

113 FERC ¶ 61,052  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Allegheny Power	Docket Nos. ER98-1466-003 ER05-1314-000 ER05-1314-001
Allegheny Energy Supply Company, LLC	Docket No. ER00-814-004
Allegheny Energy Supply Gleason Generating Facility, LLC	Docket No. ER01-2067-004
Allegheny Energy Supply Wheatland Generating Facility, LLC	Docket Nos. ER01-2068-004 ER05-1429-000
Allegheny Energy Supply Hunlock Creek, LLC	Docket No. ER01-332-003
Green Valley Hydro, LLC	Docket No. ER00-2924-004
Buchanan Generation, LLC	Docket No. ER02-1638-003

ORDER ACCEPTING UPDATED MARKET POWER ANALYSIS, REVISIONS TO  
MARKET-BASED RATE TARIFF, AND NOTICE OF CANCELLATION

(Issued October 20, 2005)

1. In this order, the Commission accepts the updated market power analysis filed by Allegheny Power, Allegheny Energy Supply Company, LLC (AE Supply), Allegheny Energy Supply Gleason Generating Facility, LLC (Gleason), Allegheny Energy Supply Hunlock Creek, LLC (Hunlock), Green Valley Hydro, LLC (Green Valley), and Buchanan Generation, LLC (Buchanan) (collectively, Applicants). The Commission also

accepts revisions to the Applicants' market-based rate tariffs<sup>1</sup> to incorporate the Commission's change in status reporting requirement.<sup>2</sup>

2. The Commission further accepts the tariff revisions submitted separately by Allegheny Power.<sup>3</sup> The Commission also accepts the notice of cancellation submitted by Allegheny Energy Supply Wheatland Generating Facility, LLC (Wheatland).<sup>4</sup>

3. As discussed below, the Commission concludes that Applicants satisfy the Commission's standards for market-based rate authority. Applicants' next updated market power analysis is due three years from the date of this order.

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<sup>1</sup> Allegheny Energy Supply Company, First Revised Electric Rate Schedule FERC No. 1, Original Sheet No. 2A; Allegheny Energy Supply Gleason Generating Facility, LLC, FERC Electric Tariff, First Revised Volume No. 1, Third Revised Sheet No. 2 (supersedes Second Revised Sheet No. 2); Allegheny Energy Supply Hunlock Creek, LLC, Rate Schedule FERC No. 1, Original sheet No. 1A; Green Valley Hydro, LLC, FERC Electric Tariff, Original Volume No. 1, First Revised Sheet No. 2 (supersedes Original Sheet No. 2); Buchanan Generation, LLC, FERC Electric Tariff, Original Volume No. 1, Original Sheet No. 2A. The change in status reporting requirement is effective March 21, 2005.

<sup>2</sup> *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 70 Fed. Reg. 8,253 (Feb. 18, 2005), FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005).

<sup>3</sup> FERC Electric Tariff, First Revised Volume No. 6, Original sheet Nos. 1-7 (supersedes FERC Electric Tariff, Original Volume No. 6). The revised tariff is effective August 12, 2005.

<sup>4</sup> FERC Electric Tariff, First Revised Volume No. 1, Third Revised Sheet No. 1 (cancels FERC Electric Tariff, First Revised Volume No. 1). The cancellation is effective September 3, 2005.

## **Background**

4. On August 11, 2005, as amended August 31, 2005, Applicants submitted for filing an updated market power analysis pursuant to the requirements of the Commission's orders granting Applicants authority to sell capacity and energy at market-based rates.<sup>5</sup>

5. On August 11, 2005, as amended on August 31, 2005, Allegheny Power filed, in Docket Nos. ER05-1314-000 and -001, revisions to its market-based rate tariff to be consistent with the Commission's *pro forma* market-based rate code of conduct, remove an inaccurate footnote referencing a merger that was never consummated, and to make other ministerial changes.<sup>6</sup>

6. On September 2, 2005, Wheatland filed in Docket No. ER05-1429-000 a notice of cancellation of its market-based rate tariff.

7. Applicants state that Allegheny Power is the business name for Allegheny Energy's three wholly-owned franchised public utilities, Monongahela Power Company (Monongahela), The Potomac Edison Company (Potomac), and West Penn Power Company (West Penn). Potomac and West Penn have transferred their generating assets to AE Supply. Monongahela, however, continues to own generating facilities. Monongahela's interests in generation include a 3.5 percent interest in Ohio Valley Electric Corporation, which owns about 2,389 MW in Ohio and Indiana, and an ownership interest in 23 percent of the voting securities in Allegheny Generating Company, which owns about 840 MW of the Bath County Pumped Storage Project in

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<sup>5</sup> *Allegheny Power Service Corp.*, 82 FERC ¶ 61,245 (1998); *Allegheny Energy Supply Co., LLC*, Docket No. ER00-814-000 (Jan. 20, 2000) (unpublished letter order); *Allegheny Energy Supply Gleason Generating Facility, LLC*, Docket No. ER01-2067-000 (July 13, 2001) (unpublished letter order); *Allegheny Energy Supply Hunlock Creek, LLC*, Docket No. ER01-332-000 (Dec. 11, 2000) (unpublished letter order); *Green Valley Hydro, LLC*, Docket No. ER00-2924-000 (Aug. 17, 2000) (unpublished letter order); *Buchanan Generation, LLC*, Docket No. ER02-1638-000 (May 29, 2002) (unpublished letter order).

<sup>6</sup> Allegheny Power submitted the Commission's required change in status and market behavior rules originally in Docket No. ER98-1466-003, however they filed a revised version of their tariff in ER05-1314-000. Therefore the incorporation of these provisions is accepted based on the submittals in Docket Nos. ER05-1314-000 and -001.

Virginia. Monongahela, through its subsidiary, Mountain Gas Company, also serves retail gas customers in West Virginia. Additionally, all three companies own transmission systems.

8. Applicants state that AE Supply is a majority-owned subsidiary of Allegheny Energy, Inc. (Allegheny Energy) and is a registered public utility holding company under the Public Utility Holding Company Act of 1935.<sup>7</sup> AE Supply, as stated above, acquired all of the generating facilities and contractual rights to generating capacity previously owned by Potomac and West Penn.

9. Applicants state that Gleason is a wholly-owned subsidiary of AE Supply. Gleason owns and operates an approximately 568 MW generating facility located in the Tennessee Valley Authority (TVA) control area. Applicants state that construction of this facility began after July 9, 1996.

10. Applicants state that Hunlock owns a 50 percent interest in Hunlock Creek Energy Ventures, a Pennsylvania general partnership that owns the Hunlock Creek Power Station. The Hunlock Creek Power Station includes an approximately 50 MW coal-fired generating facility and a 44 MW combustion turbine in Hunlock Creek, Pennsylvania.<sup>8</sup>

11. Applicants state that Green Valley is a wholly-owned subsidiary of Allegheny Energy. Applicants state that Green Valley was formed to own and operate certain hydroelectric facilities that were previously owned by Potomac.

12. Applicants state that Buchanan is an indirect, 50 percent-owned, subsidiary of AE Supply. Buchanan owns an approximately 88 MW generating facility located in Virginia. Ownership of Buchanan is divided evenly between AE Supply's wholly-owned subsidiary, Buchanan Energy Company of Virginia, LLC, and CONSOL Energy, Inc., which is not affiliated with the Applicants.

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<sup>7</sup> 15 U.S.C. §§ 79a through 79 (2000).

<sup>8</sup> Applicants note in this filing that these generating facilities are under the operational control of UGI Development Company, which owns UGI Hunlock Development Company, which in turn owns the remaining 50 percent interest in Hunlock Creek Energy Ventures.

13. Applicants state that Wheatland owned an approximately 540 MW generating facility in Indiana, and is a wholly-owned subsidiary of AE Supply. Since the initial updated market power analysis filing, Wheatland sold its generating facility and associated jurisdictional assets, and assigned associated power contracts, to PSI Energy, Inc. and The Cincinnati Gas & Electric Company.<sup>9</sup> Wheatland, as mentioned above, has submitted a notice of cancellation of its market-based rate tariff.

### **Notice and Responsive Pleadings**

14. Notice of the Applicants' August 11, 2005 filing was published in the *Federal Register*, 70 Fed. Reg. 50,314 (2005), with protests and interventions due on or before September 1, 2005. The West Virginia Energy Users Group and the Industrial Energy Users-Ohio (collectively, Industrials) filed a timely motion to intervene and protest. In their protest, the Industrials contend that Applicants have failed to provide support for their proposed continuation of tariff provisions that allow affiliate sales up to the PJM Interconnection, LLC (PJM) real-time locational marginal price. UGI Development Company filed a timely motion to intervene. On September 13, 2005, Applicants filed an answer to the Industrial's protest. On September 28, 2005, the Industrials filed an answer to the Applicants' answer.

15. Notice of the Applicants' August 31, 2005 amendment was published in the *Federal Register*, 70 Fed. Reg. 54,041 (2005), with protests and interventions due on or before September 21, 2005. None was filed.

16. Notice of Allegheny Power's August 11, 2005 filing was published in the *Federal Register*, 70 Fed. Reg. 49,270 (2005), with protests and interventions due on or before September 1, 2005. None was filed.

17. Notice of Allegheny Power's August 31, 2005 amendment was published in the *Federal Register*, 70 Fed. Reg. 54,041 (2005), with protests and interventions due on or before September 21, 2005. None was filed.

18. Notice of Wheatland's September 2, 2005 filing was published in the *Federal Register*, 70 Fed. Reg. 54,736 (2005), with protests and interventions due on or before September 23, 2005. None was filed.

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<sup>9</sup> See *Cinergy Services, Inc.*, 111 FERC ¶ 62,306 (2005).

## **Discussion**

### **Procedural Matters**

19. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

20. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We are not persuaded to allow the Applicants' answer to the Industrials' protest or the Industrials' answer to the answer and therefore will reject them.

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

21. 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 transmission and cannot erect other barriers to entry. The Commission also considers whether there is evidence of affiliate abuse or reciprocal dealing.<sup>10</sup>

22. As discussed below, the Commission concludes that Applicants satisfy the Commission's standards for market-based rate authority.

### **Generation Market Power**

23. In the April 14 Order, the Commission adopted two indicative screens for assessing generation market power: the pivotal supplier screen and the wholesale market share screen.<sup>11</sup> Also, section 35.27(a) of the Commission's regulations provides that applicants shall not be required to demonstrate any lack of market power in generation

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<sup>10</sup> See, e.g., *Progress Power Marketing, Inc.*, 76 FERC ¶ 61,155, at 61,919 (1996); *Northwest Power Marketing Co., L.L.C.*, 75 FERC ¶ 61,281, at 61,899 (1996); accord *Heartland Energy Services, Inc.*, 68 FERC ¶ 61,223, at 62,062-63 (1994).

<sup>11</sup> April 14 Order, 107 FERC ¶ 61,018 at P 71-72.

with respect to sales from capacity constructed after July 9, 1996.<sup>12</sup> If an applicant sites generation in an area where it or its affiliates own or control other generation assets, the applicant must study whether its new capacity, when added to existing capacity, raises generation market power concerns.<sup>13</sup>

24. Applicants have prepared both the pivotal supplier and the wholesale market share screens for the PJM market. Applicants state that they pass the pivotal supplier screen and the wholesale market share screen in the PJM market.

25. Applicants state that they also own generation in the TVA control area, and entitlements to capacity and energy from Ohio Valley Electric Corporation (OVEC). Applicants state that construction of their generation in the TVA control area commenced after July 9, 1996. Applicants further state that they do not own any other generation in the TVA control area. Applicants state that they have grandfathered firm transmission rights to move energy from the OVEC facilities into PJM. Applicants have prepared both the pivotal supplier and the wholesale market share screens for the OVEC control area. The prepared screens show that Applicants pass both screens in the OVEC control area.

26. The Commission has reviewed the Applicants' generation market power analysis and has determined that the Applicants pass the wholesale market share screen and the pivotal supplier screen in the PJM market and the OVEC control area. Accordingly, the Commission finds that the Applicants satisfy the Commission's generation market power standard for the grant of market-based rate authority.

### **Transmission Market Power**

27. When a transmission-owning public utility seeks market-based rate authority, the Commission has required the public utility to have an open access transmission tariff (OATT) on file before granting such authorization. The Applicants state that their affiliated transmission assets, all located in PJM, are under the functional control of PJM, and are subject to the terms and conditions of PJM's OATT.<sup>14</sup> Further, no intervenors

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<sup>12</sup> 18 C.F.R. § 35.27(a) (2005). We note that the Commission intends to address as part of the generic rulemaking proceeding in Docket No. RM04-7-000 whether to retain or modify section 35.27(a) of its regulations.

<sup>13</sup> April 14 Order, 107 FERC ¶ 61,018 at P 69.

<sup>14</sup> See *PJM Interconnection, L.L.C.*, 92 FERC ¶ 61,178 (2000).

have raised transmission market power concerns. Based on the Applicants' representation, the Commission finds that the Applicants satisfy the Commission's transmission market power standard for the grant of market-based rate authority.

### **Other Barriers to Entry**

28. The Applicants state that they do not control sites for generating capacity in the relevant market. The Applicants state that Monongahela, through its natural gas distribution facilities, supplies approximately 800 MW of unaffiliated generation in West Virginia. The Applicants also state that there are no other issues that raise any relevant competitive concerns. Further, no intervenors have raised barrier to entry concerns. Based on the Applicants' representation, the Commission is satisfied that the Applicants cannot erect barriers to entry.

29. However, should the Applicants or any of their affiliates deny, delay, or require unreasonable terms, conditions, or rates for natural gas service to a potential electric competitor in bulk power markets, then that electric competitor may file a complaint with the Commission that could result in the suspension of the Applicants' authority to sell power at market-based rates.<sup>15</sup>

### **Affiliate Abuse**

30. Applicants state that they abide by their existing codes of conduct which govern the relationships between Allegheny Power and its public utility affiliates with market-based rate authority.

31. In their protest, the Industrials state that the provisions governing affiliate sales in the Applicants' tariffs have not been shown to be just and reasonable under the Federal Power Act and that Applicants' filing offers no new support for continued approval of the affiliate sales tariff provisions. The Industrials state that there are defects in the PJM Interconnection, LLC (PJM) market structure. They state that PJM cannot adequately manage the risks of inappropriate affiliate transfer pricing. The Industrials request that the Commission either reject the Applicants' request for continued market-based rate authority or condition acceptance subject to tariff modifications that require all affiliate transactions to be priced at a rate no higher than the actual cost of generation.

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<sup>15</sup> See, e.g., *Louisville Gas & Electric Co.*, 62 FERC ¶ 61,016 (1993).

32. We find that the issues raised by the Industrials relating to the affiliate sales provisions of the Applicants' tariffs and to the adequacy of the PJM market constitute an impermissible collateral attack on both the prior Commission orders accepting the affiliate sales provisions,<sup>16</sup> as well as the Commission-approved market monitoring and mitigation of PJM.<sup>17</sup> To the extent that the Industrials are challenging the Commission's current approach with regard to sales between affiliates at market-based rates, we believe those arguments are more appropriately raised and addressed in the generic rulemaking proceeding in Docket No. RM04-7-000.<sup>18</sup> In any event, Industrials have failed to persuade us that the affiliate sales provisions in the Applicants' tariffs are no longer sufficient. We further note, however, that the Industrials' arguments rest on the assertion that the Commission-approved pricing system in PJM is flawed, but the Industrials have failed to demonstrate the nature or extent of how the Commission-approved pricing system in PJM is flawed. Accordingly, the Commission finds that, based on Applicants' representations, Applicants satisfy the Commission's concerns with regard to affiliate abuse.

### **Tariff Revisions**

33. Allegheny Power proposes to revise its market-based rate tariff to be consistent with the Commission's *pro forma* market-based rate code of conduct; to remove a footnote reference to a proposed merger with DQE, Inc. that was never consummated; to make ministerial changes such as to current effective dates and issuing personnel names; and to incorporate the market behavior rules and change in status reporting requirement. The Commission accepts the tariff revisions filed by Allegheny Power.

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<sup>16</sup> *Allegheny Energy Supply Co.*, 88 FERC ¶ 61,303 (1999); *Allegheny Power Services Corp.*, 90 FERC ¶ 61,002 (2000).

<sup>17</sup> See generally PJM Open Access Transmission Tariff, Attachment M (PJM Market Monitoring Plan); PJM Operating Agreement, Schedule 1 (PJM Interchange Energy Market).

<sup>18</sup> We note that Industrials also submitted comments in Docket No. RM04-7-000, in which similar issues have been presented to the Commission.

### **Notice of Cancellation**

34. On August 12, 2005, Wheatland consummated a transaction in which it sold its generating facility and associated jurisdictional assets. As a result, Wheatland states that it no longer expects to conduct business under its market-based rate tariff, and accordingly no longer needs to retain its market-based rate authorization. The Commission accepts the notice of cancellation filed by Wheatland. Accordingly, any waivers and authorizations previously granted in connection with Wheatland's market-based rate authority are no longer applicable.

### **Reporting Requirements**

35. In Order No. 664, the Commission stated that it intends to no longer grant waivers of the full requirements of Part 45 in its orders granting market-based rate authority. Rather, persons seeking to hold interlocking positions will be required henceforth to comply with the full requirements of Part 45.<sup>19</sup> With respect to an individual who currently is authorized to hold interlocking positions, that individual will not need to refile under the full requirements of Part 45 to continue to hold such interlocking positions (unless and until that individual assumes different or additional interlocking positions).<sup>20</sup> Thus, consistent with Order No. 664, any of the Applicants who previously sought and were granted waiver of the full requirements of Part 45 will be required henceforth to comply with the full requirements of Part 45.

36. 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

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<sup>19</sup> *Commission Authorization to Hold Interlocking Positions*, Order No. 664, 70 Fed. Reg. 17,219 (Apr. 5, 2005), 112 FERC ¶ 61,298, at P 34 (2005) (discussing Part 45, 18 C.F.R. Part 45 (2005)).

<sup>20</sup> *Id.* P 36.

greater) market-based power sales during the most recent calendar quarter.<sup>21</sup> Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.<sup>22</sup>

37. The Applicants must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.<sup>23</sup>

38. The Applicants are directed to file an updated market power analysis within three years of the date of this order, and every three years thereafter. The Commission also reserves the right to require such an analysis at any intervening time.

The Commission orders:

(A) Applicants' updated market power analysis is hereby accepted for filing, as discussed in the body of this order.

(B) Applicants' revised tariff sheets are hereby accepted for filing, as discussed in the body of this order.

(C) Applicants' next updated market power analysis is due within three years of the date of this order.

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<sup>21</sup> *Revised Public Utility Filing Requirements*, Order No. 2001, 67 Fed. Reg. 31,043 (May 8, 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/docs-filing/eqr.asp>.

<sup>22</sup> The exact dates for these reports are prescribed in 18 C.F.R. § 35.10b (2005). 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.

<sup>23</sup> *See supra* note 2.

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(D) Allegheny Power's tariff revisions are hereby accepted for filing, as discussed in the body of this order.

(E) Wheatland's notice of cancellation is hereby accepted for filing, as discussed in the body of this order.

By the Commission.

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Magalie R. Salas,  
Secretary.