

109 FERC ¶61,276  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, and Joseph T. Kelliher.

AEP Power Marketing, Inc.	Docket Nos. ER96-2495-020 ER96-2495-021 ER96-2495-022 ER96-2495-023
AEP Service Corporation	ER97-4143-008 ER97-4143-009 ER97-4143-010 ER97-4143-011
CSW Power Marketing, Inc.	ER97-1238-015 ER97-1238-016 ER97-1238-017 ER97-1238-018
CSW Energy Services, Inc.	ER98-2075-014 ER98-2075-015 ER98-2075-016 ER98-2075-017
Central and South West Services, Inc.	ER98-542-010 ER98-542-011 ER98-542-012 ER98-542-013 EL04-131-000 (Not consolidated)

ORDER ON UPDATED MARKET POWER ANALYSIS, INSTITUTING SECTION  
206 PROCEEDING AND ESTABLISHING REFUND EFFECTIVE DATE

(Issued December 17, 2004)

1. On August 9, 2004, as amended on August 10, 2004, September 16, 2004, and November 19, 2004, AEP Power Marketing, Inc., AEP Service Corporation, on behalf of the American Electric Power operating companies, CSW Power Marketing, Inc., CSW

Energy Services, Inc., and Central and South West Services, Inc. (collectively, AEP) submitted for filing generation market power screens in compliance with the Commission's orders issued on April 14, 2004 and July 8, 2004.<sup>1</sup> The filing, as amended, indicates that AEP passes the pivotal supplier screen and the wholesale market share screen in the PJM market.<sup>2</sup> AEP also states that it passes both screens in the Electric Reliability Council of Texas (ERCOT).<sup>3</sup> AEP states that, in the AEP-Southwest Power Pool, Inc. (AEP-SPP) control area,<sup>4</sup> AEP passes the pivotal supplier screen but fails the wholesale market share screen for each of the four seasons considered.<sup>5</sup> The filing indicates that in each of the control areas directly interconnected to AEP-SPP, AEP passes the pivotal supplier screen and the wholesale market share screen. Intervenors have filed protests alleging that AEP has generation market power in the AEP-SPP control area and requesting customer protection.

2. As the Commission stated in the April 14 Order, where an applicant is found to have failed either generation market power screen, such failure provides the basis for instituting a proceeding pursuant to section 206 of the Federal Power Act (FPA)<sup>6</sup> and establishes a rebuttable presumption of market power in the section 206 proceeding.<sup>7</sup> Accordingly, as discussed below, in this order, the Commission institutes a proceeding pursuant to section 206 of the FPA to determine whether AEP may continue to charge market-based rates and establishes a refund effective date pursuant to the provisions of section 206. The instant section 206 proceeding, as well as any resulting mitigation or refunds, is limited to the AEP-SPP control area because the filing indicates that this is the market for which AEP fails the wholesale market share screen.

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<sup>1</sup> *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (April 14 Order), *order on reh'g, AEP Power Marketing, Inc.*, 108 FERC ¶ 61,026 (2004) (July 8 Order).

<sup>2</sup> AEP's service territory in PJM Interconnection, L.L.C. is referred to as "AEP-East".

<sup>3</sup> AEP's service territory in ERCOT is referred to hereinafter as "AEP-ERCOT".

<sup>4</sup> The AEP-SPP control area is comprised of AEP's service territories in Arkansas, Louisiana, Oklahoma, and Texas.

<sup>5</sup> AEP's market share percentages in AEP-SPP range from 36 to 42 percent.

<sup>6</sup> 16 U.S.C. § 824e (2000).

<sup>7</sup> April 14 Order, 107 FERC ¶ 61,018 at P 201.

3. This order, including the refund effective date, will protect customers from excessive rates and charges that may result from the exercise of market power.

### **Background**

4. In the April 14 Order, as clarified by the July 8 Order, the Commission adopted two indicative screens for assessing generation market power: a pivotal supplier screen and a wholesale market share screen. The Commission stated that passage of both screens establishes a rebuttable presumption that the applicant does not possess generation market power, while failure of either screen creates a rebuttable presumption that the applicant has generation market power. The Commission further stated that applicants and intervenors may, however, rebut the presumption established by the results of the initial screens by submitting a Delivered Price Test. Alternatively, an applicant may accept the presumption of market power or forgo the generation market power analysis altogether and go directly to mitigation.<sup>8</sup> The July 8 Order directed AEP to file, within thirty days of the issuance of that order, generation market power analyses pursuant to these two indicative screens.<sup>9</sup>

### **Description of AEP's filing regarding AEP-East and AEP-ERCOT**

5. AEP submitted the results of the two generation market power screens for the AEP-East control area and first-tier markets (1) before AEP-East's integration into PJM, and (2) after AEP-East's integration into PJM on October 1, 2004. AEP's submittal indicates that AEP-East passes both the pivotal supplier screen and the wholesale market share screen with a market share of less than 9 percent for each of the four seasons considered.

6. AEP also owns generation assets in the ERCOT control area and states that it passes both the pivotal supplier screen and the wholesale market share screen with a market share of less than 3 percent for each of the four seasons considered.

### **Description of AEP's filing regarding AEP-SPP**

7. In its filing, AEP also submitted the results of the two generation market power screens for the AEP-SPP control area. AEP states that it passes the pivotal supplier

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<sup>8</sup> In addition, as the Commission stated in the April 14 Order, the applicant or intervenors may present evidence such as historical sales data to support whether the applicant does or does not possess market power. April 14 Order, 107 FERC ¶ 61,018 at P 37.

<sup>9</sup> July 8 Order, 108 FERC ¶ 61,029 at Ordering Paragraph (B).

screen for AEP-SPP's control area and for first-tier control areas. AEP represents that it passes the wholesale market share screen for first-tier control areas but fails in AEP-SPP's control area for each of the four seasons considered.<sup>10</sup> Recognizing that it fails the wholesale market share screen in AEP-SPP's control area, AEP has prepared a "truncated market share analysis" which, it states, focuses on contrasting potentially contestable loads in the AEP-SPP control market area with the competitive resources available to meet those loads.<sup>11</sup> AEP also prepared an analysis of AEP's short-term sales for 2003 in AEP-SPP.

8. On October 29, 2004, the Director, Division of Tariffs and Market Development – South, acting pursuant to delegated authority, issued a data request seeking additional information relating to AEP-SPP's submittal. On November 19, 2004, AEP filed its response to the data request. AEP has provided additional information regarding its proposed alternative screen, revised its market-based rate tariffs to include the Commission's market behavior rules,<sup>12</sup> and presented underlying data and workpapers supporting its first-tier import study.

#### **Notice of Filings and Responsive Pleadings**

9. Notice of the August 9-10, 2004, filings was published in the *Federal Register*, 69 Fed. Reg. 51,658 (2004), with interventions or protests due on or before August 30, 2004; notice of the September 16, 2004, filing was published in the *Federal Register*, 69 Fed. Reg. 57,680 (2004), with interventions or protests due on or before September 27, 2004; notice of the November 19, 2004, data request filing was published in the *Federal Register*, 69 Fed. Reg. 69,596 (2004), with interventions or protests due on or before December 7, 2004.

10. On August 24, 2004, PSEG Power LLC and PSEG Energy Resources & Trade LLC filed an intervention. On August 30, 2004, timely motions to intervene were filed by the PJM Industrial Customer Coalition (PJM-ICC), the West Virginia Energy Users Group, and the Industrial Energy Users-Ohio (IEU-Ohio); North Carolina Electric Membership Corporation; the Arkansas Cities and Cooperative (the Cities of Benton, North Little Rock, and Prescott, Arkansas; the West Memphis, Arkansas Utilities Commission; the Conway Corporation; Hope Water & Light Commission; and Farmer's Electric Cooperative Corporation).

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<sup>10</sup> See AEP filing at 45.

<sup>11</sup> See *id.* at 44-47.

<sup>12</sup> *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218 (2003), *order on reh'g*, 107 FERC ¶ 61,175 (2004).

11. On August 30, 2004, Electricity Consumers Resource Council (ELCON) filed a motion to intervene and comments regarding AEP's August 9-10 filing. Oklahoma Municipal Power Authority (OMPA) filed a protest and motion to intervene. East Texas Electric Cooperative, Inc. and Northeast Texas Electric Cooperatives, Inc. (East Texas Cooperatives) filed a protest. East Texas encourages the Commission to reject AEP's truncated market power analysis and revoke AEP's market-based rate authority in the AEP-SPP control area.

12. ELCON, OMPA, and East Texas Cooperatives object to AEP electing not to submit a Delivered Price Test, the only forward looking market power study applicants may submit to rebut the presumption of market power.<sup>13</sup> ELCON recommends that the Commission initiate a section 206 proceeding to determine whether AEP-SPP can exercise market power in its home control area.<sup>14</sup> OMPA argues that the Commission should deny AEP's request for continued authority to make sales at market-based rates within AEP-SPP, and that AEP-SPP should be promptly made subject to the cost-based default mitigation provided in the Commission's April 14 Order and July 8 Order because AEP declined to submit a delivered price test or proposed mitigation for AEP-SPP.<sup>15</sup> East Texas Cooperatives encourages the Commission to reject AEP's alternative market power analysis as it relates to AEP-SPP, reject AEP's claim that it lacks generation market power in AEP-SPP, act immediately to revoke AEP's market-based rate authority for short-term and long-term sales made in AEP-SPP, and require that such sales henceforth be made at cost-based rates.<sup>16</sup>

13. On September 14, 2004, AEP filed an answer to the August 30, 2004, protests and comments of ELCON, OMPA, and East Texas Cooperatives. On October 21, 2004, East Texas Cooperatives filed a motion for leave to reply to answer and reply to answer.

14. On September 27, 2004, the PJM Industrial Customer Coalition and Industrial Energy Users-Ohio (PJM-ICC and IEU-Ohio) jointly filed a protest to AEP's September 16 filing. On October 4, 2004, AEP filed an answer to that protest. On October 19, 2004, PJM-ICC and IEU-Ohio filed an answer to AEP's October 4 answer.

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<sup>13</sup> *See, e.g.*, August 30 filings of East Texas Cooperatives at 1, 3-14; OMPA at 1, 5-17; ELCON at 2-3.

<sup>14</sup> *See* August 30 filing of ELCON at 3.

<sup>15</sup> *See* August 30 filing of OMPA at 17.

<sup>16</sup> *See* August 30 filing of East Texas Cooperatives at 14.

15. On December 7, 2004, OMPA filed a protest and a motion to intervene with regard to AEP's November 19, 2004, filing; Steel Dynamics, Inc. (Steel Dynamics), Calpine Corporation (Calpine), and East Texas Cooperatives filed protests.<sup>17</sup> OMPA states that AEP's response to the Commission's November 19 data request does not address the shortcomings in AEP's original filing, and that AEP dismisses or ignores the significant limits on transmission availability that prevent generators from competing for load that AEP says is contestable, whether on a short-term or long-term basis. Steel Dynamics, Calpine and East Texas Cooperatives urge the Commission to reject AEP's truncated market share analysis and continue to rely on the wholesale market share screen. Calpine also argues that AEP failed to adequately address barriers to entry and affiliate abuse, and that the AEP-SPP open access transmission tariff (OATT) does not prevent the exercise of transmission market power. East Texas Cooperatives requests that the Commission revoke AEP's market-based rate authority in the AEP-SPP region and require AEP to make sales at cost-based rates.

### **Procedural Matters**

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a protest and an answer to an answer unless otherwise ordered by the decisional authority. The Commission will accept the answers filed by AEP, East Texas Cooperatives, and PJM-ICC and IEU-Ohio because they have provided information that assisted us in our decision-making process.

### **Discussion**

#### **Market-Based Rate Authorization**

17. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, market power in generation and

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<sup>17</sup> East Texas Electric Cooperative, Inc. and Northeast Texas Electric Cooperatives, Inc. previously filed a motion to intervene in Docket No. ER96-2495-017, which predates the April 14 Order.

transmission and cannot erect other barriers to entry. The Commission also considers whether there is evidence of affiliate abuse or reciprocal dealing.<sup>18</sup>

### **Generation Market Power**

18. In the April 14 Order, the Commission adopted two indicative screens for assessing generation market power. AEP performed the generation market power screen for the AEP-East, AEP-ERCOT and AEP-SPP control areas. AEP states that, with the integration of AEP-East into PJM, AEP passes both the pivotal supplier screen and the wholesale market share screen for each of the four seasons considered in the PJM market. AEP also states that it passes both the pivotal supplier screen and the wholesale market share screen for each of the four seasons considered for the ERCOT market. The Commission has reviewed AEP's pivotal supplier screen and wholesale market share screens for the PJM and ERCOT markets and finds that AEP passes the generation market power screens for those markets.

19. AEP states that it passes the pivotal supplier screen in the AEP-SPP control area. AEP also states that it passes the pivotal supplier screen in each control area that is directly interconnected to the AEP-SPP control area.

20. AEP states that it passes the wholesale market share screen in each control area that is directly interconnected to AEP-SPP. The Commission finds that AEP has complied with the directives in the April 14 Order, as clarified in the July 8 Order, regarding performance of a simultaneous transmission import capability study and the Commission relies on the results of that study herein.

21. We note that we have required that SPP provide a market monitoring plan which includes appropriate market power mitigation measures to address market power problems and a clear set of rules governing market participation conduct with the consequences for violations spelled out.<sup>19</sup> In addition, SPP's market monitoring plan must include the process that the Independent Market Monitor (IMM) would use if the IMM thinks the markets are not resulting in just and reasonable prices or providing appropriate incentives for investment in needed infrastructure. SPP's market monitoring

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<sup>18</sup> See, e.g., *Progress Power Marketing, Inc.*, 76 FERC ¶ 61,155, at 61,921-22 (1996); *Northwest Power Marketing Co., L.L.C.*, 75 FERC ¶ 61,281, at 61,899-900 (1996); accord *Heartland Energy Services, Inc.*, 68 FERC ¶ 61,223, at 62,062-63 (1994).

<sup>19</sup> *Southwest Power Pool, Inc.*, 106 FERC ¶ 61,110, *order on reh'g*, *Southwest Power Pool, Inc.*, 109 FERC ¶ 61,010 (2004).

plan would include periodic reports prepared by the IMM. These reports will incorporate market metrics to provide a basis for measuring the performance of these markets across RTOs and ISOs, and compare the performance of the market in each RTO or ISO over time. Metrics will also be developed to provide standard performance information on a monthly basis. Accordingly, once the Commission approves SPP's market monitoring and mitigation plan, Applicants could point to such mitigation rules as evidence that any market power has been adequately mitigated. The Commission will consider such arguments on a case-by-case basis.

22. AEP acknowledges that it fails the wholesale market share screen in the AEP-SPP control area for each of the four seasons considered.

23. AEP provided additional information regarding its proposed alternative screen, the truncated market share analysis. In this alternative analysis, AEP limits each supplier's uncommitted capacity to the amount of potentially contestable load as defined by AEP. In its response to the Commission's October 29 data request, AEP states that it defines potentially contestable load as the sum of its contracts expiring by the end of 2007, the total load of the Arkansas Electric Cooperative Corporation, and other smaller loads in the AEP-SPP control area. It measures these loads at the annual peak. AEP then truncates its uncommitted capacity and each individual competitor's uncommitted capacity to this amount of potentially contestable load. AEP uses these truncated uncommitted capacities to calculate its market share. In the context of the simultaneous import study AEP states that, in response to the Commission's October 29 data request, it has reduced competitive supplies in AEP-SPP by 3,120 MW. This reduction reflects operating limits imposed on generators in AEP-SPP by transmission constraints. If AEP's truncated market share analysis is performed after this reduction and at the peak of each season, AEP's market share is 22 percent.

24. The Commission's analysis indicates that AEP's additional evidence is not sufficient to rebut the presumption of market power indicated by the failure of the wholesale market share analysis, and may be inconsistent with the April 14 and July 8 Orders' requirement that, with respect to forward-looking analyses or studies, the Delivered Price Test is the only market power study applicants may submit.<sup>20</sup>

25. Pursuant to the April 14 Order, AEP's failure of the wholesale market share screen in the AEP-SPP control area provides the basis for the Commission to institute the instant section 206 proceeding to determine whether AEP may continue to charge market-based

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<sup>20</sup> See April 14 Order, 107 FERC ¶ 61,018 at P 37 n.11; July 8 Order, 108 FERC ¶ 61,019 at P 27.

rates in the AEP-SPP control area, and establishes a rebuttable presumption of market power. This order establishes a refund effective date in order to put in place the necessary procedural framework to promptly impose an effective remedy, in case the Commission determines that such a remedy is required. The Commission's decision to establish a refund effective date does not constitute a determination that refunds will be ordered.

26. The Commission's decision to institute the instant section 206 proceeding does not constitute a definitive finding by the Commission that AEP has market power in the AEP-SPP control area. As discussed in the April 14 and July 8 Orders, the screens are conservatively designed to identify the subset of applicants who require closer scrutiny. Accordingly, for the AEP-SPP control area, AEP will have 60 days from the date of issuance of this order finding a screen failure to: (1) file a Delivered Price Test analysis; (2) file a mitigation proposal tailored to its particular circumstances that would eliminate the ability to exercise market power; or (3) inform the Commission that it will adopt the April 14 Order's default cost-based rates or propose other cost-based rates and submit cost support for such rates.<sup>21</sup> In addition, as the Commission stated in the April 14 Order,<sup>22</sup> the applicant or intervenors may present evidence such as historical sales data to support whether the applicant does or does not possess market power.

27. The Commission notes that AEP submitted supplemental commercial data including sources for generation and load data for AEP-East. AEP states that it relied on Platts Basecase data for the first quarter of 2004 for generation resources available by the end of 2003. For areas interconnected with AEP-East, it used the Platts data for 2002 and escalated the load figures to 2003 based on the North American Electric Reliability Council (NERC) regional load changes from 2002 to 2003. To supplement the workpapers filed with testimony, AEP submitted a disk which details the changes made to the Platts Basecase data. AEP states that this data was purchased from Platts under an agreement which prohibits AEP from making the data public. AEP argues that parties interested in verifying the data should also purchase the data from Platts. No parties have protested AEP filing such information confidentially.

28. In the July 8 Order, the Commission stated that "[w]ith respect to data that is only available from commercial sources, we clarify that commercial sources may be used to the extent the data is made available to intervenors and other interested parties. Applicants utilizing commercial information to perform the screens should include it in

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<sup>21</sup> April 14 Order, 107 FERC ¶ 61,018 at P 201, 207-09.

<sup>22</sup> *Id.* at P 37.

their filing.”<sup>23</sup> The Commission notes that no parties in the instant case have protested AEP’s filing such information confidentially. As a result, the Commission will allow the use of such data in this case.<sup>24</sup>

29. In cases where, as here, the Commission institutes a section 206 proceeding on its own motion, 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 initiation of the Commission’s proceeding in the *Federal Register*, and no later than five months subsequent to the expiration of the 60-day period. In order to give maximum protection to customers, and consistent with our precedent,<sup>25</sup> the Commission will establish a refund effective date at the earliest date allowed. This date will be 60 days from the date on which notice of the initiation of the proceeding in Docket No. EL04-131-000 is published in the *Federal Register*. In addition, section 206 requires that, if no final decision has been rendered by that date, the Commission must provide its estimate as to when it reasonably expects to make such a decision. Given the times for filing identified in this order, and the nature and complexity of the matters to be resolved, the Commission estimates that it will be able to reach a final decision by April 29, 2005.

### **Transmission Market Power**

30. When a transmission owning public utility seeks market-based rate authority, the Commission has required the public utility to have an OATT on file before granting such authorization. AEP operates its transmission facilities pursuant to an OATT on file with the Commission. We note that AEP’s OATT was accepted by Commission order.<sup>26</sup> The Commission finds that AEP satisfies the Commission’s transmission market power standard for the grant of market-based rate authority.

31. We recognize that protesters have expressed concerns that AEP may have the ability to exercise transmission market power. However, we believe that such arguments would be more appropriately raised in a separate complaint proceeding.

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<sup>23</sup> July 8 Order, 108 FERC ¶ 61,026 at P 121.

<sup>24</sup> See *Oasis Power Partners, LLC*, 109 FERC ¶ 61,180 (2004).

<sup>25</sup> See, e.g., *Canal Electric Company*, 46 FERC ¶ 61,153, *reh’g denied*, 47 FERC ¶ 61,275 (1989).

<sup>26</sup> *American Electric Power Company and Central and South West Corporation*, 92 FERC ¶ 61,016 (2000); *Pennsylvania-New Jersey-Maryland Interconnection*, 81 FERC ¶ 61,257 (1997).

### **Barriers to Entry**

32. AEP has stated that none of its affiliates control entry barriers that might be used to block competitors and that it does not control natural gas transportation facilities, gas production facilities, coal transportation facilities, or coal production facilities that could be used to block entry by potential competitors. Based on these representations, the Commission is satisfied that AEP cannot erect barriers to entry.<sup>27</sup>

33. We recognize that protesters have expressed concerns that AEP may have the ability to erect barriers to entry. However, we believe that such arguments would be more appropriately raised in a separate complaint proceeding

### **Affiliate Abuse**

34. The Commission is also concerned with the potential for affiliate abuse. AEP's market-based rate tariffs include codes of conduct which govern the relationship between affiliates. On this basis, AEP satisfies the Commission's concerns with regard to affiliate abuse.

35. We recognize protesters have expressed concerns regarding affiliate abuse. However, we believe that such arguments would be more appropriately raised in a separate complaint proceeding.

36. The Commission notes that in AEP's November 19 filing AEP substituted its codes of conduct with the Commission's market behavior rules by designating the market behavior rules with the page numbers already used for the codes of conduct. Because AEP is required to have on file both codes of conduct and the market behavior rules, within 15 days from the date of issuance of this order, AEP is directed to revise its market-based rate tariffs to include both the market behavior rules and the codes of conduct. AEP is also directed to file, within fifteen days of the date of this order, revised designations for the market-based rate tariff in accordance with the guidelines set forth in Order No. 614, FERC Stats. & Regs ¶ 31,096 (2000).

### **Market Behavior Rules**

37. In the Market Behavior Rules Order, the Commission directed market-based rate sellers to include as an amendment to their market-based rate tariff the market behavior

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<sup>27</sup> See, e.g., *Louisville Gas & Electric Co.*, 62 FERC ¶ 61,016 (1993).

rules at such time as they seek continued authorization to sell at market-based rates.<sup>28</sup> As described above, on November 19, 2004, AEP substituted its codes of conduct with the Commission's market behavior rules. Therefore, as explained above, AEP is directed to revise its market-based rate tariff.

### **Reporting Requirements**

38. Consistent with the procedures the Commission adopted in Order No. 2001, an entity with market-based rates must file electronically with the Commission an Electric Quarterly Report containing: (1) a summary of the contractual terms and conditions in every effective service agreement for market-based power sales; and (2) transaction information for effective short-term (less than one year) and long-term (one year or greater) market-based power sales during the most recent calendar quarter.<sup>29</sup> Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.<sup>30</sup>

39. With regard to reporting changes in status that would reflect a departure from the characteristics the Commission has relied upon in approving market-based pricing, in a Notice of Proposed Rulemaking in Docket No. RM04-14-000, the Commission is proposing to amend its regulations and to modify the market-based rate authority of current market-based rate sellers to establish a reporting obligation for changes in status that apply to public utilities authorized to make wholesale power sales in interstate

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<sup>28</sup> Market Behavior Rules Order, 105 FERC ¶ 61,218 (2003), at Ordering Paragraph (A).

<sup>29</sup> *Revised Public Utility Filing Requirements*, Order No. 2001, 67 Fed. Reg. 31,043 (2002), FERC Stats. & Regs. ¶ 31,127 (2002). Required data sets for contractual and transaction information are described in Attachments B and C of Order No. 2001. The Electric Quarterly Report must be submitted to the Commission using the EQR Submission System Software, which may be downloaded from the Commission's website at <http://www.ferc.gov/Electric/eqr/eqr.htm>.

<sup>30</sup> The exact dates for these reports are prescribed in 18 C.F.R. § 35.10b (2004). Failure to file an Electric Quarterly Report (without an appropriate request for extension), or failure to report an agreement in an Electric Quarterly Report, may result in forfeiture of market-based rate authority, requiring filing of a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

commerce at market-based rates.<sup>31</sup> Accordingly, the change in status reporting obligation for AEP is subject to the outcome of the rulemaking.

The Commission orders:

(A) AEP's updated market power analysis for all relevant markets not subject to the section 206 proceeding is hereby accepted for filing, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the 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 C.F.R., Chapter I), the Commission hereby institutes a proceeding in Docket No. EL04-131-000 concerning the justness and reasonableness of AEP's market-based rates, as discussed in the body of this order.

(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. EL04-131-000.

(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) For the AEP-SPP control area, AEP is directed, within 60 days from the date of issuance of this order, to: (1) file a Delivered Price Test analysis; (2) file a mitigation proposal tailored to its particular circumstances that would eliminate the ability to exercise market power; or (3) inform the Commission that it will adopt the April 14 Order's default cost-based rates or propose other cost-based rates and submit cost support for such rates.

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<sup>31</sup> *Reporting Requirement for Changes in Status for Public Utilities With Market-Based Rate Authority*, 69 Fed. Reg. 61,180 (2004), FERC Stats. & Regs. ¶ 32,576 (2004).

Docket No. ER96-2495-020, *et al.*

14

(F) AEP is directed, within 15 days from the date of issuance of this order, to file market behavior rules and make other conforming changes as discussed in the body of this order.

By the Commission. Commissioner Kelly not participating.

( S E A L )

Magalie R. Salas,  
Secretary.