

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

CL Power Sales One, LLC
CL Power Sales Two, LLC

Docket Nos. ER95-892-055,
ER95-892-056 and
ER95-892-057

CL Power Sales Seven, LLC
CL Power Sales Eight, LLC
CL Power Sales Ten, LLC

ER96-2652-049,
ER96-2652-050 and
ER96-2652-051

ORDER ACCEPTING UPDATED MARKET POWER ANALYSIS

(Issued May 26, 2005)

1. In this order we accept an updated market power analysis filed by Edison Mission Marketing & Trading Inc., on behalf of its public utility affiliates CL Power Sales One, LLC (CPS One), CL Power Sales Two, LLC (CPS Two), CL Power Sales Seven, LLC (CPS Seven), CL Power Sales Eight, LLC (CPS Eight), and CL Power Sales Ten, LLC (CPS Ten), (collectively referred to as the CPS Entities). As discussed below, we conclude that, with the tariff modifications directed herein, the CPS Entities satisfy the Commission's standards for market-based rate authority. This order benefits customers by reviewing the conditions under which market-based rate authority is granted, thus ensuring that the prices charged for jurisdictional sales are just and reasonable. The CPS Entities' next updated market power analysis is due three years from the date of this order.

Background

2. The CPS Entities state that CPS One, CPS Two, and CPS Seven are owned by Edison Mission Energy Company (EME), JP Morgan Chase & Co. (JPMC) and GATX Financial Corporation (GATX); CPS Eight is owned by EME, JPMC, GATX and Peabody Energy Corporation (Peabody Energy); and CPS Ten is owned by EME, JPMC, GATX and Mr. John Fair.

3. The CPS Entities state that EME engages in the acquisition, development, and operation of merchant electric power facilities and the trading and marketing of electric power. The CPS Entities also state that EME is a subsidiary of Edison International, an exempt public utility holding company. According to the submittal, the primary subsidiaries of Edison International, other than EME, are Southern California Edison Company (SCE) and Edison Capital. SCE is a franchised public utility located in the California Independent System Operator Corporation (CAISO) and Edison Capital provides capital and financial services for electric power and infrastructures.
4. JPMC is a financial holding company. The CPS Entities state that JPMC owns passive and non-passive interests in electric generation and transmission facilities throughout the United States.
5. GATX is a finance and leasing company. The CPS Entities state that GATX holds passive ownership interests in certain electric generation and transmission facilities as a lessor, however, the CPS Entities assert that because of the nature of those leases, neither GATX nor any of its subsidiaries is deemed to own or control the leased generation and transmission facilities for purposes of the Federal Power Act (FPA).
6. Peabody Energy markets, brokers and trades coal in the United States. Peabody Energy is currently developing three generating projects – a 1500 MW facility in Muhlenberg County Kentucky, a 1500 MW facility in Washington County, Illinois, and a 300 MW facility in Cibola County, New Mexico. The CPS Entities state that neither Peabody nor any of its subsidiaries owns or controls any electric generation or transmission facilities in the Eastern Interconnection.
7. The CPS Entities state that Mr. Fair resides in South Carolina and does not own or control, directly or indirectly, any generation or transmission facilities.
8. CPS One and CPS Two were authorized to engage in the sale of electricity at market-based rates effective June 8, 1995.¹ CPS Seven, CPS Eight and CPS Ten were authorized to engage in the sale of electricity at market-based rates effective September 23, 1996.²
9. The CPS Entities state that CPS One, CPS Two, CPS Seven, CPS Eight, and CPS Ten are power marketers that buy and sell energy products only in the Eastern

¹ See *Citizens Lehman Power L.P.*, Docket No. ER95-892-000, (unpublished delegated letter order).

² See *CL Power Sales Six, L.L.C.*, Docket No. ER96-2652-000 (unpublished delegated letter order) (*CL Power Sales Six*).

Interconnection and that none of the CPS Entities owns or controls any generation or transmission facilities through contract or otherwise.

10. The CPS Entities state that certain subsidiaries of EME own or control generation facilities in the Eastern Interconnection. MidWest Generation, LLC (MWGen) owns or controls approximately 7,583 MW of generation in Illinois. EME Homer City leases and controls a 2,012 MW generation facility located in Indiana County, Pennsylvania. EMMT is a power marketer that holds contractual rights to the uncommitted energy from the generating facilities of MWGen and EME Homer City. The EME subsidiaries also consist of CP Power Sales Twelve, LLC, CP Power Sales Seventeen, LLC, CP Power Sales Nineteen, LLC, and CP Power Sales Twenty, LLC.³

11. On April 1, 2002, the CPS Entities filed an updated market power analysis including a supply margin assessment of generation market power pursuant to the Commission's orders granting the CPS Entities authority to sell electric energy and capacity at market-based rates.⁴ In that filing, the CPS Entities stated that they satisfy the Commission's standards for generation market power, transmission market power, barriers to entry, and affiliate abuse or reciprocal dealing.

12. On November 9, 2004, as amended November 18, 2004,⁵ the CPS Entities submitted for filing a revised updated market power analysis, pursuant to the Commission's order issued on May 13, 2004.⁶ The May 13 Order addressed the procedures for implementing the generation market power analysis that the Commission announced on April 14, 2004, and clarified on July 8, 2004.⁷

³ The Commission recently approved an updated market power analysis for MidWest Generation, LLC, EME Homer City, CP Power Sales Twelve, LLC, CP Power Sales Seventeen, LLC, CP Power Sales Nineteen, LLC, and CP Power Sales Twenty, LLC, Edison Mission Marketing & Trading, Inc., and Midwest Generation Energy Services, LLC in *Midwest Generation, LLC*, 111 FERC ¶ 61,034 (2005).

⁴ *Oswego Harbor Power, LLC*, 88 FERC ¶ 61,219 (1996), *EME Homer City Generation, L.P.*, 86 FERC ¶ 61,016 (1999), *Edison Mission Mktg. & Trading, Inc.*, 86 FERC ¶ 61,072 (1999); *CP Power Sales Nineteen, LLC*, Docket No. ER99-4228-000 (unpublished delegated letter order); *CL Power Sales Fifteen, LLC*, Docket No. ER99-890-000 (unpublished delegated letter order).

⁵ On November 18, 2004, EME submitted CDs containing the workpapers to each of the market power analyses submitted on November 9, 2004.

⁶ *Acadia Power Partners, LLC*, 107 FERC ¶ 61,168 (2004) (May 13 Order).

⁷ *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004) (July 8 Order).

13. We note that in the November 9, 2004 submittal, the CPS Entities also filed amendments to each of the CPS Entities' respective market-based rate tariffs to incorporate the Commission's market behavior rules.⁸

Notice and Responsive Pleadings

14. Notice of the CPS Entities' April 1, 2002 filing was published in the *Federal Register*, 67 Fed. Reg. 17,986 (2002), with protests and interventions due on or before April 22, 2002. Exelon Generation Company, LLC (Exelon GenCo) and its affiliate ComEd together submitted a motion to intervene. The Illinois Commerce Commission (Illinois Commission) filed comments. The Illinois Commission requested that the Commission: 1) allow the CPS Entities to continue making sales at market-based rates conditioned on the requirement that Edison Mission, one of the CPS Entities' affiliates, file an updated market power analysis whenever the generation capacity under its control exceeds 5,000 MW and the transmission facilities of ComEd are not under the control of a Commission-approved RTO subject to Commission-approved market-monitoring and mitigation; 2) require Edison Mission to file a market power analysis a minimum of three months prior to the expiration of the contracts between Exelon GenCo and Midwest Generation; 3) require Edison Mission to notify the Commission and the Illinois Commission if, and when, Exelon GenCo releases any contracted capacity; and 4) require Edison Mission to recalculate its supply margin assessment using the simultaneous import capacity figure of 3,000 MW.

15. Notice of the CPS Entities' November 9, 2004 filing was published in the *Federal Register*, 69 Fed. Reg. 68,894 (2004), with protests and interventions due on or before November 30, 2004. None was filed.

16. Notice of the CPS Entities' November 18, 2004 filing was published in the *Federal Register*, 69 Fed. Reg. 70,139 (2004), with protests and interventions due on or before December 9, 2004. None was filed.

Discussion

Procedural Matters

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

⁸ *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorization*, 105 FERC ¶ 61,218 (2003), *order on reh'g*, 107 FERC ¶ 61,175 (2004).

Market-Based Rate Authorization

18. 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.⁹

19. As discussed below, with the tariff modification directed herein, the Commission concludes that the CPS Entities satisfy the Commission's standards for market-based rate authority.

Generation Market Power

20. 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. The CPS Entities state that they have prepared the pivotal supplier and the wholesale market share screens for the PJM market where MWGen and EME Homer City are located, for the New York Independent System Operator (NYISO) market to which EME Homer City is interconnected via transmission lines partially owned by New York State Electric and Gas Corporation, and for the ISO New England, Inc. (ISO-NE) market in which certain CPS Entities purchase and resell power under long-term contracts.

21. The CPS Entities state that the indicative screens were computed based on PJM data which reflects the expansion of PJM in October of 2004 to include American Electric Power (AEP) and Dayton Power and Light (DP&L). The CPS Entities state that using PJM data as of October is conservative because it does not include either Dominion Virginia Power or Duquesne Light Company, which are scheduled to become part of PJM in January 2005.¹⁰ The CPS Entities' analysis also reflects the termination of certain long-term sales contracts that expired in December 2004. The CPS Entities state that this analysis is conservative because the expiration of these contracts results in an increase in the amount of uncommitted capacity owned or controlled by the CPS Entities in 2005. The Commission finds that including AEP and DP&L in the analysis represents current conditions in PJM, and exclusion of the long-term sales contracts is a conservative assumption resulting in greater uncommitted capacity controlled by the CPS Entities. We conclude, therefore, that the CPS Entities' assumptions used in the indicative screens are acceptable.

⁹ 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).

¹⁰ Duquesne Light Company integrated into the PJM control area on January 1, 2005. Dominion Virginia Power integrated into the PJM on May 1, 2005.

22. The CPS Entities also state that they do not include Dominion Virginia Power or Duquesne Light as part of the PJM market even though they may integrate with PJM in January of 2005.

23. The Commission has reviewed the CPS Entities' generation market power screens and has determined that the CPS Entities pass the screens in the PJM, ISO-NE, and NYISO markets. Accordingly, the Commission finds that the CPS Entities satisfy the Commission's generation market power standard for the grant of market-based rate authority.

24. With regard to the Illinois Commission's April 2002 comments, as we noted in our April 14, 2005 order in Docket No. ER99-3693-001,¹¹ the Commission requires that applicants timely report any change in status that would reflect a departure from the characteristics the Commission initially relied upon in granting market-based rate authority.¹² Specifically, the Commission has concluded that market-based rate sellers must report as a change in status each cumulative increase in generation of 100 MW or more that has occurred since the most recent notice of a change in status filed by that seller.¹³ The Commission also stated that reports of changes in status must be filed no later than 30 days after the legal or effective date of the change in status. Further, the April 14 Order requires that transmission providing utilities seeking to obtain or retain market-based rate authority provide a simultaneous import capability study for its home control area and directly interconnected first-tier markets.¹⁴ Therefore, the Commission finds that the Illinois Commission's comments are already addressed by the Commission's change in status reporting requirement and the indicative screens adopted in the April 14 Order.

Transmission Market Power

25. The CPS Entities state that neither the CPS Entities nor their affiliates own or control any transmission facilities, other than limited interconnection facilities, in the

¹¹ See *Midwest Generation, LLC*, 111 FERC ¶ 61,034 (2005).

¹² *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) (Change in status order).

¹³ See *Change in status order*, at P 68.

¹⁴ See *April 14 Order*, at P 86.

Eastern Interconnection.¹⁵ Further, no intervenors have raised transmission market power issues. Based on the CPS Entities' representation, the Commission finds that the CPS Entities satisfy the Commission's transmission market power standard for the grant of market-based rate authority.

Other Barriers to Entry

26. The CPS Entities state that neither the CPS Entities nor their affiliates own or control any resources or inputs to power generation that could impede potential competition. The CPS Entities also state that neither Peabody Energy, JPMC or their affiliates have the ability to erect barriers to entry since there are numerous other fuel suppliers who compete directly with Peabody's and JPMC's affiliates for a share of the electric utility market for fuel. Finally, the CPS Entities state that neither Peabody Energy nor its affiliates own or control any of the public utilities to which coal is sold by the Peabody Energy affiliates. The CPS Entities state that they are aware that, consistent with Commission precedent, should the CPS Entities or any of their affiliates deny, delay or require unreasonable terms, conditions or rates for fuel or services to potential electric competitors in bulk power markets, the Commission could suspend the CPS Entities' authority (or that of any affiliate) to sell power at market-based rates. In addition, no intervenors have raised barrier to entry concerns. Based on the CPS Entities' representations, the Commission is satisfied that the CPS Entities cannot erect barriers to entry.

Affiliate Abuse

27. The CPS Entities state that SCE, their franchised public utility affiliate, operates in the Western Interconnection and that the CPS Entities' market-based rate tariffs include a specific prohibition on the sale of power to, or purchase of power from, affiliated entities absent separate Commission approval under section 205 of the FPA. The CPS Entities further state that the CPS Entities have adopted a code of conduct that conforms to the Commission's requirements for affiliates of franchised utilities and that these tariff and code of conduct provisions eliminate any concern over affiliate abuse or reciprocal dealing. In addition, no intervenors have raised affiliate abuse concerns.

28. The Commission's review of the CPS Entities' market-based rate tariffs reveals that the CPS Entities tariffs do not state that the company will not make sales to its

¹⁵ The CPS Entities state that SCE is the only affiliate who owns or controls transmission facilities other than limited interconnection facilities, however, SCE's transmission facilities are located in the Western Interconnection under the control of the CAISO and will be addressed in SCE's updated market power analysis which is scheduled to be filed on August 29, 2005.

affiliates “without first receiving” Commission authorization of the transaction under section 205 of the FPA. Therefore, consistent with Commission precedent, the CPS Entities are directed to make a compliance filing within 30 days of the date of issuance of this order to revise their market-based rate tariffs to include such language.¹⁶ Based on the representations of the CPS Entities, and subject to the tariff revisions we direct herein, the Commission finds that the CPS Entities satisfy the Commission’s concerns with regard to affiliate abuse.

Reporting Requirements

29. Consistent with the procedures the Commission adopted in Order No. 2001, an entity with market-based rates must file electronically with the Commission an Electric Quarterly Report containing: (1) a summary of the contractual terms and conditions in every effective service agreement for market-based power sales; and (2) transaction information for effective short-term (less than one year) and long-term (one year or greater) market-based power sales during the most recent calendar quarter.¹⁷ Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.¹⁸

30. The CPS Entities 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.¹⁹ Order No. 652 requires that the change in status reporting requirement be incorporated in the market-based rate tariff of each entity authorized to make sales at market-based rates. Accordingly, the CPS Entities are directed, within 30

¹⁶ *Aquila Inc.*, 101 FERC ¶ 61,331 at P 12 (2002).

¹⁷ *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>.

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

¹⁹ *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).

days of the date of issuance of this order, to revise their market-based rate tariffs to incorporate the following provision:

[insert market-based rate seller name] 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. A change in status includes, but is not limited to, each of the following: (i) ownership or control of generation or transmission facilities or inputs to electric power production other than fuel supplies, or (ii) affiliation with any entity not disclosed in the application for market-based rate authority that owns or controls generation or transmission facilities or inputs to electric power production, or affiliation with any entity that has a franchised service area. Any change in status must be filed no later than 30 days after the change in status occurs.

31. The CPS Entities 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) The CPS Entities' updated market power analysis is hereby accepted for filing, as discussed in the body of this order.

(B) The CPS Entities' next updated market power analysis is due within three years of the date of this order.

(C) The CPS Entities are directed, within 30 days of the date of issuance of this order, to revise the affiliate sales prohibition language in their respective tariffs as discussed in the body of this order.

(D) The CPS Entities are directed, within 30 days of the date of issuance of this order, to revise their market-based rate tariffs to include the change in status reporting requirement adopted in Order No. 652.

(E) The CPS Entities' revised tariff sheets incorporating the market behavior rules are accepted for filing effective December 17, 2003.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.