutory duty to ensure that market-based rates are just and reasonable and that market-based rate sellers continue to lack the potential to exercise market power so that market forces are in fact determining the price.

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<sup>1</sup> *3E Technologies, Inc.*, 111 FERC ¶ 61,295 (2005) (May 31 Order).

<sup>2</sup> The Commission has also received a number of updated and revised market power analyses in response to the May 31 Order, which will be addressed in a separate order.

<sup>3</sup> *See, e.g., Western Resources, Inc.*, 94 FERC ¶ 61,050 at 61,247 (2001); *Entergy Services, Inc.*, 58 FERC ¶ 61,234 at 61,760 (1992); *PSI Energy, Inc.*, 51 FERC ¶ 61,367 at 62,209 (1990).

3. In the May 31 Order, the Commission announced its policy with respect to entities that have failed to comply with the conditions under which the Commission granted them market-based rate authority, namely, the requirement to submit an updated or revised market power analysis. In that order, the Commission directed these market-based rate sellers to file their updated or revised market analyses within 60 days from the issuance of that order or to provide satisfactory support for why they should not be required to do so. The Commission also established a refund effective date under section 206 of the Federal Power Act (FPA) for the protection of customers.<sup>4</sup>

4. On June 8, 2005, in response to the May 31 Order, Questar Energy Trading Company (Questar) filed only a statement that there has been no change in the facts relied upon by the Commission when it initially granted Questar market-base rate authority.

5. On June 28, 2005, in response to the May 31 Order, Tiger Natural Gas, Inc. (Tiger) refiled its initial application for market-based rates, which it originally filed November 6, 2000.

## **Discussion**

### **Revocation of Market-Based Rate Authority and Termination of Market-Based Rate Tariffs**

6. The entities listed in Appendix A of this order have made no filing in response to the Commission's May 31 Order. In the May 31 Order, we stated that we would revoke the market-based rate authority and terminate the market-based rate tariff of any market-based rate seller that failed to file the required updated or revised market power analysis. Accordingly, we hereby revoke the market-based rate authority of the entities identified in Appendix A of this order and terminate their market-based rate tariffs, effective on the date of issuance of this order.

7. We find that the filings submitted by Questar and Tiger do not satisfy the Commission's directive in the May 31 Order. We note that Questar did not submit any market power analysis whatsoever and instead states that there have been no changes since its market-based rate tariff was accepted on January 29, 1996. Tiger simply refiled the same initial application for market-based rate authorization that it submitted five years ago. The Commission requires that an updated market power analysis contain current information. The submissions of Questar and Tiger are patently deficient and

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<sup>4</sup> 16 U.S.C. § 824e (2000).

thus fail to comply with the clear directive in the May 31 Order. Accordingly, we revoke Questar's and Tiger's market-based rate authority and terminate their market-based rate tariffs, effective on the date of issuance of this order.

8. Furthermore, any waivers and authorizations previously granted in connection with the market-based rate authority of the entities listed in Appendix A, Questar, and Tiger are no longer applicable.

### **Disgorgement of Profits**

9. As discussed above, the May 31 Order established a refund effective date in this proceeding. If any of the entities listed in Appendix A, Questar, or Tiger made sales pursuant to their market-based rate tariffs after the refund effective date established in this proceeding, they may be required to disgorge their profits from those sales. Accordingly, we direct the entities listed in Appendix A, Questar, and Tiger to inform the Commission within five days of the issuance of this order whether they have made such sales at market-based rates during this period. For the entities that inform the Commission that they have not made any such sales during this period, the Commission will terminate the section 206 proceeding with respect to them and will not impose the remedy of disgorgement.

10. For any entities that inform the Commission that they have made such sales or that fail to respond, we will establish hearing and settlement judge procedures to determine whether and in what amount these entities should be required to disgorge their profits from these sales. These entities have failed to comply with the conditions of their market-based rate authorizations, namely, the obligation to file an updated market power analysis when requested to do so by the Commission. Their failure to comply with this express obligation impeded the Commission's ability to ensure that utilities do not acquire market power and that rates remain just and reasonable. Under these circumstances, we find that disgorgement of the profits earned on transactions during this period is justified.

11. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.<sup>5</sup> If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding;

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<sup>5</sup> 18 C.F.R. § 385.603 (2005).

otherwise, the Chief Judge will select a judge for this purpose.<sup>6</sup> The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

### **Entities Inadvertently Included in May 31 Order**

12. The inclusion in the May 31 Order of the entities listed in Appendix B of this order was inadvertent, and we hereby terminate the section 206 proceeding with regard to them.

#### **The Commission orders:**

(A) The market-based rate authority of the entities listed in Appendix A, Questar, and Tiger is hereby revoked. The market-based rate tariffs of those entities are terminated effective on the date of issuance of this order and any waivers and authorizations previously granted in connection with the market-based rate authority of these entities are no longer applicable.

(B) The entities listed in Appendix A, Questar, and Tiger are directed to inform the Commission within five days of the issuance of this order whether they have made any sales pursuant to their market-based rate tariffs after the refund effective date established in this proceeding, as discussed above.

(C) 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 sections 205 and 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), a public hearing shall be held in Docket No. EL05-111 to determine whether and in what amount the entities listed in Appendix A, Questar, and Tiger should be required to disgorge any profits from sales made pursuant to their market-based rate tariffs after the refund effective date established in this proceeding, as discussed in the body of this order.

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<sup>6</sup> If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience ([www.ferc.gov](http://www.ferc.gov) – click on Office of Administrative Law Judges).

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However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Paragraphs (D) and (E) below.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2005), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(E) Within sixty (60) days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(F) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, N.E., Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(G) The section 206 proceeding instituted in Docket No. EL05-111-000 is hereby terminated with regard to the entities listed in Appendix B of this order.

(H) The Secretary is directed to publish a copy of this order in the *Federal Register*.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

**APPENDIX A**

The following market-based rate sellers have failed to submit a response to the Commission's May 31 Order. As discussed above, we revoke the following entities' authority to sell power at market-based rates and terminate their electric market-based rate tariffs:

3E Technologies, Inc.  
AC Power Corporation  
ACES Power Marketing LLC  
ACN Power, Inc.  
AI Energy, Inc.  
A'Lones Group, Inc.  
Alrus Consulting, LLC  
Astra Power, LLC  
Atlantic Energy Technologies, Inc.  
Beacon Generating, LLC  
Black River Power, LLC  
California Polar Power Broker, L.L.C.  
Callaway Golf Company  
Cambridge Electric Light Company  
Candela Energy Corporation  
Capital Energy, Inc.  
Chicago Electric Trading, L.L.C.  
Cielo Power Market, L.P.  
Colonial Energy, Inc.  
Commonwealth Electric Company  
Competisys LLC  
Cumberland Power, Inc.  
Direct Electric Inc.  
Eclipse Energy, Inc.  
EGC 1999 Holding Company, L.P.  
Energy Clearinghouse Corp.  
Energy PM, Inc.  
Energy Resource Management Corp.  
Energy Transfer-Hanover Ventures, LP  
EnergyOnline, Inc.  
ENMAR Corporation  
Environmental Resources Trust, Inc.  
Exact Power Co., Inc.  
Federal Energy Sales, Inc.  
First Electric Cooperative Corporation

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First Power, LLC  
FMF Energy, Inc.  
Gelber Group, Inc.  
George Colliers, Inc.  
GNA Energy, LLC  
Golden Valley Power Company  
Hinson Power Company, LLC  
Holt Company of Ohio  
ICC Energy Corporation  
IEP Power Marketing, LLC  
INFINERGY Services, LLC  
InPower Marketing Corporation  
IPP Energy LLC  
It's Electric & Gas, L.L.C.  
J. Anthony & Associates Ltd  
Kaztex Energy Ventures, Inc.  
Kimball Power Company  
Kloco Corporation  
Lambda Energy Marketing Company  
Longhorn Power, LP  
Lumberton Power, LLC  
Marquette Energy, LLC  
Metro Energy Group, LLC  
Michigan Gas Exchange, L.L.C.  
Mid-American Resources, Inc.  
Midwest Energy, Inc.  
Monmouth Energy, Inc.  
Morrow Power, LLC  
National Power Exchange Corp.  
National Power Management Company  
Natural Gas Trading Corporation  
Nautilus Energy Company  
Navitas, Inc.  
New Millennium Energy Corp.  
NGTS Energy Services  
Nine Energy Services, LLC  
North American Energy Conservation, Inc.  
North Atlantic Utilities Inc.  
North Carolina Power Holdings, LLC  
North Star Power Marketing, LLC  
Northeast Electricity Inc.  
Northeast Empire L.P. #2

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Northwest Regional Power, LLC  
Northwestern Wind Power, LLC  
Oceanside Energy, Inc.  
ODEC Power Trading, Inc.  
Old Mill Power Company  
Peak Energy, Inc.  
Peak Power Generating Company  
Power Dynamics, Inc.  
Power Management Co., LLC  
Power Providers Inc.  
Power Systems Group, Inc.  
Powertec International, LLC  
Pro-Energy Development LLC  
Progas Power Inc.  
PS Energy Group, Inc.  
Renewable Energy Resources LLC  
SEMCOR Energy  
Strategic Power Management, Inc.  
Symmetry Device Research, Inc.  
The Energy Group of America, Inc.  
The Legacy Energy Group, LLC  
Travis Energy & Environment, Inc.  
U.S. Power & Light, Inc.  
VIASYN, Inc.  
Western Energy Marketers, Inc.

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**APPENDIX B**

The following market-based rate sellers were inadvertently included on the May 31 Order. We therefore terminate the section 206 proceeding instituted in Docket No. EL05-111-000 with regard to these entities:

Commerce Energy, Inc.  
Desert Power, L.P.  
EWO Marketing, L.P.  
MPC Generating, LLC  
NorthWestern Energy Marketing, L.L.C.  
Sunrise Power Company, LLC  
TransAlta Centralia Generation LLC  
TransAlta Energy Marketing (US) Inc.  
TransAlta Energy Marketing Corp. (US)  
TXU Electric Delivery Company  
Walton County Power, LLC