

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Peak Power Generating Company

Docket Nos. ER03-372-002  
and EL05-111-000

ORDER GRANTING CLARIFICATION

(Issued April 26, 2006)

1. In this order, we grant the request for clarification of Peak Power Generating Company (Peak Power) and terminate the section 206 proceeding instituted in Docket No. EL05-111-000 with regard to Peak Power, as discussed below.

**Background**

2. In an order issued on May 31, 2005, the Commission announced its policy with respect to entities that failed to comply with the conditions under which the Commission granted them market-based rate authority, namely, the requirement to submit an updated market power analysis.<sup>1</sup> The Commission directed the captioned market-based rate sellers, including Peak Power, to file their updated market analyses within 60 days from the date of issuance of that order or provide satisfactory support for why they should not be required to do so. The Commission stated that, if an entity failed to file an updated market power analysis or provide satisfactory support for why it should not be required to do so within 60 days, its market-based rate authority would be revoked.

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<sup>1</sup> *3E Technologies, Inc.*, 111 FERC ¶ 61,295 (2005) (May 31 Order). The May 31 Order established a refund effective date of 60 days after publication of notice of the investigation in the *Federal Register*. The notice was published in the *Federal Register* on June 10, 2005, with a refund effective date of August 9, 2005.

3. On November 3, 2005,<sup>2</sup> the Commission revoked the market-based rate authority of the companies that failed to comply with the May 31 Order and terminated their market-based rate tariffs. Peak Power was included in the November 3 Order.

### **Request for Clarification**

4. On November 8, 2005, Peak Power filed a request for clarification of the November 3 Order. Peak Power states that prior to the issuance of the November 3 Order, the Commission accepted Peak Power's notice of cancellation of its market-based rate tariff, effective August 26, 2005. Peak Power requests that the Commission find that Peak Power is not subject to the refund effective date in this proceeding. Peak Power states that it has not made any sales under its market-based rate tariff since 2003.

### **Discussion**

5. The November 3 Order revoked market-based rate authority for companies failing to comply with the May 31 Order. We clarify that Peak Power's inclusion in the November 3 Order was inadvertent because Peak Power's market-based rate authority was cancelled prior to issuance of the November 3 Order. Specifically, on September 22, 2005, the Commission accepted Peak Power's August 25, 2005 notice of cancellation of its market-based rate tariff.<sup>3</sup> Accordingly, Peak Power is not subject to the refund effective date in this proceeding, and we hereby terminate the section 206 proceeding instituted in Docket No. EL05-111-000 with regard to Peak Power.

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<sup>2</sup> *3E Technologies, Inc.*, 113 FERC ¶ 61,124 (2005) (November 3 Order).

<sup>3</sup> *Peak Power Generating Co.*, Docket No. ER05-1391-000 (Sept. 22, 2005) (unpublished letter order).

The Commission orders:

(A) Peak Power's request for clarification is hereby granted, as discussed in the body of this order.

(B) The section 206 proceeding instituted in Docket No. EL05-111-000 is hereby terminated with regard to Peak Power.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.