

112 FERC ¶ 61,027
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Exelon Generation Company, LLC	Docket Nos. ER00-3251-004 ER00-3251-005 ER00-3251-007 ER00-3251-008
AmerGen Energy Company LLC	ER99-754-007 ER99-754-008 ER99-754-009 ER99-754-010
Commonwealth Edison Company	ER98-1734-005 ER98-1734-006 ER98-1734-007 ER98-1734-008
Unicom Power Marketing, Inc.	ER97-3954-015 ER97-3954-016 ER97-3954-017 ER97-3954-018
PECO Energy Company	ER99-1872-005 ER99-1872-008 ER99-1872-009
Exelon Energy Company	ER01-1919-001 ER01-1919-002 ER01-1919-004 ER01-1919-005

Exelon Edgar, LLC,	ER01-513-005
Exelon West Medway, LLC,	ER01-513-006
Exelon Wyman, LLC,	ER01-513-009
Exelon New Boston, LLC, and	
Exelon Framingham, LLC	

Exelon New England Power Marketing, L.P.	ER99-2404-001
	ER99-2404-004
	ER99-2404-005
	ER99-2404-006

Exelon Generation Company, LLC,	EL05-132-000
AmerGen Energy Company, LLC,	
Commonwealth Edison Company,	
Unicom Power Marketing, Inc., PECO	
Energy Company, Exelon Energy Company,	
Exelon Edgar, LLC, Exelon West Medway, LLC,	
Exelon Wyman, LLC, Exelon New Boston, LLC	
Exelon Framingham, LLC, and Exelon New	
England Power Marketing, L.P.	

**ORDER ON UPDATED MARKET POWER ANALYSIS, SUBJECT TO FILING A
REVISED GENERATION MARKET UPDATE, INSTITUTING SECTION 206
PROCEEDING AND ESTABLISHING REFUND EFFECTIVE DATE**

(Issued July 5, 2005)

1. In this order we conditionally accept an updated market power analysis filed by Exelon Corporation on behalf of Exelon Generation Company, LLC, and its affiliates, AmerGen Energy Company, LLC, Commonwealth Edison Company(ComEd), Unicom Power Marketing, Inc., Exelon Edgar, LLC (Exelon Edgar), Exelon Framingham, LLC (Exelon Framingham), Exelon West Medway, LLC (Exelon West Medway), Exelon Wyman, LLC (Exelon Wyman), and Exelon New Boston, LLC (Exelon New Boston), Exelon New England Power Marketing, L.P., PECO Energy Company (PECO), and Exelon Energy Company (collectively, Exelon). As discussed below, we conclude that Exelon satisfies the Commission's standards for market-based rate authority, subject to the Commission's acceptance of the compliance filing directed herein. However, the Commission finds that Exelon's filings fail to address the affiliate abuse and reciprocal dealing part of the Commission's analysis for market-based rate authority and, therefore are incomplete. In light of this failure, as discussed below, the Commission institutes a

proceeding pursuant to section 206 of the Federal Power Act (FPA)¹ to determine whether Exelon may continue to charge market-based rates and establishes a refund effective date pursuant to the provisions of section 206. We also direct Exelon to file a code of conduct and revise their market-based rate tariffs to state that sales to affiliates are prohibited without first receiving approval for the transaction from the Commission under section 205 of the FPA,² and file a revised generation market power update within 30 days of the consummation of the announced merger with Public Service Enterprise Group, Inc. (PSEG). 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. Exelon's next updated market power analysis is due the earlier of three years from the date of this order or 30 days from the date of consummation of the merger.³

Background

2. On June 26, 2002, Exelon, on behalf of it and certain of its then-existing affiliates, filed a notification of change in status in Docket Nos. ER00-3251-004, ER98-1734-005, ER01-1919-001, ER99-754-007, and ER97-3954-015 (June 26 Change of Status Filing).⁴

3. On November 7, 2003, Exelon, on behalf of it and certain of its then-existing affiliates, filed a triennial market power study update based on the Supply Margin Assessment (SMA) in Docket Nos. ER00-3251-005, ER99-1872-005, ER98-1734-006, ER99-754-008, ER97-3954-016 and ER01-1919-002 (November 7 SMA Filing).

¹ 16 U.S.C. § 824e (2000).

² 16 U.S.C. § 824d (2000).

³ On February 4, 2005, Exelon Corporation filed a request for Commission authorization to merge with PSEG under section 203 of the Federal Power Act, 16 U.S.C. § 824b (2000), in Docket No. EC05-43-000. The order approving that merger was issued July 1, 2005, *Exelon Corporation*, 112 FERC ¶ 61,011.

⁴ The June 26 filing also included change of status notification for other then-existing Exelon affiliates in Docket Nos. ER00-3691-003, ER01-42-003, ER99-2404-002 and ER02-41-002. To the extent that these dockets remain open, they will be addressed in other proceedings.

4. On November 28, 2003, Exelon, on behalf of other of its then-existing affiliates, filed a triennial market power study update based on the Supply Margin Assessment in Docket No. ER00-513-005 (November 28 SMA Filing).⁵

5. On September 27, 2004, as amended on October 13, 2004, Exelon, on behalf of it and its affiliates, filed an updated market power analysis, in Docket Nos. ER99-754-009, ER98-1734-007, ER97-3954-017, ER01-513-006, ER00-3251-007, ER99-2404-005, ER99-1872-008 and ER01-1919-004 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 announced on April 14, 2004, and clarified on July 8, 2004 (September 27 Updated Market Power Analysis Filing).⁷

6. On January 5, 2005, the Director, Division of Tariffs and Market Development – South, acting pursuant to delegated authority, issued a deficiency letter seeking additional information related to Exelon's updated market power analysis filed September 27, 2004. On January 24, 2005, January 27, 2005 and February 14, 2005, Exelon filed its responses to the deficiency letter (Exelon Responses to Deficiency Letter).⁸

7. On March 25, 2005, the Director, Division of Tariffs and Market Development – South, acting pursuant to delegated authority, issued another deficiency letter seeking additional information related to Exelon's updated market power analysis filed February 14, 2005 (March 25 Deficiency Letter). On April 15, 2005, Exelon filed a response to the March 25 Deficiency Letter that was deemed by the Commission to be inadequate. On April 22, 2005, Exelon filed a procedural motion, requesting a 30-day

⁵ *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218 (2003) (Market Behavior Rules Order). Exelon included in this filing market behavior rules for the following affiliates: Exelon Edgar, LLC, Exelon New Boston, LLC, Exelon Framingham, LLC, Exelon West Medway, LLC, Exelon Wyman LLC and Exelon New England Power Marketing, L.P. In addition, we note that Exelon filed market behavior rules for Exelon Generation LLC which were accepted in *Exelon Generation LLC*, Docket No. ER00-3251-006 (March 29, 2004) (unpublished letter order). However, we note that none of the other Exelon affiliates have filed the market behavior rules.

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).

⁸ On January 24, 2005, Exelon filed a motion for an extension of time to February 14, 2005 to comply with the deficiency letter.

extension of time to respond to the March 25 Deficiency Letter. That motion for an extension of time was granted by the Commission on May 17, 2005. On May 23, 2005, Exelon filed a response to the March 25 Deficiency Letter (May 23 Filing).

8. Exelon Generation is the generation and energy power marketing arm of Exelon Corporation, the parent of PECO and ComEd. PECO is an electric and gas utility that serves retail customers in the Philadelphia area. ComEd is an electric utility that serves retail customers in northern Illinois. AmerGen Energy Company LLC is a subsidiary of Exelon Generation and owns three nuclear plants.⁹ Exelon Generation also owns about 600 MW of generation through its affiliates, Exelon New Boston, Exelon Wyman, Exelon West Medway, and Exelon Framingham, which are all located in ISO-NE. Exelon New England Power Marketing, L.P. and Exelon Energy Company both engage in power marketing and other energy sales and purchases. Exelon states that neither of the marketing entities own or control any generating assets.

Notice and Responsive Pleadings

9. Notice of Exelon's June 26 Change of Status Filing was issued on July 2, 2002.¹⁰

10. Notice of Exelon's November 7 SMA Filing was published in the *Federal Register*, 68 Fed. Reg. 66,089 (2003), with interventions or protests due on or before November 28, 2003. Illinois Commerce Commission filed a notice of intervention. Wisconsin Public Service Corporation, Upper Peninsula Power Company, WPS Power Development, Inc. and WPS Energy Services filed a joint motion to intervene. Midwest Generation, LLC (Midwest) filed a motion to intervene and comments. Midwest challenges the results of Exelon's SMA analysis arguing that the SMA analysis contains factual mistakes. Exelon filed a response to Midwest's comments on December 11, 2003 arguing that: (1) its SMA analysis does not contain factual mistakes, (2) it does not have an incentive to withhold generation in certain wholesale markets, and (3) ComEd does not have the ability to exercise vertical market power with respect to transmission.

11. Notice of Exelon's November 28 SMA Filing was published in the *Federal Register*, 68 Fed. Reg. 69,677 (2003), with interventions or protests due on or before December 19, 2003. None was filed.

⁹ Three Mile Island and Oyster Creek in PJM, and Clinton in the Illinois Power control area.

¹⁰ This notice was not published in the *Federal Register*.

12. Notice of Exelon's September 27 Updated Market Power Analysis Filing was published in the *Federal Register*, 69 Fed. Reg. 60,851 (2004), with protests and interventions due on or before October 18, 2004. Public Services Enterprises Group (PSEG) and Edison Mission Energy, Edison Mission Marketing & Trading, Inc. and Midwest Generation EME, LLC (collectively, EME Companies) filed timely motions to intervene. An errata notice of the Exelon's October 13, 2004 filing was issued on October 14, 2004.¹¹

13. Notice of Exelon's January 24, 2005, January 27, 2005 and February 14, 2005 responses to the deficiency letter was published in the *Federal Register*, 70 Fed. Reg. 10,388 (2005), with protests and interventions due on or before March 7, 2005. None was filed.

14. Notice of Exelon's May 23, 2005 response to the March 25 Deficiency Letter was published in the *Federal Register*, 70 Fed. Reg. 33,743 (2005), with protests and interventions due on or before June 13, 2005. None was filed.

Procedural Matters

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

Discussion

Market-Based Rate Authorization

16. 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.¹²

17. As discussed below, the Commission concludes that Exelon satisfies the Commission's standards for market-based rate authority.

¹¹ The October 14, 2004 errata notice was not published in the *Federal Register*.

¹² 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).

Generation Market Power

18. 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.¹³ Exelon prepared both the pivotal supplier and the wholesale market share screens for its relevant market, the PJM Interconnection LLC (PJM).¹⁴ Exelon also controls generation in the following control areas and markets: Illinois Power (IP), New York Independent System Operator (NYISO), ISO New England Inc. (ISO-NE), Southern Company Services, Inc., Entergy, and Central and Southwest (CSWS).¹⁵ According to Exelon's filing, 7500 MW can be imported into the PJM control area from first-tier markets.¹⁶ Exelon asserts that it passes the pivotal supplier screen and the wholesale market share screen in PJM and all other markets where it controls generation for each of the four seasons considered.

19. With regard to the protests filed in response to the SMA analysis utilized in Exelon's November 2003 updated market power analysis, we note that the Commission has replaced the SMA analysis with the indicative screens, as discussed in the April 14, May 13, and July 8 Orders. On this basis, we believe that the concerns of Midwest regarding Exelon's SMA analysis have been adequately addressed.

20. We also note that Exelon and PSEG recently announced plans to merge.¹⁷ Consistent with our practice, we have analyzed Exelon's generation market power in this proceeding on a stand-alone basis.¹⁸ The Commission has reviewed Exelon's generation market power analysis and has determined that Exelon and its affiliates pass the

¹³ April 14 Order at P 71-72

¹⁴ In its May 23 Filing, Exelon filed indicative screens that utilized "Expanded PJM" as the geographic market. "Expanded PJM" includes Dominion Virginia Power, which became a part of PJM on May 1, 2005.

¹⁵ We note that Exelon also identifies ERCOT as one of its control areas. However, ERCOT is non-jurisdictional and Exelon did not include that generation in its studies.

¹⁶ Exelon states that the simultaneous import capability of 7500 MW in PJM was supplied by PJM.

¹⁷ *Supra* note 3.

¹⁸ See *Delmarva Power and Light Co.*, 76 FERC ¶ 61,331 at 62,582 (1996), *Consolidated Edison Energy, Inc.*, 83 FERC ¶ 61,236 at 62,033 (1998), and *Central and South West Services, Inc.*, 82 FERC 61,001 at 61,002 (1998).

wholesale market share screen and pivotal supplier screen in the PJM market and all other markets in which it controls generation. Accordingly, the Commission finds that Exelon satisfies the Commission's generation market power standard for the grant of market-based rate authority.

Transmission Market Power

21. Exelon states that they do not have the ability to exercise market power over transmission since both PECO Energy and ComEd are members of PJM, which has comprehensive and Commission-approved market monitoring and mitigation procedures. Exelon states that the transmission assets of PECO and ComEd are operated by PJM under PJM's open access transmission tariff (OATT), which is on file with the Commission.¹⁹ Further, no intervenors have raised transmission market power concerns. Based on Exelon's representations, the Commission finds that Exelon satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

Other Barriers to Entry

22. Exelon states that it and its affiliates do not own gas transmission facilities, railroads, field gas supplies, or coal mines. Exelon also states that while it and its affiliates do have fuel and transportation contracts to supply their generating plants, these contracts do not provide them with the ability to frustrate the entry of competitors. Exelon also states that they do not control potential sites for the construction of new plants, and that numerous new generation units have been built or are under development in the relevant markets. No intervenors have raised barrier to entry concerns. Based on Exelon's representations, the Commission is satisfied that Exelon cannot erect barriers to entry.

Affiliate Abuse

23. The Commission notes that none of Exelon's updated market power analysis filings address the affiliate abuse and reciprocal dealing part of the Commission's market-based rate authorization. Exelon's failure to address the affiliate abuse and reciprocal dealing part of the Commission's market power analysis provides the basis for the Commission to institute a section 206 proceeding to determine whether Exelon may continue to charge market-based rates. Our decision to institute the instant section 206

¹⁹ *Pennsylvania-New Jersey-Maryland Interconnection*, 81 FERC ¶ 61,257 (1997).

proceeding does not constitute a definitive finding by the Commission that Exelon may have market power. Accordingly, Exelon is directed to file, within 30 days of the date of this order, a compliance filing to address the affiliate abuse and reciprocal dealing part of the Commission's market power analysis.

24. In cases where, as here, the Commission institutes a section 206 proceeding on its own motion, section 206(b) requires that the Commission establish a refund effective date that is no earlier than 60 days after publication of the notice of the initiation of the Commission's proceeding in the *Federal Register*, and no later than five months subsequent to the expiration of the 60-day period. In order to give maximum protection to customers, and consistent with our precedent,²⁰ we will establish a refund effective date at the earliest date allowed. This date will be 60 days from the date on which notice of the initiation of the proceeding in Docket No. EL05-132-000 is published in the *Federal Register*. In addition, section 206 requires that, if no final decision has been rendered by that date, the Commission must provide its estimate as to when it reasonably expects to make such a decision. Given the times for filing identified in this order, and the nature and complexity of the matters to be resolved, the Commission estimates that it will be able to reach a final decision by December 31, 2005.

25. In a previous case, the Commission waived the code of conduct requirement and the restrictions on inter-affiliate transactions for Exelon and its affiliates²¹ following the merger of PECO and ComEd.²² At that time, we reserved the right to reimpose the code of conduct requirement on Exelon and its affiliates, if appropriate, and directed Exelon to notify us if the circumstances on which we relied in granting waiver of the code of conduct requirement should change.²³ At this time, we find that the circumstances resulting from Exelon's proposed acquisition of PSEG trigger the need to re-impose the code of conduct requirement on Exelon and its affiliates for their interactions with PSEG and its affiliates. Consistent with Commission precedent and policy, which requires merging utilities to treat one another as affiliates pending the consummation of a merger,

²⁰ See, e.g., *Canal Electric Company*, 46 FERC ¶ 61,153 (1989), *reh'g denied*, 47 FERC ¶ 61,275 (1989).

²¹ The Commission requires a code of conduct to be filed when an affiliate, such as an affiliate power marketer or power producer, of a traditional public utility seeks market-based rate authority. The code of conduct is intended to govern the relationship between the utility and its affiliate.

²² See *Exelon Generation Company, L.L.C.*, 93 FERC ¶ 61,140 (2000).

²³ *Id.* at p. 61,426.

we will direct Exelon, within 30 days of the date of issuance of this order, to revise its tariff to include a code of conduct which governs the relationship between Exelon and PSEG.²⁴ Our action is without prejudice to Exelon making a filing to demonstrate why a code of conduct is not necessary.

26. Further, we note that the Commission's precedent with regard to merging utilities also applies to market-based rate sales of power to affiliates. However, Exelon's tariffs do not currently contain a provision governing affiliate sales. Given the announced merger, Exelon is directed to revise its tariffs to include such a provision. The prohibition on affiliate sales that we direct be included in Exelon's tariffs would apply to PSEG and its affiliates. Consistent with Commission precedent, such provision should include a prohibition on sales to affiliates "without first receiving" Commission authorization of the transaction under section 205 of the FPA. The Commission directs Exelon and its affiliates to make a compliance filing within 30 days of the date of issuance of this order to revise their market-based rate tariffs to state that sales to affiliates are prohibited without first receiving approval for the transaction by the Commission under section 205 of the FPA.²⁵

Market Behavior Rules

27. As noted above, Exelon filed market behavior rules on behalf of Exelon Edgar, Exelon New England Power Marketing, Exelon Framingham, Exelon West Medway, Exelon Wyman and Exelon New Boston on November 28, 2003.²⁶ However, it appears that the other Exelon affiliates have yet to file market behavior rules. We accept the market behavior rules filed by Exelon on behalf of the above-referenced affiliates, as

²⁴ *Consolidated Edison Energy, Inc.*, 83 FERC ¶ 61,236 at 62,034 (1998), *Central and South West Services, Inc.*, 82 FERC ¶ 61,101 at 61,103 (1998); *Delmarva Power & Light Company*, 76 FERC ¶ 61,331 at 62,582 (1996) (Noting that "The self-interest of two merger partners converge sufficiently, even before they complete the merger, to compromise the market discipline inherent in arm's-length bargaining that serves as the primary protection against reciprocal dealing.")

²⁵ *Aquila, Inc.*, 101 FERC ¶ 61,331 at P 12 (2002).

²⁶ *Supra* note 3.

filed,²⁷ and we direct Exelon to file market behavior rules for those affiliates that have not yet complied with the Commission's Market Behavior Rules Order within 30 days of the issuance of this order.

Reporting Requirements

28. 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.²⁸ Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.²⁹

²⁷ Exelon Edgar, LLC, Eighth Revised FERC Electric Tariff No. 1, Original Sheet Nos. 7 and 8; Exelon New Boston, LLC, Eighth Revised FERC Electric Tariff No. 1, Original Sheet Nos. 7 and 8; Exelon Framingham, LLC, Eighth Revised FERC Electric Tariff No. 1, Original Sheet Nos. 7 and 8; Exelon West Medway, LLC, Eighth Revised FERC Electric Tariff No. 1, Original Sheet Nos. 7 and 8; Exelon Wyman, LLC, Eighth Revised FERC Electric Tariff No. 1, Original Sheet Nos. 7 and 8; and Exelon New England Power Marketing, L.P. FERC Electric Rate Schedule No. 3, Original Sheet Nos. 3 and 4.

²⁸ *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>.

²⁹ 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.

29. Exelon 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.³⁰ 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, Exelon is directed, within 30 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.

30. In this case, we note that Exelon and PSEG already filed a request for Commission authorization to merge in Docket No. EC05-43-000.³¹ The Commission, therefore, directs the combined Exelon-PSEG entity to file a revised generation market power analysis to reflect the circumstances of the merged company within 30 days of consummation of the merger.

31. Exelon is directed to file an updated market power analysis within three years of the date of this order, and every three years thereafter.³² The Commission also reserves the right to require such an analysis at any intervening time.

³⁰ *Reporting Requirement for Changes in Status for Public Utilities With Market-Based Rate Authority*, Order No. 652, 70 Fed. Reg. 8,253 (Feb. 18, 2005), FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005) (Order No. 652).

³¹ *Supra* note 3.

³² We note that, when the combined Exelon-PSEG entity files the revised generation market power screen following the merger, as directed above, the three-year market update required herein will be based on the date of the Commission's order on the revised generation market power screen for the combined entities.

The Commission orders:

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

(B) Exelon is directed within 30 days of the date of issuance of this order, to submit a compliance filing to address the Commission's concerns with regard to affiliate abuse, as discussed in the body of this order.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedures and the regulations under the Federal Power Act (18 C.F.R. Chapter I), the Commission hereby institutes a proceeding in Docket No. EL05-132-000 concerning the justness and reasonableness of Exelon's market-based rates, as discussed in the body of this order.

(D) The Secretary shall promptly publish in the *Federal Register* a notice of the Commission's initiation of the proceeding under section 206 of the Federal Power Act in Docket No. EL05-132-000.

(E) The refund effective date in Docket No. EL05-132-000 will be 60 days following publication in the *Federal Register* of the notice discussed in Ordering Paragraph (D) above.

(F) Exelon is directed, within 30 days of the date of issuance of this order to revise its market-based rate tariff sheets to include the code of conduct requirement, and language prohibiting the sale of power to affiliates without first receiving Commission authorization of the transaction under section 205 of the FPA, as discussed in the body of this order.

(G) Exelon is directed, within 30 days of the date of issuance of this order, to revise its market-based rate tariffs to incorporate the change in status reporting requirement adopted in Order No. 652, as discussed in the body of this order.

(H) The combined Exelon/PSEG entity is directed to file a revised generation market power study to reflect the circumstances of the merged company, within 30 days of the consummation of the merger with PSEG, as discussed in the body of this order.

(I) Exelon's next updated market power analysis is due within three years of the date of this order.

By the Commission.

(S E A L)

Magalie R. Salas
Secretary