

107 FERC ¶ 61,019
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Market-Based Rates For Public Utilities

Docket No. RM04-7-000

INITIATION OF RULEMAKING PROCEEDING ON MARKET-BASED RATES
AND NOTICE OF TECHNICAL CONFERENCE

(April 14, 2004)

1. In a companion order we are issuing today in AEP Power Marketing, Inc., Docket No. ER96-2495-016, et al. (AEP Order),¹ the Commission adopts new interim generation market power screens to identify those applicants for electric market-based rate authority that may possess generation market power. An analysis of whether an applicant possesses generation market power has for many years been one of the four prongs of analysis the Commission has used to assess whether an applicant should be granted market-based rate authority. The other three prongs that the Commission has considered are (1) whether the applicant has transmission market power, (2) whether the applicant can erect barriers to entry, and (3) whether there are concerns involving the applicant that relate to affiliate abuse and/or reciprocal dealing. In today's AEP Order and in prior orders in the same dockets, the Commission stated that the generation market power screen it was adopting in that proceeding was only an interim screen, and that the Commission intended to initiate a generic rulemaking proceeding on potential new analytical methods for assessing markets and market power. The Commission has also stated that as part of this process it intended to hold a series of outreach meetings with industry experts on these matters.² The purpose of this notice is to initiate a rulemaking proceeding with respect to the adequacy of the current four-prong analysis and whether and how it should be modified to assure that electric market-based rates are just and reasonable under the Federal Power Act.

¹ 107 FERC ¶ 61,018 (2004) (AEP Order).

² See, e.g., AEP Order, 107 FERC ¶ 61,018 at P1-2; AEP Power Marketing, Inc, et al., 97 FERC ¶ 61,219 at 61,967 & n.2 (2001); Notice Delaying Effective Date of Mitigation and Announcing Technical Conference, December 20, 2001 at 1; Notice of Technical Conference on Supply Margin Assessment Screen and Alternatives, December 19, 2003, at 1, 3, and attached Staff Paper at 1.

2. The Commission's four-prong market-based rate test was developed nearly 15 years ago, in the context of specific market-based rate proposals filed with the Commission, and currently there are no comprehensive codified regulations governing what applicants must demonstrate in order to obtain market-based rate authorization from the Commission. Much has changed in the industry since the Commission began using the four-prong test in the 1980s, and we believe it is important not only to ensure that our test is sufficient to support market-based rates in today's energy markets, but also to provide clarity, by way of codified regulations, as to what applicants must demonstrate in order to obtain (and retain) authority to sell at market-based rates.

3. This generic proceeding will address, but not be limited to, whether the Commission should retain or modify its existing four-prong test (e.g., whether the analysis should explicitly address vertical market power issues); whether the factors the Commission considers under the existing prongs should be revised; whether the interim generation market power screens that are adopted today in the AEP Order should be retained over the long-term; whether the Commission should adopt different approaches to affiliate transactions than it currently does; and whether there should be new Commission regulations promulgated expressly for electric market-based rate filings. The Commission intends the scope of this rulemaking proceeding to be broad, and to include market-based rate authorizations associated with ancillary services.

4. In order to have a better understanding of the issues that need to be considered, as well as the procedural direction the rulemaking should take, as a first step the Commission intends to convene a series of technical conferences that will be open to the public. The Commission will hold the first such technical conference on June 9, 2004, at the Commission's headquarters. The purpose of this conference will be to frame the issues that will comprise the rulemaking proceeding, including a discussion of how all four parts of the current test interrelate, as well as what other factors the Commission should consider in granting market-based rate authorizations.

5. The conference will be transcribed. Those interested in acquiring the transcript should contact Ace Reporters at 202-347-3700 or 800-336-6646. Transcripts will be placed in the public record ten days after the Commission receives the transcripts. Additionally, Capitol Connection offers the opportunity for remote listening and viewing of the conference. It is available for a fee, live over the Internet, by phone or via satellite. Persons interested in receiving the broadcast, or who need information on making arrangements, should contact David Reininger or Julia Morelli at Capitol Connection (703-993-3100) as soon as possible or visit the Capitol Connection website at <http://www.capitolconnection.org> and click on "FERC."

6. For more information about the conference, please contact Michelle Barnaby at 202-502-8407 or Michelle.Barnaby@ferc.gov.

7. A supplemental notice of this conference will be issued later that will provide details of the conference, including the panelists.

By direction of the Commission.

Magalie R. Salas,
Secretary.