UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PPL Montana, LLC	Docket Nos. ER99-3491-005, ER99-3491-006, ER99-3491-007 and ER99-3491-008
PPL Colstrip II, LLC	ER00-2184-003, ER00-2184-004, ER00-2184-005 and ER00-2184-006
PPL Colstrip I, LLC	ER00-2185-003, ER00-2185-004, ER00-2185-005 and ER00-2185-006
PPL Montana, LLC, PPL Colstrip II, LLC and PPL Colstrip I, LLC	EL05-124-000, EL05-124-001, EL05-124-002 and EL05-124-003

ORDER ON MARKET-BASED RATES, TERMINATING SECTION 206
PROCEEDING AND DISMISSING REHEARING

(Issued May 18, 2006)

1. In this order, the Commission finds that PPL Companies[1] have rebutted the presumption of market power in the control area operated by NorthWestern Corporation

[1] PPL Montana, LLC (PPL Montana), PPL Colstrip I, LLC (PPL Colstrip I), and PPL Colstrip II, LLC (PPL Colstrip II) (collectively, PPL Companies).

(NorthWestern)[2] and satisfy the Commission's generation market power standard for the grant of market-based rate authority. The Commission's finding is based in part on simultaneous import limitation (SIL) values for the NorthWestern control area, which indicate that competitors have access to 1,344 MW of transmission import capability for summer, 1,406 MW of transmission import capability for winter and 1,342 MW of transmission import capability for spring. Accordingly, the Commission terminates the proceeding instituted in Docket No. EL05-124-000 pursuant to section 206 of the Federal Power Act (FPA).[3] The Commission also accepts certain revised market-based rate tariff sheets filed by PPL Companies.[4] In addition, the Commission dismisses as moot the PPL Companies' request for rehearing of the Commission's September 1 Order.[5]

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[2] As a result of Montana's electric restructuring initiative, NorthWestern acts as the permanent energy purchasing agent for 310,000 residential and commercial default retail supply customers (*i.e.*, those with loads under 50 kW). *See* NorthWestern Answer, January 17, 2006 at p. 3.

[3] 16 U.S.C. § 824e (2000).

[4] Only PPL Colstrip I, LLC, FERC Electric Tariff, Original Volume No. 1, Second Revised Sheet No. 1 (Superseding First Revised Sheet No. 1) and PPL Colstrip II, LLC, FERC Electric Tariff, Original Volume No. 1, Second Revised Sheet No. 1 (Superseding First Revised Sheet No. 1) are accepted for filing. With regard to the market behavior rules, the Commission issued an order rescinding market behavior rules 2 and 6 effective February 27, 2006. *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 114 FERC ¶ 61,165 (2006). The Commission also adopted a Final Rule codifying market behavior rules 1, 3, 4 and 5 in the Commission's regulations, effective February 27, 2006. *Conditions for Public Utility Market-Based Rate Authorization Holders,* Order No. 674, 71 Fed. Reg. 9,695 (Feb. 27, 2006), 114 FERC ¶ 61,163 (2006). As a result, the market behavior rules will no longer be part of sellers' market-based rate tariffs.

[5] *PPL Montana, LLC*, 112 FERC ¶ 61,237 (2005) (September 1 Order).

Background

2. On November 9, 2004, PPL Companies submitted for filing an updated market power analysis in compliance with the Commission's May 13, 2004 Order.[6] The Commission's preliminary analysis indicated that PPL Companies failed the wholesale market share screen in the NorthWestern control area.[7]

3. 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 FPA and establishes a rebuttable presumption of market power in the section 206 proceeding.[8] Accordingly, the Commission, on its own motion, instituted a section 206 proceeding in the September 1 Order to investigate generation market power of the PPL Companies in the NorthWestern control area.[9] The Commission also established a refund effective date pursuant to the provisions of section 206.

4. For the NorthWestern control area, PPL Companies were directed to: (1) file a Delivered Price Test (DPT) analysis; (2) file a mitigation proposal tailored to their particular circumstances that would eliminate the ability to exercise market power; or (3) inform the Commission that they would adopt the April 14 Order's default cost-based rates or propose other cost-based rates and submit cost support for such rates.[10]

5. In the September 1 Order, the Commission, referencing the April 14 and July 8 Orders, noted that applicants and intervenors may present historical evidence to show that the market-based rate seller satisfies the Commission's generation market power concerns. The evidence that will be considered is historical sales and/or access to

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[6] *Acadia Power Partners, LLC*, 107 FERC ¶ 61,168 (2004) (May 13 Order). The May 13 Order addressed the procedures for implementing the generation market power screens announced on April 14, 2004, and clarified on July 8, 2004, in *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004) (July 8 Order).

[7] The Commission's analysis showed market shares as high as 24.6 percent.

[8] April 14 Order, 107 FERC ¶ 61,018 at P 201.

[9] In the September 1 Order, the Commission found that PPL Companies satisfied the other three prongs of the four-prong test for market-based rate authority.

[10] *Id*. at P 201, 207-09.

transmission to move supplies within, out of, and into a control area.[11] The Commission stated in the September 1 Order that intervenors' arguments regarding sales contracts that expire in 2007, the lack of alternative suppliers to serve native load in the NorthWestern control area, and the correct simultaneous import capability limit may be examined in conjunction with other evidence submitted in the section 206 proceeding.[12]

6. On October 3, 2005, PPL Companies filed revised tariff sheets in compliance with the September 1 Order and requested rehearing of the September 1 Order.

7. On November 14, 2005,[13] PPL Companies submitted DPT analyses for 2004 and 2006, respectively.[14] PPL Companies' DPT analysis for 2004 uses the SIL values for the NorthWestern control area reported by NorthWestern in its triennial market-based rate triennial review filing, as adjusted by PPL Companies.[15] The adjusted SIL values used by PPL Companies in their DPT analysis are 1,344 MW for summer, 1,406 MW for winter and 1,342 MW for spring.[16] We note that NorthWestern's SIL reported higher import capacity for all seasons. In particular, the SIL values used by NorthWestern in its analysis are 1,400 MW for summer, 1,567 MW for winter and 1,500 MW for spring. PPL Companies state that they have adjusted NorthWestern's SIL consistent with the

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[11] *Id*. at P 102. The Commission has stated that in performing the initial screens, applicants are required to prepare them as designed, and must use the most recent unadjusted 12 months' historical data as a snapshot in time. Historical data have been proven to be more objective, readily available, and less subject to manipulation than future projections. The Commission further stated that it will not permit applicants to make any adjustments to such data. *Id.* at P 118.

[12] September 1 Order, 112 FERC ¶ 61,237 at P 45.

[13] PPL Companies originally filed a DPT analysis with the Commission on October 31, 2005 but later amended that filing with the DPT analysis filed on November 14, 2005. This order analyzes the DPT filed on November 14, 2005 and subsequent pleadings.

[14] For purposes of this order, the Commission reviews only the 2004 DPT constructed consistent with the April 14 and July 8 Orders which requires use of historical data. Accordingly, we do not consider the 2006 analysis.

[15] NorthWestern Corporation, Market Power Analysis filed under Docket No. ER03-329-006, December 14, 2005, Simultaneous Import Limitation Study.

[16] PPL Companies, November 14, 2005 Workpapers.

approach accepted by the Commission in DPT analyses. In addition, as noted below, the Commission finds that PPL Companies have complied with the methodology in the April 14 Order and July 8 Order regarding performing a SIL study and the Commission relies on the results of that study herein.

8. PPL Companies conclude that the DPT results indicate that they do not have generation market power in the NorthWestern control area. PPL Companies' DPT analysis indicates that PPL Companies are non-pivotal suppliers in all ten season/load conditions for both the economic capacity and available economic capacity measure. For the economic capacity measure, PPL Companies state that their market shares exceed 20 percent in five season/load conditions, and under the available economic capacity measure, market shares exceed 20 percent during three season/load conditions. Hirschman-Herfindahl Index[17] (HHI) numbers are below 2,500 in all seasons under both measures. PPL Companies state that, notwithstanding the DPT results confirming their lack of market power in the NorthWestern control area, they offer to commit to a voluntary long-term sales obligation to load within the NorthWestern control area for 100 MW of "discounted power,"[18] provided that their market-based rate authority is renewed without a hearing.

Notice of Filing and Responsive Pleadings

9. Notice of PPL Companies' October 3, 2005 filing was published in the *Federal Register*,[19] with interventions or protests due on or before October 24, 2005. Notice of PPL Companies' November 14, 2005 Filing was published in the *Federal Register*,[20] with interventions or protests due on or before December 9, 2005. As discussed below, the comment date was extended to February 23, 2006.

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[17] The HHI is the sum of the squared market shares. For example, in a market with five equal size firms, each would have a 20 percent market share. For that market, HHI = $(20)^2 + (20)^2 + (20)^2 + (20)^2 + (20)^2 = 400 + 400 + 400 + 400 + 400 = 2{,}000$.

[18] PPL Companies state that the term for such sales would be from January 1, 2007 through December 31, 2008, for power sold on a firm, liquidated damages basis at a PPL generator bus under standard format contract. They state that the offer price will be the Firm Dow Jones Mid-Columbia Index minus $5/MWH. PPL Companies' November 14, 2005 Filing PP 9,14.

[19] 70 Fed. Reg. 61,438 (2005).

[20] 70 Fed. Reg. 69,333 (2005).

10. On November 21, 2005, NorthWestern requested expedited issuance of a protective order and extension of time to answer. On November 21, 2005, Montana Consumer Counsel (MCC) filed in support of NorthWestern's motion for expedited issuance of a protective order and extension of time to answer. PPL Companies filed an answer in opposition to NorthWestern's motion to extend time on November 22, 2005. The Commission issued an order on December 2, 2005, denying the adoption of a protective order and instead allowed for the parties to adopt a protective agreement among themselves.[21]

11. On December 20, 2005, PPL Companies filed in compliance with the December 2, 2005 Order informing the Commission of the date the necessary materials were provided to the interested parties. Notice of PPL Companies' filing was published in the *Federal Register*,[22] with interventions or protests due on or before January 10, 2006. On January 6, 2006, MCC filed a protest to the informational filing. On January 11, 2006, MCC filed an answer to PPL Companies' December 20, 2005 compliance filing. On January 17, 2006, the Commission suspended the comment date regarding the DPT filing, pending the Commission's rulings on certain additional requests included in MCC's protest pertaining to, among other things, the obligations of PPL Companies to make a software program available to the MCC. On January 23, 2006, PPL Companies submitted an answer to MCC's protest and, on January 27, 2006, the Commission issued a notice establishing a comment period ending February 23, 2006. Although protestors filed a supplemental protest by February 23, 2006, and thereafter as described below, protestors did not submit any new calculations based on additional analyses pursuant to the additional information obtained through the protective agreement.

12. NorthWestern filed a motion to intervene on November 21, 2005 and a protest to the PPL Companies' DPT analysis on January 17, 2006. Also on January 17, 2006, MCC filed a protest to PPL Companies' DPT analysis.[23] Other parties that filed protests or comments on PPL Companies' DPT analysis include the Montana Public Service Commission (Montana Commission) and Fall River Rural Electric Cooperative, Inc. (Fall River).

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[21] *PPL Montana, LLC*, 113 FERC ¶ 61,231 (2005) (December 2, 2005 Order).

[22] 71 Fed. Reg. 1,421 (2006).

[23] MCC filed comments on December 9, 2005 requesting that the Commission reject PPL Companies' DPT analysis. The protest MCC filed on January 17, 2006 addressed the same issues as in the December 9, 2005 filing.

13. Protestors argue that PPL Companies' analysis wrongly reduces PPL Companies' available economic capacity by 450 MW for an existing contract to make long-term firm sales to supply NorthWestern's default customers under agreements that expire on June 30, 2007. Protestors argue that PPL Companies are presumed to have market power in the NorthWestern control area, and should not be allowed to consider as committed the capacity which PPL Companies is currently negotiating to sell under new contracts that would commence after July 2007. NorthWestern asserts that, as agent for default supply customers, it has no choice but to contract with PPL Companies when negotiating replacements for the current contract and/or in providing shorter term energy after the contract has lapsed because there is a lack of alternative suppliers.

14. Protestors state that PPL Companies' DPT is further flawed because it incorrectly claims as native load between 237-41 MW of sales made by PPL Companies' affiliate, PPL EnergyPlus, to retail industrial customers; improperly includes in the available economic capacity measure capacity associated with wholesale sales in the NorthWestern control area that may be committed to serve load; derates PPL Companies' capacity from hydroelectric facilities based on a five-year seasonal historical capacity factor rather than using a forward-looking measure; disregards the September 1 Order by including as available economic capacity the Colstrip capacity[24] owned by neighboring electric utilities which, through dynamic scheduling, is used to serve their native load customers or is otherwise committed under long-term sales contracts; and makes unsupported and incorrect assumptions regarding the load obligations of the outside competitors which has the effect of increasing the amount of available generation capacity that could be imported into the NorthWestern control area.

15. Protestors submit revisions to PPL Companies' DPT analysis to correct for the alleged errors. Protestors also submit a DPT analysis that purports to present the market after the expiration on June 30, 2007 of PPL Companies' long-term contracts to supply NorthWestern's default load obligations. Protestors state that whether PPL Companies meet the "safe-harbor provisions" of the Commission's DPT metrics largely depends upon having the contracts with NorthWestern in place, especially with respect to the market share analysis.[25] MCC submits revisions to PPL Companies' DPT results, raising

[24] Colstrip is a coal-fired generating facility located East of Billings, Montana. Colstrip, a jointly-owned facility is comprised of Units 1 through 4, which collectively are capable of producing a total of up to 2,094 MW of capacity. The Colstrip is jointly owned by PPL Montana, Puget Sound Energy (Puget), Avista Corp., Portland General Electric Company, NorthWestern and PacifiCorp.

[25] NorthWestern January 17, 2006 filing, Affidavit p. 2.

arguments similar to NorthWestern's, representing that PPL Companies' market shares are over 50 percent and HHI values above 2,500.[26] NorthWestern's DPT results indicate that when the long-term contracts of PPL Companies and PPL EnergyPlus that expire in 2007 are not deducted from PPL Companies' available economic capacity, PPL Companies' market shares in the economic capacity and available economic capacity measures range from 27 percent to 33 percent. However NorthWestern's analysis indicates that market concentrations would be below the 2,500 threshold for all periods. For available economic capacity, HHIs range from 1,174-1,754 and for economic capacity, HHIs range from 1,205- 1,404.[27] Based on NorthWestern's DPT results deducting contracts expiring in 2007, PPL Companies remain non-pivotal suppliers in all season/load periods.

16. Montana Commission further states that the Commission should take appropriate measures to protect the Montana default supply customers because due to the limited base load generation resources within the NorthWestern control area, protestors may be forced to purchase some supply from the PPL Companies. Montana Commission also requests that PPL Companies' current market-based rate authority be revoked and that PPL Companies be required to sell exclusively at cost-based rates. Protestors estimate, based on historical and projected data at the Mid-Columbia (Mid-C) trading hub, that prices will at least double for the power that NorthWestern buys from PPL Companies, if they retain their market-based rate authority because there is no competitive market for electric power in the Pacific Northwest, which includes the NorthWestern control area.

17. NorthWestern provided an alternative pivotal supplier screen which it describes as using actual transmission capacity available for reservation for long-term firm transactions (based on the Open Access Same-time Information System (OASIS)

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[26] MCC filed these results in December 9, 2005 without providing sufficient support such as for the use of an alternative SIL value. MCC subsequently requested additional time and access to PPL Companies' workpapers, including access to the software program used by PPL Companies to model their DPT. As described above, the Commission suspended the DPT comment period and later extended it to allow for MCC to file a complete protest. Although MCC filed several supplemental protests to its December 9, 2005 protest after gaining access to the necessary PPL Companies' workpapers, MCC did not supplement its results after gaining access to PPL Companies' workpapers.

[27] These results assign to PPL Companies available economic capacity the 450 MW contract with NorthWestern plus 237-41 MW from PPL EnergyPlus contracts which expire in June 30, 2007. NorthWestern January 17, 2006 filing, Exhibit No. WHH-3.

postings for 2006) as a proxy for competing capacity that could be imported. NorthWestern argues that the amount of capacity posted on NorthWestern's OASIS for competitive suppliers to serve the NorthWestern market may be and generally is significantly less than the physical limits found in PPL Companies' SIL due to the fact that transfer capability into the NorthWestern control area varies significantly depending on system conditions (such as hydro-flows). NorthWestern claims that it cannot sell longer-term transmission service up to the total amount that might be physically possible under the system conditions used in computing the SIL. NorthWestern states that it can only sell long-term firm transmission based on the lowest amount of forecasted transfer capability available over the period. NorthWestern argues that using a lower simultaneous import value based on import capacity that is actually available to be reserved on NorthWestern's OASIS shows that PPL Companies are pivotal with respect to providing long-term products in the NorthWestern control area. Similarly, MCC argues that PPL Companies assume a greater transmission import capability than is shown by NorthWestern's transmission OASIS because PPL Companies' SIL study ignores transmission constraints and limitations.

18. Protestors also argue that PPL Companies can and will erect barriers to entry, presenting as an example their ownership and control of the Hebgen dam hydroelectric project. Protestors argue that PPL Companies erected a barrier to entry by terminating negotiations that would have allowed Fall River to add generation capacity on the Hebgen dam owned by PPL Companies.

19. On February 1, 2006, PPL Companies filed an answer to the protests of the DPT analysis. PPL Companies argue that their DPT properly excluded 450 MW of long-term contracts from PPL Companies' available economic capacity because they expire in 2007.[28] PPL Companies also state that the long-term contracts are associated with long-term firm transmission arrangements. PPL Companies also refute protestors' use of a DPT for 2007 analysis to illustrate the expiring contracts on the basis that it is a biased and inappropriate approach. PPL Companies argue that Northwestern's DPT analysis considers expiring contracts, and makes an assumption that load will grow 2 percent, but does not make the countervailing assumptions that new contracts will be executed or that other material changes will take place in the market such as entry by new generation and

[28] PPL Companies state that they adjusted their analysis to account for long-term contracts with associated long-term firm transmission arrangements, for sales which they are obligated to deliver, depending on season.

construction of new transmission import capability. PPL Companies also state that protestors did not submit any testimony supporting the propriety of using a 2007 test year.

20. PPL Companies argue that they properly excluded from their available economic capacity between 237-41 MW of long-term contracts, most of which are for service through 2007, made by their affiliate, PPL EnergyPlus, to retail customers because PPL Companies are obligated to provide power to serve these customers.[29] PPL Companies also state that they deducted their affiliate contracts, as permitted by the Commission under certain circumstances.[30] In support, PPL Companies submitted the contracts as confidential exhibits to the filing. Further, PPL Companies state that all of the PPL EnergyPlus contracts they deducted in this proceeding are long-term contracts and clarify that the contracts may not be terminated with 30 days notice as protestors had stated. PPL Companies state that given PPL EnergyPlus' firm commitment to provide power to serve customers, PPL Companies are precluded from withholding such capacity, and as such, PPL Companies properly deducted their affiliate's long-term contracts in deriving their available economic capacity.

21. PPL Companies argue that they derated hydroelectric capacity in accordance with the approach adopted by the Commission in its April 14 and July 8 orders. PPL Companies state that protestors provided no evidence for predicting more favorable hydro conditions in the future.

22. PPL Companies submit that they excluded the appropriate amount of MWs from available economic capacity the Colstrip capacity that is owned by the joint owners and is dynamically scheduled to leave the NorthWestern control area. PPL Companies argue that they only included, as available to compete in the NorthWestern control area, the share from Colstrip 4 owned by NorthWestern, which NorthWestern sells at wholesale in the control area to Duke Energy Corp. (Duke) (116 MW) and to Puget Sound Energy, Inc. (Puget) (25 MW), and the uncommitted share owned by PacifiCorp. PPL Companies state that they subsequently considered whether these suppliers maintained long-term

[29] 18 C.F.R. § 33.3(c)(i)(A) Prior to applying the delivered price test, the generating capacity meeting this definition must be adjusted by subtracting capacity committed under long-term firm sales contracts and adding capacity acquired under long-term firm purchase contracts (*i.e*., contracts with remaining commitment of more than one year).

[30] As discussed below, applicants are allowed deductions of capacity that are tied to any long-term firm commitments to third parties.

firm transmission rights to export the power from the NorthWestern control area and amended their analysis to remove the Puget capacity from the NorthWestern control area because it was exportable and retained the PacifiCorp share competing in the NorthWestern control area because PacifiCorp has no long-term firm transmission reservation to export from the NorthWestern control area. PPL Companies also retained the 116 MW of capacity that NorthWestern sells to Duke since NorthWestern did not protest this treatment. PPL Companies state that the removal of the Puget share has an insignificant impact on the DPT results.

23. Finally, PPL Companies argue against protestors' proposed alternative pivotal supplier screen that uses actual transmission capacity available for reservation for long-term firm transactions (based on the OASIS postings for 2006) as a proxy for competing capacity that could be imported because it presents an unconventional flawed pivotal supplier test implying that the PPL Companies appear to be pivotal suppliers. PPL Companies explain that NorthWestern's pivotal supplier test is purportedly for longer-term firm products in the NorthWestern control area –a product which is inconsistent with the underlying intention of the pivotal supplier test, which is to evaluate whether a supplier's generation is needed during the super-peak period. PPL Companies claim that the NorthWestern pivotal supplier study ignores simultaneous import limits and instead relies on estimates of available transmission capacity. Further, PPL Companies argue that NorthWestern has not provided a reasonable basis for ignoring NorthWestern's SIL and reducing available imports by more than 600 MW.[31]

24. Protestors filed a response to PPL Companies' answer which states that PPL Companies' DPT analysis must be rejected because it does not address the issue of whether PPL Companies have market power over the supply of long-term firm wholesale power delivery beginning in July 2007. Protestors state that the analysis addresses a different product (short-term purchases), and does not deal with the time period for which default supply purchases must be made for deliveries from mid-2007 forward. Also, protestors state that PPL Companies have not demonstrated that NorthWestern has viable alternatives to continuing to purchase capacity from PPL Companies. On March 30, 2006, MCC filed a supplemental protest restating the arguments made in its earlier protests, and arguing that PPL Companies violate antitrust laws by refusing to sell power to NorthWestern at cost-based rates.

[31] PPL Companies, February 1, 2006 Affidavit at 24-25.

25. NorthWestern claims that the PPL Companies have market power. NorthWestern points to its summer 2004 Request For Proposals (RFP) conducted to secure a portion of its needs, as evidence of the lack of supply alternatives to PPL Companies to serve native load in the NorthWestern control area. PPL Companies rebut this assertion by submitting the RFP, associated reports and documents that they claim demonstrate a competitive market in the NorthWestern control area.

26. On April 11, 2006, PPL Companies filed an answer to MCC's March 30, 2006 supplemental protest. PPL Companies state that they do not possess market power in their home geographic market and argue that they are not violating the antitrust laws. PPL Companies state that they are not refusing to sell power to NorthWestern; they are "willing to sell available power at competitive market-based prices."[32] PPL Companies argue that their actions in attempting to sell power to NorthWestern are supported by a legitimate business justification and PPL Companies are not violating any antitrust laws.

27. MCC filed a reply to PPL Companies' April 11, 2006 answer restating MCC's previous arguments and stating that the Commission should not accept PPL Companies' "unauthorized answer."[33]

28. On April 28, 2006, Montana Commission, together with MCC, filed an emergency motion for an expedited decision requesting that the Commission issue an order in the above referenced dockets at or before the Commission's May 18, 2006 open meeting. Montana Commission and MCC state that if the Commission does not issue an order by that time, any ruling may be ineffective due to NorthWestern's need to begin contracting immediately to meet its capacity needs after its current contracts expire in 2007. On May 1, 2006, Montana Commission and MCC jointly filed a motion to substitute the previously filed attachment to the emergency motion for expedited decision and restated that it is essential that the Commission reach a prompt decision on whether the PPL Companies may sell at market-based rates. On May 8, 2006, MCC filed a motion to add to the record and supplement the emergency motion for an expedited decision. The motion includes information arguing that PPL Companies are seeking to sell power outside of Montana in order to negate any possible Commission order finding that PPL Companies have market power and argues that this information is further evidence of the Commission's need to issue an order quickly on this case. On May 11, 2006, followed on May 12, 2006, PPL Companies filed an answer to the motions requesting an expedited decision and motion to supplement the record. On May 16, 2006, NorthWestern filed an

[32] PPL Companies April 11, 2006 Answer at 4.

[33] MCC April 17, 2006 Reply.

answer in support of MCC's May 8, 2006 motion and in opposition to PPL Companies' answer to various motions of the Montana Commission and MCC. NorthWestern also seeks to correct representations and allegations contained in PPL Companies' answer. Montana Commission also filed, on May 16, 2006, an answer to fully support MCC's May 8, 2006 motion.

Discussion

Procedural Matters

29. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[34] the notices of intervention and 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[35] prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We will accept the answers and responses filed by PPL Companies, NorthWestern, MCC, Montana Commission, and Fall River because they have provided information that assisted us in our decision-making process.

Generation Market Power

30. As discussed more fully below, after reviewing PPL Companies' 2004 DPT analysis, and the comments and analysis of the intervenors, the Commission finds that PPL Companies have rebutted the presumption of generation market power and satisfy the Commission's generation market power standard for the grant of market-based rate authority. In addition, the Commission finds that PPL Companies have complied with the methodology in the April 14 Order and July 8 Order regarding performing a SIL study and the Commission relies on the results of that study herein.

Delivered Price Test

31. In the April 14 Order, we stated that an applicant's failure of one or more of the indicative screens establishes a rebuttable presumption of market power. If such an applicant chooses not to proceed directly to mitigation, it must present a more thorough analysis using the Commission's DPT.[36] The DPT is used to analyze the effect on

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[34] 18 C.F.R. § 385.214 (2005).

[35] 18 C.F.R. § 385.213(a)(2) (2005).

[36] April 14 Order, 107 FERC ¶ 61,018 at P 105-12.

competition for transfers of jurisdictional facilities in section 203 proceedings,[37] using the framework described in Appendix A of the Merger Policy Statement and revised in Order No. 642.[38] The DPT is a well established test that has been used routinely to analyze market power in the merger context for many years, and it has been affirmed by the courts.[39]

32. The DPT defines the relevant market by identifying potential suppliers based on market prices, input costs, and transmission availability, and calculates each supplier's economic capacity and available economic capacity for each season/load period.[40] The results of the DPT can be used for pivotal supplier, market share and market concentration analyses. Examining these three measures with the more robust output from the DPT will allow applicants to present a more complete view of the competitive conditions and their positions in the relevant markets. A detailed description of the mechanics of the DPT is provided in Appendix F of the April 14 Order which refers to Appendix A of the Merger Policy Statement and Order No. 642 for a complete description of the DPT and its requirements.

33. Under the DPT, to determine whether an applicant is a pivotal supplier in each of the season/load periods, applicants should compare the load in the destination market to the amount of competing supply (the sum of the economic capacities of the competing suppliers). The applicant will be considered pivotal if the sum of the competing suppliers' economic capacity is less than the load level (plus a reserve requirement that is no higher than state and regional reliability council operating requirements for reliability)

[37] 16 U.S.C. § 824b (2000).

[38] *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, 61 Fed. Reg. 68,595 (1996), FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,044 (1996), *reconsideration denied*, Order No. 592-A, 62 Fed. Reg. 33,341 (1997), 79 FERC ¶ 61,321 (1997) (Merger Policy Statement); *see also Revised Filing Requirements Under Part 33 of the Commission's Regulations*, Order No. 642, 65 Fed. Reg. 70,984 (2000), FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,111 (2000) (Order No. 642), *order on reh'g*, Order No. 642-A, 66 Fed. Reg. 16,121 (2001), 94 FERC ¶ 61,289 (2001).

[39] *See, e.g., Wabash Valley Power Associates, Inc. v. FERC*, 268 F. 3d 1105 (D.C. Cir. 2001).

[40] Super-peak, peak, and off-peak, for Winter, Shoulder and Summer periods and an additional highest super-peak for the Summer.

for the relevant period. The analysis should also be performed using available economic capacity to account for applicants' and competing suppliers' native load commitments. In that case, native load in the relevant market would be subtracted from the load in each season/load period. The native load subtracted should be the average of the actual native load for each season/load period.

34. Each supplier's market share is calculated based on economic capacity (the DPT's analog to installed capacity). The market shares for each season/load period reflect the costs of the applicant's and competing suppliers' generation, thus giving a more complete picture of the applicant's ability to exercise market power in a given market. For example, in off-peak periods, the competitive price may be very low because the demand can be met using low-cost capacity. In that case, a high-cost peaking plant that would not be a viable competitor in the market would not be considered in the market share calculations, because it would not be counted as economic capacity in the DPT. Applicants must also present an analysis using available economic capacity (the DPT's analog to uncommitted capacity) and explain which measure more accurately captures conditions in the relevant market.

35. Under the DPT, applicants must also calculate the market concentration using the HHI based on market shares. HHIs are usually used in the context of assessing the impact of a merger or acquisition on competition. However, as noted by the U.S. Department of Justice in the context of designing an analysis for granting market-based pricing for oil pipelines, concentration measures can also be informative in assessing whether a supplier has market power in the relevant market.[41]

36. A showing of an HHI less than 2,500 in the relevant market for all season/load periods for applicants that have also shown that they are not pivotal and do not possess more than a 20 percent market share in any of the season/load periods would constitute a showing of a lack of market power, absent compelling contrary evidence from intervenors. Concentration statistics can indicate the likelihood of coordinated interaction in a market. All else being equal, the higher the HHI, the more a firm can

[41] *See Comments of the United States Department of Justice in response to Notice of Inquiry Regarding Market-Based Ratemaking for Oil Pipelines*, Docket No. RM94-1-000 (January 18, 1994) ("The Department and the Commission staff have previously advocated an HHI threshold of 2,500, and it would be reasonable for the Commission to consider concentration in the relevant market below this level as sufficient to create a rebuttable presumption that a pipeline does not possess market power.").

extract excess profits from the market. Likewise a low HHI can indicate a lower likelihood of coordinated interaction among suppliers and could be used to support a claim of a lack of market power by an applicant that is pivotal or does have a 20 percent or greater market share in some or all season/load periods. For example, an applicant with a market share greater than 20 percent could argue that that it would be unlikely to possess market power in an unconcentrated market (HHI less than 1,000).[42]

37. As with our initial screens, applicants and intervenors may present evidence such as historical wholesale sales data, which can be used to calculate market shares and market concentration and to refute or support the results of the DPT. We encouraged applicants to present the most complete analysis of competitive conditions in the market as the data allow. We have used actual data in our analysis of mergers and other section 203 jurisdictional transactions to supplement or support the analysis of the effect of such transactions on competition. As we stated in Order No. 642:

> If sales data indicate that certain participants actually have been able to reach the market in the past, it is appropriate to consider whether they are likely candidates to be included in the market in the future. It is for this reason that we will require a "trade data check" as part of the competitive analysis test.[43]

PPL Companies' Delivered Price Test

38. PPL Companies submitted a DPT analysis using 2004 test year data assessing PPL Companies' market shares, pivotal supplier status and the control area HHIs. PPL Companies state that their DPT excludes from available economic capacity in the NorthWestern control area the portions of the Colstrip capacity that is owned by the joint owners and is dynamically scheduled to by them to external control areas. PPL Companies state that only discrete and limited portions of Colstrip remained available in the control area, the portion of NorthWestern capacity contracted to Duke and uncommitted PacifiCorp capacity.[44]

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[42] April 14 Order, 107 FERC ¶ 61,018 at P 111.

[43] Order No. 642 at n. 41.

[44] PPL Companies' February 1, 2006 filing submits revised DPT results that do not include Puget Sound Energy, Inc.'s (Puget) 25 MW as available in the NorthWestern control area (Revised Exhibit 7A).

39. PPL Companies state that for the economic capacity measure, PPL Companies' market shares range from 18 percent to 27 percent, with HHIs ranging from 1,113 to 1,304. PPL Companies also state that their market shares exceed 20 percent in five season/load conditions, mostly off peak. For the available economic capacity measure, market shares exceed 20 percent (21 percent, 24 percent and 25 percent) during three season/load conditions and range from 13 percent to 19 percent in the remaining season/load conditions, with HHIs ranging from 903 to 1,317. PPL Companies state that they pass the pivotal supplier screen in all ten season/load conditions for the economic capacity and available economic measures.

40. PPL Companies explain that the highest market shares occur during the off peak when excess supply is greatest and the ability to exercise market power is not a concern. Additionally, PPL Companies state that the NorthWestern control area is characterized by ease of entry, as demonstrated by the presence of recently implemented and planned generation. PPL Companies also point out that there is ease of entry for external supplies into the NorthWestern control area to compete with the PPL Companies' capacity, whether by being transmitted into the control area or by using Colstrip output to displace imports provided there are adequate supplies available to the joint owners to serve load in their control areas. Further, PPL Companies argue that NorthWestern is able to exert competitive pressure in its control area because it is the largest buyer in the market, with sophisticated purchasing practices, and it controls access to transmission. PPL Companies argue that these combined factors support their lack of ability to exercise market power in the NorthWestern control area.

Commission Determination

41. After weighing all of the relevant factors, the Commission concludes that, on balance, based on PPL Companies' 2004 DPT analysis in the NorthWestern control area, PPL Companies have rebutted the presumption of generation market power and satisfy the Commission's generation market power standard for the grant of market-based rate authority.[45] PPL Companies' 2004 DPT indicates that the market shares using the available economic capacity measure are below 20 percent in 7 out of 10 season/load periods and are slightly above 20 percent during three off-peak periods, with the highest

[45] April 14 Order, 107 FERC ¶ 61,018 at P 111.

market share at 25 percent.[46] The HHIs are all below 2,500 (the lowest being 903 in winter super-peak and the highest being 1,317 in shoulder off-peak). Further, PPL Companies are not pivotal in any season/load period. At the same time, in the economic capacity measure, while PPL Companies' market shares are above 20 percent in 5 periods, the HHIs remain below 2,500 and PPL Companies are not a pivotal supplier in any season/load periods.

42. Furthermore, we accept PPL Companies' offer of commitment to voluntary long-term sales obligation to load within the NorthWestern control area for 100 MW of "discounted power".[47]

43. As the Commission has stated, the DPT does not function like the initial screens – *i.e.*, failure of either the economic capacity or available economic capacity analyses does not result in an automatic failure of the test as a whole. In particular, neither measure is definitive; the Commission weighs the results of both the available economic capacity and the economic capacity analyses and considers the arguments of the parties.[48]

44. Protestors argue that the Commission should not allow PPL Companies to reduce their available economic capacity by the 450 MWs associated with long-term firm sales to supply NorthWestern's default customers under agreements that expire on June 30, 2007 because such reductions would amount to an unrealistic representation of the market at a time when NorthWestern is actively seeking new contracts to replace the expiring ones and PPL Companies are seeking to commit such capacity under new contracts. Protestors argue that treating the 450 MW as part of PPL Companies' available economic capacity in the NorthWestern control area would significantly increase PPL Companies' market shares for the available economic capacity measure such that they would exceed 20 percent in all 10 time periods, with a maximum of about 27 percent.

45. The Commission finds that PPL Companies correctly deducted the 450 MW long-term contracts from their available economic capacity. The Commission established in the April 14 Order that in performing all screens, applicants are required to prepare them

[46] Under the available economic capacity measure during the winter off-peak, when PPL Companies have their largest market share of 25 percent, total available economic capacity to compete in the NorthWestern control area was 2,127 MW and PPL Companies' share of that was 524 MW.

[47] PPL Companies November 14, 2005 Filing at 9.

[48] July 8 Order, 108 FERC ¶ 61,026 at P 26.

as designed, and must use the most recent unadjusted 12 months' historical data as a snapshot in time. Historical data have been proven to be more objective, readily available, and less subject to manipulation than future projections. Therefore, as an initial matter, the Commission does not permit applicants to make any adjustments to such data.[49] In the April 14 Order, the Commission allowed the deduction of long-term contracts for the calculation of uncommitted capacity in the market power analysis.[50] The Commission rejected suggestions to treat capacity that is tied up in a long-term contract of less than three years as uncommitted and continued to require applicants to base their analysis on a "snap-shot" in time as representative of their potential to exercise market power.[51] Further, in *Southern* the Commission rejected the use of projected data and reaffirmed that DPT analyses should be based on historical data.[52] PPL Companies performed their 2004 DPT analysis consistent with the April 14 and July 8 Orders and Commission precedent.

46. We note that in the Notice of Proposed Rulemaking being issued concurrently with this order in Docket No. RM04-7-000, *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, the Commission proposes on a prospective basis to allow both applicants and intervenors to propose known and measurable changes to be considered in the DPT analysis provided such changes are fully supported and encompass all relevant known and measurable changes (*i.e.*, not just those changes that advantage the party proposing a change to historical data). In the instant proceeding and consistent with current policy, the Commission analyzed the DPT herein using historical unadjusted data. However, as noted below, if the Commission were to consider adjustments to the DPT with regard to expiring contracts as protestors request, the evidence would still indicate that PPL Companies do

[49] April 14 Order, 107 FERC ¶ 61,018 at P 118.

[50] *Id.* at P 95. ("Uncommitted capacity is determined by adding the total nameplate capacity of generation owned or controlled through contract and firm purchases, less operating reserves, native load commitments and long-term firm non-requirement sales.") 18 C.F.R. § 33.3 (c)(4)(i)(A) ("Prior to applying the delivered price test, the generating capacity meeting this definition must be adjusted by subtracting capacity committed under long-term firm sales contracts and adding capacity acquired under long-term firm purchase contracts.").

[51] July 8 Order at P 67.

[52] *Southern Company Energy Marketing, Inc*. 112 FERC ¶ 61,054 (2005) (*Southern*).

not have generation market power, and thus our conclusion that PPL Companies have rebutted the presumption of market power would not change.[53]

47. Protestors argue that PPL Companies understated their available economic capacity by reducing it for sales made by the PPL Companies' affiliate, PPL EnergyPlus to industrial and commercial end-users in Montana. Protestors argue that PPL Companies' contracts are not for long-term firm sales because they can be terminated upon 30-days written notice and that they do not have a native load commitment to justify the deduction from the available economic capacity.[54]

48. The Commission has reviewed the termination clauses of the contracts and their delivery terms. The termination clauses in 12 of the 13 contracts state that only after all contractual obligations are met (*i.e.,* service is provided throughout the "Delivery Term" that is specified in the "Purchasing Attachment") may the 30-day option be used to terminate the contracts.[55] Thus, they may not be cancelled during the Delivery Term as NorthWestern suggests.[56] For purposes of calculating available economic capacity, PPL Companies are allowed deductions of capacity that is tied to any long-term firm

[53] In addition, if we were inclined to reconsider our policy on the use of historical, unadjusted data in this proceeding rather than in the generic rulemaking (which we are not), we would need to give PPL Companies and all intervenors an opportunity to propose known and measurable changes to the DPT analysis. Without such a record, it is impossible to determine how known and measurable changes, when considered *in toto*, affect the DPT analysis.

[54] The amount of capacity at issue here is 237-41 MW, depending on season, for long-term firm sales to industrial customers under 13 contracts.

[55] Only one contract differs. It states that the "Agreement shall terminate at the end of the term and [PPL EnergyPlus] shall have no obligation to provide notice to customer of such termination." Either party may also immediately terminate the Agreement without prior notice if the other party: "(i) make(s) an assignment or any general arrangement for the benefit of creditors, or (ii) otherwise become(s) bankrupt or insolvent (however evidenced)." Accordingly, absent, for example, the bankruptcy of either party, this Agreement may not be terminated until the expiration of the term.

[56] Although the delivery term specified in each of the purchasing attachments varies, the delivery term is for more than one year in all contracts.

commitments to third parties.[57] Based on the termination clauses of the contracts and their Delivery Terms, all are long-term contracts. On this basis, the Commission finds that PPL Companies correctly deducted capacity that is tied to the long-term firm commitment contracts.

49. NorthWestern argues that PPL Companies improperly included as competing supplies available economic capacity associated with wholesale sales in the NorthWestern control area that may be committed to serve load, which has the effect of overstating the available economic capacity in the NorthWestern control area and understating PPL Companies' market share by one to two percentage points.[58] NorthWestern states that based on its review of PPL Companies' workpapers and associated inputs to their DPT analysis, it appears that the entities shown as having available economic capacity inside the NorthWestern control area do not, in fact, have sufficient resources to serve their own loads outside the NorthWestern control area. In rebuttal, PPL Companies argue that the foregoing buyers do not have long-term firm transmission available to export the energy in question from the NorthWestern control area and that because the buyers could elect to leave this capacity in the NorthWestern control area, the capacity in question should not be excluded from the available economic capacity in the NorthWestern control area.[59] We note that PPL Companies' treatment of this capacity is not inconsistent with how DPTs have historically been conducted. In any case, as NorthWestern indicates if we were to agree with NorthWestern the capacity at issue may increase PPL Companies' market share by one to two percentage points. This capacity alone is insufficient to significantly change the DPT results. In addition, as discussed below, the Commission's analysis has considered the collective effect of NorthWestern's proposed adjustments and finds that NorthWestern's study does not necessarily support its contention that PPL Companies have market power.

[57] *See* 18 C.F.R. § 33.3 (c)(i)(A) ("Prior to applying the delivered price test, the generating capacity meeting this definition must be adjusted by subtracting capacity committed under long-term firm sales contracts and adding capacity acquired under long-term firm purchase contracts.").

[58] NorthWestern notes that contracts associated with this error include: Idaho Power for 83 MW for Summer Absolute Peak Period; Portland General Electric (PGE) for 100 MW for all time periods; and Avista for 75 MW (off-peak periods).

[59] PPL Companies states that these power purchases do not include dynamic scheduling rights such as the joint-owned portions of the Colstrip generating facility that were excluded from available economic capacity in the NorthWestern control area. PPL Companies, February 1, 2006 Attachment A at 9

50. Protestors argue that, as part of PPL Companies' attempt to overstate competing suppliers and understate the PPL Companies' uncommitted capacity, PPL Companies improperly derated their capacity from hydroelectric facilities based on a five-year seasonal historic capacity factor. Protestors argue that, as a result of the derating, PPL Companies' total generating capacity is reduced by 19-33 percent depending on the season. Protestors argue that the derating was wrong because it contradicts the PPL Companies' proposed 2006 DPT and during four of the last five years the West received unusually low precipitation that has resulted in below normal water levels in Montana rivers. We find that PPL Companies have used historical data and employed the approach adopted by the Commission for derating hydroelectric capacity in the April 14 and July 8 Orders.[60] Further, protestors did not document their claim nor do they present the effects that such adjustment would have on PPL Companies' DPT results.

51. NorthWestern also argues that the September 1 Order was clear that PPL Companies should not include as competing supply in NorthWestern's control area, among other capacity, 80 MW of Colstrip capacity owned by PacifiCorp because that 80 MW of capacity is needed to serve PacifiCorp's native load commitments.[61] Further, NorthWestern states its understanding that PacifiCorp routinely dispatches this capacity to meet its own load obligations in PacifiCorp's control area.[62] However, NorthWestern also notes that even if the Commission were to consider this capacity as available to compete within the NorthWestern control area, such an assumption would not have a material effect on the DPT results.[63] PPL Companies argue that PacifiCorp itself has represented in its triennial review[64] that this capacity is available to compete in the NorthWestern control area and is not used to meet PacifiCorp's native load.

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[60] The Commission has permitted the output of hydroelectric resources to be derated based on historical capacity factors using a five-year average capacity factor and a sensitivity test using the lowest capacity factor in the previous five years in order to more accurately capture hydroelectric availability. April 14 Order, 107 FERC ¶ 61,018 at 126 and July 8 Order, 108 FERC ¶ 61,026 at 129.

[61] NorthWestern January 17, 2006 filing transmittal at 42.

[62] *Id*. affidavit at 6. NorthWestern is the control area transmission operator.

[63] *Id*. affidavit at. 7 at n. 12.

[64] PPL Companies, February 1, 2006 filing, Attachment A at 11 n. 14. PacifiCorp & PPM Energy, Inc., Docket Nos. ER97-2801-006, ER03-478-005; and EL05-95-001; First Filing in Compliance with 111 FERC ¶ 61,205 (2005), June 8, 2005, at Attachment 19 where PacifiCorp treated this capacity as in the NorthWestern control area.

NorthWestern concedes that the capacity at issue does not have a material effect on the 2004 DPT results.

52. In any case, even if we were to consider Protestors' arguments regarding sales contracts that expire in 2007 and the above noted adjustments to the DPT analysis,[65] NorthWestern's DPT results do not necessarily support NorthWestern's contention that PPL Companies have market power. For example, NorthWestern's study, with proposed adjustments, shows that the market concentrations for all periods under the available economic capacity measure would still be below the 2,500 HHI threshold, except for one off-peak period with an HHI of 2,606.[66] Moreover, NorthWestern does not provide, for our consideration, a DPT pivotal supplier analysis with proposed adjustments calculated consistent with the Commission's guidelines.[67]

53. NorthWestern argues that PPL Companies made further incorrect assumptions in calculating the available economic capacity that could be imported to the NorthWestern control area by assuming zero load obligations on suppliers that are not traditional load serving entities or control areas. NorthWestern states that some of the entities have load obligations. For example, NorthWestern states that PPL Companies included as potential suppliers the Alcan Aluminum (Kemano-Hydro) facility in Canada, assuming that nearly all the output of the plant is available, even though the hydro plant has significant smelter load obligations. NorthWestern states that PPL Companies' analysis also includes among other available suppliers Tri-State G&T's entire fleet assuming it to be available, including its base load plants. NorthWestern did not specify how these errors may affect the HHIs; they state that it will not affect either the PPL Companies' market share or whether they are pivotal provided that there are sufficient resources to use the stated

[65] NorthWestern's DPT results include adjustments to the available economic capacity measure to account for 450 MW from expiring contracts, removal of PPL Companies' native load reduction (PPL EnergyPlus'contracts), and exclusion of wholesale sales to investor-owned utilities, exclusion of PacifiCorp's and Puget's capacity. NorthWestern January 17, 2006 filing Exhibit WHH-3.

[66] NorthWestern reports HHIs below 2500 in all periods under the economic capacity measure when the only adjustment is for the expiring contracts. NorthWestern January 17, 2006 filing Exhibit WHH-3.

[67] As discussed below, NorthWestern did provide an alternative pivotal supplier screen for 2006 presenting PPL Companies as pivotal for providing products that require longer-term firm transmission to load in the NorthWestern control area.

import capacity.[68] PPL Companies state that in conducting their DPT analysis, they independently established the potential suppliers' ability to make wholesale sales in the region and took into account the fact that the pro-rata allocation of imports substantially limits the amount of supply that reaches the NorthWestern control area. PPL Companies state that they subsequently have assessed the suppliers' hourly load data and have incorporated them into their analysis.[69] PPL Companies conclude that the capacity contributions in the DPT from the suppliers were realistic.

54. NorthWestern further argues that PPL Companies' analysis overstates competing suppliers' available economic capacity by failing to assign competing suppliers' least-cost generation to serve native load. As an example, NorthWestern notes that 187 MWs of Bonneville Power Administration's (BPA) least-cost generation is incorrectly assumed to be available to compete in the Northwestern control area, rather than being dedicated to serve BPA's native load. NorthWestern also identifies other errors in PPL Companies' input data that also create additional available competing supply. However, NorthWestern concedes that it has not corrected any of these alleged errors in its own study, since, they are unlikely to affect conclusions concerning the PPL Companies' market shares or whether they are pivotal.[70] PPL Companies state that to the extent that corrections are appropriate it has corrected them and they have an immaterial effect on the results.[71] As an initial matter, we note that the parties are in agreement that even if the PPL Companies' DPT study contains these errors, they do not materially affect the results of the DPT.

55. Even if we were to accept all of NorthWestern's corrections to PPL Companies' 2004 analysis, the DPT results, as discussed more fully above, do not, on balance, support NorthWestern's contention that PPL Companies have the ability to exercise market power. For example, NorthWestern states that in the available economic capacity measure the market concentrations for all periods would still be below the 2,500 HHI threshold, with the maximum HHI being 1,812 and market shares ranging from 25 percent to 33 percent.[72]

[68] NorthWestern January 17, 2006 filing. Affidavit at 7-8.

[69] PPL Companies, February 1, 2006 filing. Attachment A at 13.

[70] NorthWestern January 17, 2006 filing. Affidavit at 9.

[71] PPL Companies, February 1, 2006 filing. Attachment A at 18-19.

[72] NorthWestern January 17, 2006 Exhibit No. WHH-2.

56. MCC argues that PPL Companies assume a greater transmission import capability than is shown by NorthWestern's transmission OASIS because PPL Companies' SIL ignores transmission constraints and limitations. The Commission finds that PPL Companies have used simultaneous import limit capability values that take account of transmission constraints as calculated by the Western Electricity Coordinating Council (WECC), including transmission reliability margin, consistent with Appendix E of the April 14 Order.[73] The Commission has accepted the use of WECC path ratings as reported by the WECC's Operating Transfer Capability Policy Committee.[74]

Alternative Suppliers and Long-Term Options

57. Protestors raise arguments regarding the lack of alternative suppliers to serve native load in the NorthWestern control area. NorthWestern argues that it is dependent on PPL Companies to serve its default supply obligations and, in support, stated that during a recent RFP to supply NorthWestern's customers, "other than NorthWestern's own Colstrip capacity, PPL Companies was the only existing base-load generator to submit one or more bids in the RFP. The other bidders were primarily from wind, dispatchable generation and not-yet-built coal projects."[75] NorthWestern asserts that PPL Companies have been able to continually increase power prices because there is little or no competitive check on their ability to exercise market power with their control of a large amount of low-cost base-load resources.

58. Protestors argue that PPL Companies' DPT analysis must be rejected because it does not address the issue of whether PPL Companies have market power over the supply of long-term firm wholesale power delivery beginning in July 2007. Protestors state that the analysis addresses a different product (short-term purchases), and does not address whether PPL Companies have market power over the supply of long-term firm wholesale power for delivery beginning in July, 2007.

59. In response to NorthWestern's claims, PPL Companies state that the RFP demonstrates wholesale sales competition in the control area. PPL Companies provide information that indicates that 44 proposals were submitted in response to the RFP. Nine of these 44 proposals were for intermediate-term products and 35 were for long-term

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[73] PPL Companies' November 14, 2005 Workpapers, NWMT Import Capability Non-SIL.

[74] *Pinnacle West Corporation*, 110 FERC 61,127 at 10 (2005).

[75] NorthWestern May 6, 2005 filing at 20.

products. Ten of the 35 long-term bids were eliminated because they were non-conforming or non-competitive. At least eight proposals from different bidders were short-listed. The bids generally ranged in price from $40 to $70 MWh and PPL Companies state that its bids were within the $40-50 range.[76] PPL Companies also state that, as a result of the RFP, NorthWestern received approval from the Montana Commission to enter into a 20-year power sales agreement with Invenergy Wind, LLC for 135 to 150 MW at $32/MWh (plus $7 to $14 for firming supply) from a newly proposed wind farm to be located in Montana. PPL Companies state that, as a result of the RFP, NorthWestern has also announced its intent to purchase a 50 MW unit contingent resource from the 222 MW share of the Colstrip plant that it owns for a term of 11.5 years at $35.80/ MWh. For purposes of comparison, PPL Companies provide information on two of their bids: (1) 20 years of supply beginning at $39.00/MWh in 2007 and increasing to $43.50/MWh in 2016 (average price of $40.95/MWh for 9.5 year period) and (2) supply beginning in 2007 at a price beginning at $37.40 with an average price of $39.05/MWh over a 12.5 year period.[77]

60. The RFP information and workpapers submitted by PPL Companies further indicate that NorthWestern was able to select a varied portfolio of delivered power (wind, dispatchable, base-load and non-unit contingent offers) and was able to create a short-list of eight entities including at least two bidders other than PPL Companies, offering base-load resources, but whose identities are not identified. From the RFP independent consultant's short-list, it appears that NorthWestern was able to select winning bids to meet part of its needs. The Commission notes that NorthWestern has not provided any additional substantial evidence in support of its claims. Indeed, NorthWestern states that 83 percent of portfolios reviewed "beat" the PPL Companies' full requirement bid."[78] Thus, the information provided indicating that NorthWestern received several proposals other than PPL Companies' in response to its RFP, suggests that NorthWestern has alternatives to renewing the expiring contracts with PPL Companies. Accordingly, these RFP results have not been shown to be indicative of market power on the part of the PPL Companies.

61. Protestors assert that PPL Companies have market power and can erect barriers to entry in the wholesale electric power market. The basis for this claim is that PPL Companies' terminated negotiations to allow Fall River to develop a hydroelectric project

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[76] PPL Companies, April 15, 2005 at 17.

[77] *Id*.

[78] NorthWestern May 5, 2006 at 23.

at the Hebgen dam which is licensed to and controlled by PPL Montana. This protest has been addressed in another proceeding in which the Commission, in denying Fall River's request for a hydroelectric license, cited reasons for denying the license unrelated to PPL Companies' decision to terminate negotiations with Fall River. [79] Further, the Commission evaluated PPL Companies' ability to erect barriers to entry in the wholesale electric energy market as part of its updated market power analysis. In the September 1 Order, we stated that we were satisfied that PPL Montana cannot erect other barriers to entry.[80] We are unpersuaded by protestors' argument and find that protestors have not provided any new evidence that PPL Companies can erect barriers to entry. Therefore, we will reject their argument.

62. NorthWestern argues that PPL Companies may be found pivotal with respect to providing long-term products in the NorthWestern control area. In support, protestors submit the results of an alternative pivotal supplier screen which uses actual firm ATC (transmission capacity available for reservation) for long-term firm transactions (based on OASIS postings for 2006) as a proxy for competing capacity that could be imported. Protestors argue that using this proxy for competing capacity that could be imported is more accurate because the transfer capability into the NorthWestern control area varies significantly depending upon system conditions (such as hydro-flows).

63. The Commission disagrees. The use of actual OASIS postings of available transmission capacity as an alternative transmission import capability value in this case significantly understates import capability. The use of actual postings of available transmission capacity as a limit to what can be imported does not take into account existing transmission reservations that may be held by competitive suppliers or the applicant. In addition, NorthWestern's' alternative 2006 pivotal supplier analysis, which uses NorthWestern control area summer 2006 OASIS postings as a proxy for SIL, improperly uses projected data. The Commission rejects the use of projected data.[81] In addition protestors' alternative pivotal supplier analysis limits products being analyzed to those that require longer-term firm transmission. The Commission's pivotal supplier screen considers the total supply in the relevant market.[82]

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[79] *Fall River Rural Electric Cooperative, Inc.*, 111 FERC ¶ 62,333 (2005), *reh'g denied*, 114 FERC ¶ 61,152 (2006).

[80] September 1 Order at 48.

[81] The Commission rejected the use of projected data, rather than historical data as the Commission requires. *Southern* P 54 (2005).

[82] April 14 Order, 107 FERC ¶ 61,018 at 94.

Other Issues

64. Protestors allege that PPL Companies are violating the antitrust laws by refusing to sell power to Northwestern at cost-based rates. Because the issues before the Commission here involve PPL Companies' authority to make sales at market-based rates, protestors' concerns are beyond the scope of the proceeding. Moreover, in any event, even if the antitrust laws impose a duty on certain sellers to sell power at cost-based rates, matters involving alleged violations of antitrust laws are beyond the Commission's jurisdiction to address.[83]

Commission Determination

65. Accordingly, after weighing all of the relevant factors, the Commission concludes that, on balance, based on PPL Companies' DPT analysis of the NorthWestern control area, PPL Companies have rebutted the presumption of generation market power and satisfy the Commission's generation market power standard for the grant of market-based rate authority.

PPL Companies' Request for Rehearing

66. PPL Companies request rehearing of the September 1 Order. PPL Companies argue that the Commission erred in: finding that the United States portion of the Northwest Power Pool (NWPP) is not the appropriate relevant geographic market in which to conduct the indicative market share screens; determining that the Colstrip capacity is not properly considered as uncommitted capacity and that it is not available to serve load in the NorthWestern control area; finding that the PPL Companies had not adequately demonstrated the nature of PPL EnergyPlus' long-term firm contracts, and failing to consider or to address PPL Companies' additional information regarding the RFP for contractual offers to provide supply to NorthWestern upon the expiration of the PPL Companies' contracts in June 2007.

Commission Determination

67. In this order, we find that PPL Companies have rebutted the presumption of market power and that they may continue to charge market-based rates. As a result, the

[83] *Californians for Renewable Energy, Inc., et al.*, 98 FERC ¶ 61,085 (2002), *reh'g denied*, 98 FERC ¶ 61,269 (2002).

Commission finds that the issues raised in the request for rehearing no longer need to be addressed and we dismiss the request for rehearing of the September 1 Order.

Reporting Requirements

68. PPL Companies 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.[84]

69. PPL Companies are directed to file an updated market power analysis within three years of the date of this order. The Commission also reserves the right to require such an analysis at any time.

Docket No. EL05-124-000

70. The Commission terminates Docket No. EL05-124-000. That proceeding was established under section 206 of the FPA to investigate generation market power issues in the NorthWestern control area. Based on the above findings, the Commission finds that there is no further need for the proceeding in this docket.

The Commission orders:

(A) PPL Montana, LLC's, PPL Colstrip II, LLC's and PPL Colstrip I, LLC's updated market power analysis is accepted for filing, as discussed in the body of this order.

(B) PPL Colstrip II, LLC's and PPL Colstrip I, LLC's revised market-based rate tariff sheets are accepted for filing, as discussed in the body of this order.

(C) PPL Montana, LLC's, PPL Colstrip II, LLC's and PPL Colstrip I, LLC's request for rehearing of the September 1 Order is dismissed, as discussed in the body of this order.

[84] *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 (2005).

(D) The section 206 proceeding in Docket No. EL05-124-000 is terminated, as discussed in the body of the order.

(E) PPL Montana, LLC, PPL Colstrip II, LLC and PPL Colstrip I, LLC are directed to file an updated market power analysis within three years of the date of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.