environmental and related issues associated with development of the St. Lawrence-FDR Power Project license application that was filed on October 31, 2001. These staff will continue to be available to assist the parties, if requested, to resolve issues during the pendency of the license application. However, these ''separated staff'' will take no part in Commission review of the application, or deliberations concerning the merits of the application.

Office of General Counsel

Merrill Hathaway

Office of Energy Projects

Jennifer Hill

Mark Pawlowski

Patti Leppert

Steve Naugle

Different Commission ''advisory staff'' will be assigned to process the license application, including providing advice to the Commission with respect to it. Separated staff and advisory staff are prohibited from communicating with one another concerning this license application. However, in the interest of efficiency and consistency, Environmental Resource Management, Inc. (ERM), per agreement with and under the direction of the New York Department of Environmental Conservation (Department) and the Commission, will continue to assist the Department and the Commission in producing the final project environmental impact statement.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–29416 Filed 11–26–01; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL01–118–000]

Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations; Notice of Initiation of Proceeding and Refund Effective Date

November 21, 2001.

Take notice that on November 20, 2001, the Commission issued an order in the above-indicated dockets initiating a proceeding in Docket No. EL01–118–000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL01–118–000 will be 60 days after publication of this notice in the **Federal Register**.

David P. Boergers,

Secretary.

[FR Doc. 01–29449 Filed 11–26–01; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL01–118–000]

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, Linda Breathitt, and Nora Mead Brownell; Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations; Order Establishing Refund Effective Date and Proposing To Revise Market-Based Rate Tariffs and Authorizations

Issued November 20, 2001.

I. Introduction

In this order, the Commission institutes a proceeding pursuant to section 206 of the Federal Power Act (FPA)[1] to investigate the justness and reasonableness of the terms and conditions of market-based rate tariffs and authorizations[2] of public utilities that sell electric energy and ancillary services at wholesale in interstate commerce. As discussed below, the Commission proposes to revise all existing market-based rate tariffs and authorizations to condition all public utility sellers' market-based rate authority to ensure that such rates remain just and reasonable and do not become unjust or unreasonable as a result of anticompetitive behavior or abuse of market power. The Commission intends to condition all new market-based rate tariffs and authorizations in a similar manner. The proposed condition, including the refund effective date, will protect customers from excessive rates and charges resulting from anticompetitive behavior or abuse of market power, as discussed more fully below.

Independently, in light of numerous concerns raised by market participants in cases involving market-based rates, the Commission intends to review its approach to evaluating market-based rate applications. The Commission will in the near future hold a series of outreach meetings with industry experts. The Commission expects that such meetings will inform a generic rulemaking proceeding on potential new analytical methods for assessing markets and market power. In addition, the Commission has initiated a proceeding on market design and market structure to reform open access transmission tariffs and standardize market design rules as appropriate.

II. Discussion

In an order issued on November 1, 2000, we found that the ''electric market structure and market rules for wholesale sales of electric energy in California were seriously flawed and that these structures and rules, in conjunction with an imbalance of supply and demand in California, have caused, and continue to have the potential to cause, unjust and unreasonable rates for short-term energy * * * under certain conditions.''[3] In a series of subsequent orders, the Commission reiterated those earlier findings and, among other things, established conditions, including refund liability, on sellers' market-based rate authority to prevent anticompetitive bidding behavior.[4] In its June 19 Order, the Commission stated that abuse of market power cannot and will not be tolerated, that sellers will be subject to losing their market-based rates for engaging in anti-competitive conduct, and that ''as a condition of continued authorization of market-based rates, public utility sellers in the WSCC [Western Systems Coordinating Council] must agree to refunds, with interest pursuant to 18 CFR 35.19a, of any overcharges resulting from anticompetitive bidding or behavior.''[5]

Based on our recent experience involving wholesale electric markets in California and the rest of the WSCC, and consistent with our intention to review the Commission's approach to evaluating market-based rate applications and also to explore generic transmission and market design protocols, we believe it is necessary and appropriate to impose a tariff condition on all public utility sellers with market-based rate authority. This tariff condition, described more fully below, will ensure that rates collected pursuant

[1] 16 U.S.C. § 824e (1994).

[2] Our use in this order of the term ''market-based rate tariffs and authorizations'' is intended to include all tariffs and rate schedules under which a public utility is authorized to make sales of electric energy and ancillary services at market-based rates.

[3] San Diego Gas & Electric Company, *et al.,* 93 FERC ¶61,121 at 61,349–50 (2000), *reh'g pending* (November 1 Order).

[4] San Diego Gas & Electric Company, *et al.,* 93 FERC ¶61,294 (2000), *reh'g pending* (December 15 Order); San Diego Gas & Electric Company, *et al.,* 95 FERC ¶61,115 at 61,360 (2001) (April 26 Order), *order on reh'g,* 95 FERC ¶61,418 (2001), *reh'g pending* (June 19 Order); San Diego Gas & Electric Company, *et al.,* 96 FERC ¶ 61,120 (2001), *reh'g pending* (July 25 Order).

[5] June 19 Order, 95 FERC at 62,548, 62,565.

to market-based rate tariffs and authorizations are just and reasonable and that customers have full refund protection against anticompetitive behavior or abuse of market power.[6]

In today's electric industry, the Commission is faced with power and energy sales markets that are increasingly interstate in nature and increasingly dependent upon one another, and with power and energy sales markets that are in varying stages of transition to competition at the wholesale and, in numerous states, the retail level. We have a responsibility under the FPA to monitor wholesale markets to ensure that jurisdictional rates in the markets remain within a zone of reasonableness. Our responsibility is to ensure that sellers not charge unjust and unreasonable wholesale rates, and that the market structures and market rules governing public utility sellers nationwide, and affecting the wholesale rates of such public utility sellers, do not result in, or have the potential to result in, wholesale rates that are unjust, unreasonable, unduly discriminatory, or preferential. We have become increasingly concerned about the potential that public utilities with market-based rate authorization might, under certain circumstances, exercise market power or engage in anticompetitive behavior that could result in unjust or unreasonableness rates.

Although we do not find here that particular sellers have, for example, exercised market power, we propose to take steps now to minimize the potential for any such market power abuse or anticompetitive behavior and thus protect against possible unjust and unreasonable rates. Pursuant to FPA section 206, we are establishing a refund effective date 60 days from the date on which notice of initiation of this investigation is published in the **Federal Register** and seek comments on our proposal to revise all market-based rate tariffs and authorizations in effect to condition public utility sellers' market-based rate authority to prevent anticompetitive behavior or the exercise of market power. In particular, all such market-based rate tariffs and authorizations would be revised to include the following provision: ''As a condition of obtaining and retaining market-based rate authority, the seller is prohibited from engaging in anticompetitive behavior or the exercise of market power. The seller's market-based rate authority is subject to refunds or other remedies as may be appropriate to address any anticompetitive behavior or exercise of market power.'' We will also require that this provision be included in all new market-based rates tariffs and authorizations. Violation of such provision would constitute a violation of a tariff or rate schedule on file under FPA section 205, and the Commission would have the authority to address promptly potential instances of anticompetitive behavior or exercises of market power through the imposition of refunds or such other remedies as may be appropriate.

Anticompetitive behavior or exercises of market power include behavior that raises the market price through physical or economic withholding of supplies. Such behavior may involve an individual supplier withholding supplies, or a group of suppliers jointly colluding to do so. Physical withholding occurs when a supplier fails to offer its output to the market during periods when the market price exceeds the supplier's full incremental costs. For example, physical withholding would occur when a generator declares a forced outage when its unit is not, in fact, experiencing mechanical problems, and when the market price is above the unit's full incremental costs. Economic withholding occurs when a supplier offers output to the market at a price that is above both its full incremental costs and the market price (and thus, the output is not sold). For example, we would expect that, during periods of high demand and high market prices, all generation capacity whose full incremental costs do not exceed the market price would be either producing energy or supplying operating reserves. Failing to do so would be an example of economic withholding. Withholding supplies can also occur when a seller is able to erect barriers to entry that limit or prevent others from offering supplies to the market or that raise the costs of other suppliers. Examples would include denying, delaying or requiring unreasonable terms, conditions, or rates for natural gas service to a potential electric competitor in bulk power markets.

Should public utility market participants engage in prohibited behavior, their rates will be subject to increased scrutiny by the Commission, and to potential refunds or such other remedies as may be appropriate. This could result in further conditions or restrictions on their market-based rate authority, including, for example, prospective revocation of the market-based rate authority of the seller or any of its affiliates, or conditions precluding the seller from selling at market-based rates to its affiliate.

We believe that our proposal herein is necessary to ensure that rates which are market-based remain just and reasonable, and to ensure that the Commission can adequately remedy any anticompetitive behavior or the exercise of market power that might subsequently be brought to the Commission's attention, and protect customers through refunds or other remedies where appropriate.

We conclude that a trial-type hearing is not necessary to resolve the matter that is the subject of the proceeding that we are instituting here.[7] Rather, we believe that a ''paper'' hearing will allow us to determine whether the condition we propose to add to all market-based rate tariffs and authorizations is appropriate given the state of today's wholesale electric markets. Further, given our statutory responsibility to ensure that rates under existing market-based rate tariffs and authorizations remain just and reasonable, we believe that expeditious resolution of this proceeding is critical. Accordingly, the Commission will provide interested entities an opportunity to file comments and reply comments regarding our proposal to

[6] The Commission proposes to apply the condition to all public utility sellers currently authorized to sell at market-based rates and to make the condition effective 60 days following publication in the **Federal Register** of the notice of the Commission's initiation of this proceeding. A list of such sellers and the docket numbers in which they previously received market-based rate authorization is attached as Appendix A. In the event that a public utility with market-based rate authority as of the date of issuance of this order is not listed in Appendix A, such omission is inadvertent and does not mean that a non-listed utility is exempt from the tariff condition proposed herein. The Commission does not, however, propose a specific date by which each such seller must make a compliance filing, but instead proposes to direct each seller to include the required revision to its tariff the next time that it files an amendment to the tariff or seeks continued authorization to sell at market-based rates. The date of submission of the compliance filing will not, however, delay the effective date of the condition.

The Commission intends to condition all future market-based rate tariffs and authorizations in a similar manner.

[7] The use of a ''paper'' hearing rather than a trial-type evidentiary hearing has been addressed in numerous cases. *See, e.g.,* Public Service Company of Indiana, 49 FERC ¶61,346 (1989), *order on reh'g,* 50 FERC ¶61,186, *opinion issued,* Opinion 349, 51 FERC ¶61,367, *order on reh'g,* Opinion 349–A, 52 FERC ¶61,260, *clarified,* 53 FERC ¶61,131 (1990), *dismissed,* Northern Indiana Public Service Company v. FERC, 954 F.2d 736 (D.C. Cir. 1992). As the Commission noted in Opinion No. 349, 51 FERC at 62,218–19 & n.67, while the FPA and the case law require that the Commission provide the parties with a meaningful opportunity for a hearing, the Commission is required to reach decisions on the basis of an oral, trial-type evidentiary record only if the material facts in dispute cannot be resolved on the basis of the written record, *i.e.,* where the written submissions do not provide an adequate basis for resolving disputes about material facts.

revise all market-based rate tariffs and authorizations in effect to condition public utility sellers' market-based rate authority to prevent anticompetitive behavior or the exercise of market power. Initial comments will be due 15 days from the date of this order, and reply comments will be due 15 days from the date of filing of initial comments.

In cases where the Commission institutes a section 206 proceeding on its own motion, as here, section 206(b) requires that the Commission establish a refund effective date that is no earlier than 60 days after publication of notice of the Commission's intent to institute a proceeding in the **Federal Register**, and no later than five months subsequent to the expiration of the 60-day period. We will establish a refund effective date of 60 days from the date on which notice of our initiation of this investigation is published in the **Federal Register**. The Commission is also required by section 206 to indicate when it expects to issue its final order. The Commission expects to issue a final order in this proceeding by the end of March 2002.

The Commission Orders

(A) 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 section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR chapter I), the Commission proposes to revise all public utility sellers' market-based rate tariffs and authorizations, and to conduct the proceedings directed in Ordering Paragraph (B) below, as discussed in the body of this order.

(B) Interested persons may submit to the Commission arguments and evidence as outlined in the body of this order 15 days from the date of this order. Replies may be made 15 days thereafter.

(C) The Secretary shall promptly publish in the **Federal Register** a notice of the Commission's initiation of the proceeding under section 206 of the FPA in Docket No. EL01–118–000.

(D) The refund effective date established pursuant to section 206(b) of the FPA will be 60 days following publication in the **Federal Register** of the notice discussed in Ordering Paragraph (C) above.

(E) The Secretary shall promptly publish this order in the **Federal Register**.

By the Commission.

David P. Boergers,

Secretary.

[FR Doc. 01–29450 Filed 11–26–01; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG02–1–000]

Southern LNG Inc.; Notice of Filing

November 20, 2001.

On October 24, 2001, Southern LNG submitted its revised standards of conduct.

Southern LNG Inc. states that it served copies of the filing on all customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest in this proceeding with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. (18 CFR 385.211 or 385.214) All such motions to intervene or protest should be filed on or before December 5, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–29411 Filed 11–26–01; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–48–000]

Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

November 20, 2001.

Take notice that on November 15, 2001, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain revised tariff sheets, which sheets are enumerated in Appendix A attached to the filing. The proposed effective date of such tariff sheets is November 1, 2001.

Transco states that the purpose of the instant filing is to track rate changes attributable to: (1) Transportation service purchased from Dominion Transmission, Inc. (Dominion) under its Rate Schedule GSS, the costs of which are included in the rates and charges payable under Transco's Rate Schedules GSS and LSS, and (2) transportation service purchased from Texas Gas Transmission Corporations (Texas Gas) under its Rate Schedule FT, the costs of which are included in the rates and charges payable under Transco's Rate Schedule FT–NT. This filing is being made pursuant to tracking provisions under Section 3 of Transco's Rate Schedule GSS, Section 4 of Transco's Rate Schedule LSS and Section 4 of Transco's Rate Schedule FT–NT.

Transco states that included in Appendices B and C attached to the filing are the explanations of the rate changes and details regarding the computation of the revised GSS, LSS and FT–NT rates.

Transco states that copies of the filing are being mailed to affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://*