UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Kansas City Power and Light Company	Docket Nos.	ER99-1005-004
Great Plains Power, Inc.		ER02-725-005 ER05-1441-000
Kansas City Power and Light Company and Great Plains Power, Inc.		EL05-3-000
		(Not consolidated)

ORDER ON MARKET-BASED RATES, ACCEPTING NOTICE
OF CANCELLATION AND TERMINATING SECTION 206 PROCEEDING

(Issued October 21, 2005)

1. On December 17, 2004, the Commission issued an order[1] on Kansas City Power and Light Company's updated market power analysis, filed on behalf of itself and its affiliate, Great Plains Power, Inc. (Great Plains) (collectively, KCPL). The order instituted a proceeding pursuant to section 206 of the Federal Power Act (FPA)[2] to investigate generation market power issues in the KCPL and the Board of Public Utilities of Kansas City, Kansas (Board of Public Utilities) control areas. In this order, the Commission finds that KCPL has rebutted the presumption of market power in the KCPL and Board of Public Utilities control areas and satisfies the Commission's generation market power standard. Accordingly, this order will terminate the section 206 proceeding in Docket No. EL05-3-000. The Commission also accepts the notice of cancellation of market-based rate tariff filed by Great Plains.

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[1] *Kansas City Power and Light Co.*, 109 FERC ¶ 61,277 (2004) (December Order).

[2] 16 U.S.C. § 824e (2000).

Background

2. On August 11, 2004, as supplemented on November 19, 2004, KCPL submitted the generation market power screens in compliance with the Commission's May 13 Order.[3] KCPL's generation market power analysis indicated that, among other things, KCPL passed the pivotal supplier screen in all control areas considered, but failed the wholesale market share screen for each of the four seasons in KCPL's control area as well as for two seasons in the Board of Public Utilities control area.

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.[4] Accordingly, because KCPL's filing indicated that it failed the wholesale market share screen, the Commission instituted a section 206 proceeding in the December Order to investigate generation market power in the KCPL and Board of Public Utilities control areas. The Commission also established a refund effective date pursuant to the provisions of section 206.

4. For the KCPL and Board of Public Utilities control areas, KCPL was directed to: (1) file a Delivered Price Test (DPT) analysis; (2) file a mitigation proposal tailored to its particular circumstances that would eliminate the ability to exercise market power; or (3) inform the Commission that it would adopt the April 14 Order's default cost-based rates or propose other cost-based rates and submit cost support for such rates.[5]

5. On February 15, 2005, KCPL submitted a DPT analysis. KCPL concludes that its DPT results show that it does not have generation market power in either the KCPL or Board of Public Utilities control areas.

6. On September 2, 2005, Great Plains submitted a notice of cancellation of its market-based rate tariff.

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[3] *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 analysis announced on April 14, 2004 and clarified on July 8, 2004. *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004) (July 8 Order).

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

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

Notice of Filing and Responsive Pleadings

7. Notice of KCPL's filing was published in the *Federal Register*, 70 Fed. Reg. 9,943 (2005), with interventions or protests due on or before March 8, 2005. As discussed below, the comment date was extended to March 29, 2005. Missouri Public Service Commission (Missouri Commission) filed a timely notice of intervention raising no substantive issues.

8. On February 17, 2005, the Board of Public Utilities filed a timely motion to intervene, stating, among other things, that the Board of Public Utilities is interconnected with KCPL and depends on KCPL for certain transmission service, including the delivery of the Board of Public Utilities' allocation of power and energy from the Southwestern Power Administration (SWPA). Additionally, the Board of Public Utilities states that due to transmission constraints that from time to time limit imports into the Board of Public Utilities, the Board of Public Utilities is at times left with little choice but to purchase power and energy from KCPL. The Board of Public Utilities seeks to ensure that KCPL is required to adopt such mitigation measures as are necessary to address KCPL's market power over the Board of Public Utilities.

9. On March 4, 2005, KCPL filed an answer to the Board of Public Utilities' motion to intervene, stating that it contained incomplete and misleading statements. KCPL states that the Board of Public Utilities is also interconnected with Westar Energy (Westar) and regularly uses the interconnected transmission system of the Southwest Power Pool (SPP). KCPL notes that, in 2003, SPP confirmed over 1,600 reservations for transmission capacity that sunk in the Board of Public Utilities' control area: 52 percent were from Westar, 5 percent from KCPL, 6 percent from Aquila network–Missouri Public Service (MPS), and 37 percent from other miscellaneous sources. KCPL argues that the Board of Public Utilities does not depend on KCPL for transmission service, that the Board of Public Utilities receives service through SPP across SPP's interconnected transmission system, and that, other than some grandfathered transmission paths, access to transmission service on KCPL's system is controlled by SPP pursuant to its open access transmission tariff. Consequently, KCPL states that even if the Board of Public Utilities did depend on KCPL, this transmission service is provided on an open access, non-discriminatory basis, and therefore KCPL cannot exercise market power over the Board of Public Utilities.

10. KCPL also takes issue with the Board of Public Utilities' assertion that it is sometimes left with little choice but to purchase from KCPL. KCPL notes that the Board of Public Utilities obtains energy from numerous other sources, including Westar, Associated Electric Cooperative, Inc., Southwestern Public Service Company, American Electric Power, Oklahoma Gas and Electric, Cleco Power LLC, Entergy, Ameren, Grand

River Dam Authority, MPS, Omaha Public Power District, SWPA, Sunflower Electric Power Corporation, Empire District Electric Company, and Western Farmers Electric Cooperative. KCPL states that this is shown by SPP's transmission data.

11. On March 7, 2005, the Board of Public Utilities filed an amended motion to intervene, and a motion for extension of time to file comments on KCPL's DPT analysis due to difficulties associated with adopting the protective order KCPL included in its February 15, 2005 filing. The Commission granted the extension until March 29, 2005.

12. On March 29, 2005, the Board of Public Utilities submitted comments on KCPL's DPT analysis as it pertains to the Board of Public Utilities control area. It also filed its own DPT analysis for that control area. On April 7, 2005, KCPL filed a response to the Board of Public Utilities' comments. On April 28, 2005, the Board of Public Utilities filed a response to KCPL's April 7 filing. These filings are discussed below.

13. Notice of the Great Plains' notice of cancellation was published in the *Federal Register*, 70 Fed. Reg. 54,736 (2005), with interventions or protests due on or before September 23, 2005. None was filed.

Discussion

Procedural Matters

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

15. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We will accept the answers and responses filed by KCPL and the Board of Public Utilities because they have provided information that assisted us in our decision-making process.

Generation Market Power

16. As discussed more fully below, after reviewing KCPL's DPT analysis, and the comments and analysis of the intervenor, the Commission finds that KCPL satisfies the Commission's generation market power standard for the grant of market-based rate authority. Accordingly, the presumption of market power as it relates to the generation part of the Commission's four-part market-based rate analysis has been rebutted.

Delivered Price Test

17. 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.[6] The DPT is used to analyze the effect on competition for transfers of jurisdictional facilities in section 203 proceedings,[7] using the framework described in Appendix A of the Merger Policy Statement and revised in Order No. 642.[8] 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.[9]

18. 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.[10] The results of the DPT can be used for pivotal supplier, market share and market concentration analyses. 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.

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[6] *Id.* at P 105-12.

[7] 16 U.S.C. § 824b (2000).

[8] *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 on reh'g*, Order No. 642-A, 66 Fed. Reg. 16,121 (2001), 94 FERC ¶ 61,289 (2001).

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

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

19. Using the economic capacity for each supplier, applicants should provide 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.

20. 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) 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.

21. 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.

22. Under the DPT, applicants must also calculate the market concentration using the Hirschman-Herfindahl Index (HHI) based on market shares.[11] HHIs are usually used in the context of assessing the impact of a merger or acquisition on competition. However,

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[11] 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.

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.[12]

23. 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 firms can 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).[13]

24. 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:

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[12] *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.")

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

> 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.[14]

KCPL's Delivered Price Test

KCPL control area

25. KCPL's DPT analysis for the KCPL control area indicates that the results for the pivotal supplier, market share and market concentration analyses under the available economic capacity measure are below the thresholds set forth in the April 14 Order for all ten season/load periods under study.[15] KCPL's market share is below 20 percent in all season/load periods, it is not a pivotal supplier in any season/load period, and the HHIs are all below 2,500.

26. When the economic capacity measure is used, KCPL's market shares and the HHIs are higher than the results for available economic capacity (which is not unexpected for a traditional utility in its own control area). The results of the economic capacity measure indicate that it exceeds the thresholds set forth in the April 14 Order for the market share and market concentration analyses in all ten season/load periods, and for the pivotal supplier analysis in one period. Using the economic capacity measure, KCPL's market shares are above 20 percent in all periods and are highest in the summer and winter peak periods. The HHIs exceed the 2,500 threshold in five of the ten season/load periods under study. Additionally, KCPL is pivotal in winter super-peak.

27. KCPL argues that only the available economic capacity results are relevant in the context of KCPL's regulatory and competitive circumstances. KCPL states that there is no retail access or corporate restructuring in the KCPL control area or neighboring markets. It states that it retains significant load obligations that commit most of its capacity to serving customers at cost-based rates, and that this makes the economic capacity measure inaccurate due to its overstatement of KCPL's ability to exercise market power. KCPL states that the available economic capacity measure deserves greater consideration because, during most periods, KCPL does not have the amounts of uncommitted capacity indicated by the economic capacity measure.

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

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

28. KCPL further argues that other factors should be considered. First, KCPL states that because it is a committed member of the SPP, which is currently in the process of implementing its energy imbalance market and has already retained an independent market monitor, it would be counterproductive to restrict KCPL's market-based rate authority for the short time period until the SPP becomes fully operational. At such time, KCPL states that it would use the SPP as the relevant geographic market for purposes of conducting the indicative screens, and would pass the screens under that scenario.

29. Second, KCPL states that it made no market-based rate sales in the KCPL control area in 2003, the test period for the DPT analysis. In addition, KCPL states that its total wholesale sales in its control area are small, totaling less than 100 MW, and that these customers are all served under existing cost-based rate contracts.

<u>Commission Determination – KCPL control area</u>

30. After weighing all of the relevant factors, the Commission concludes that, on balance, based on KCPL's DPT analysis in its control area, KCPL has rebutted the presumption of generation market power and satisfies the Commission's generation market power standard for the grant of market-based rate authority. [16] As noted above, KCPL's DPT analysis for the KCPL control area varies depending on whether the economic capacity or available economic capacity measure is used. 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 economic capacity and the available economic capacity analyses and considers the arguments of the parties.[17]

31. The Commission has recognized that not all generation capacity is available all of the time to compete in wholesale markets and that some accounting for native load requirements is warranted.[18] In the DPT analysis, available economic capacity accounts for native load requirements. KCPL's DPT analysis using the available economic capacity measure indicates that KCPL lacks market power in its control area.

32. While available economic capacity reflects native load obligations when assessing the potential for market power in generation, the Commission has noted that a clear

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[16] *Id*.

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

[18] April 14 Order, 107 FERC ¶ 61,018 at P 67.

distinction between generation serving native load and generation competing for wholesale load is not so easily made.[19] The Commission therefore also considers economic capacity in assessing generation market power. The HHIs using the economic capacity measure are below the 2,500 threshold for half of the season/load periods and the pivotal supplier results indicate that in all but one season/load period KCPL is not pivotal.

33. In addition, KCPL's DPT indicates that the market shares using the available economic capacity measure are below 20 percent, the HHIs are all below 2,500 (the lowest being 393 in summer super-peak and the highest being 2,334 in shoulder off-peak, a season/load period for which KCPL has zero percent market share), and KCPL is not pivotal in any season/load period. Moreover, our analysis indicates that these results are robust even when available economic capacity is increased. For example, our review shows that a 20 percent increase in KCPL's available economic capacity in all season/load periods still yields market shares below 20 percent in all season/load periods, with the exception of winter peak, in which the market share is only slightly above 20 percent at 22.4 percent. At the same time, KCPL remains a non-pivotal supplier, and the market concentration as measured by the HHIs remains below 2,500.

34. As reported by KCPL, its wholesale customers are all served under existing cost-based rate contracts, under which KCPL made sales of less than 100 MW in 2003, the test year for this analysis. In addition, KCPL made no wholesale sales at market-based rates in 2003, a statement that is confirmed by reviewing KCPL's electric quarterly reports (EQRs). The Commission's analysis indicates that the same can be said for 2004, according to KCPL's EQRs.

35. As discussed earlier, utilities with a native load obligation are obligated to secure and devote resources to serve that native load. Depending on load conditions, some or all of those resources are not available to the wholesale market and the available economic capacity measure accounts for that. In short, the DPT balances both arguments and the Commission must then make a determination, based on the record, as to what the DPT is indicating and, in particular, whether the evidence in the record supports a finding of market power in generation. Accordingly, after weighing all of the relevant factors, the Commission concludes that, on balance, based on KCPL's DPT analysis in its control area, KCPL has rebutted the presumption of generation market power and satisfies the Commission's generation market power standard for the grant of market-based rate authority.

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[19] *Id.*

Board of Public Utilities control area

36. KCPL's DPT analysis for the Board of Public Utilities control area indicates that the results for the pivotal supplier and market share analyses under both the economic and available economic capacity measures are below the thresholds set forth in the April 14 Order for all ten season/load periods under study.[20] Under both measures, KCPL's market share is below 20 percent in all season/load periods, and it is not a pivotal supplier in any season/load period.

37. The market concentration analysis shows HHIs greater than 2,500 in four season/load periods under the economic capacity measure and in three season/load periods under the available economic capacity measure. With the exception of summer off-peak, the season/load periods in which the 2,500 HHI threshold is exceeded are different for economic capacity versus available economic capacity. Under the available economic capacity measure, KCPL has zero percent market share in all but one of the seasons that show an HHI of greater than 2,500.

38. The Board of Public Utilities states in its March 29 filing that, based on its independent DPT analysis, KCPL fails both the economic capacity and available economic capacity portions of the DPT for the Board of Public Utilities control area. It argues that KCPL has not adequately supported its study that seeks to rebut the presumption of market power in the Board of Public Utilities control area. The Board of Public Utilities requests the Commission to require KCPL to submit additional information in order to reconcile the differing conclusions from the opposing DPTs or to find that KCPL has market power in the Board of Public Utilities control area. If KCPL is found to have market power in the Board of Public Utilities control area, the Board of Public Utilities states that KCPL should be required to adopt appropriate mitigation measures, including a requirement that KCPL offer a sale of capacity and associated energy to the Board of Public Utilities at average system cost-based rates.

39. The Board of Public Utilities states that, although KCPL passes the pivotal supplier test in the Board of Public Utilities control area, under the Board of Public Utilities' analysis KCPL fails the economic capacity and available economic capacity portions of the DPT. The Board of Public Utilities' analysis indicates that the HHIs exceed the 2,500 threshold in all ten season/load periods using economic capacity and that KCPL's market shares exceed 20 percent in eight of the ten season/load periods. It argues further that KCPL also fails the available economic capacity measure, with

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[20] *Id.* at P 111.

KCPL's market shares exceeding 20 percent in eight out of ten season/load periods, and with HHIs in excess of 2,500 for all ten periods.

40. The Board of Public Utilities also states that it was unable to find sufficient detail in KCPL's work papers and testimony to determine how KCPL calculated its figures, and requests that KCPL provide tables with specific inputs and explanations as to how the inputs were determined to allow for replication of KCPL's results.

41. In its April 7 filing, KCPL responds that it provided all the necessary work papers with the data required by the Commission's orders and provided the necessary information to replicate KCPL's results. Further, KCPL argues that the discrepancy between its DPT analysis and the Board of Public Utilities' analysis is due to the Board's failure to correctly apply the Commission's analytical guidelines for the DPT to the available data (*i.e.*, the Board of Public Utilities excluded competitive supplies from second and third-tier markets, thus artificially limiting the relevant market, and made minor changes to data inputs).

42. In addition, KCPL disagrees with the Board of Public Utilities' mitigation proposal that KCPL be required to sell capacity and associated energy to the Board at average system cost-based rates. KCPL states that the Board of Public Utilities is not a captive wholesale customer, and has available to it other sources of supply and transmission access to those supplies. KCPL identifies some of those sources. KCPL states that the Commission has never mandated that a public utility must enter into a contract with a potential purchaser under specific terms and conditions where the purchaser is not captive and has supply alternatives. It therefore requests that the Commission terminate the section 206 investigation and refund effective date and affirm KCPL's market-based rate authorization in all relevant markets.

43. In its April 28 filing, the Board of Public Utilities argues that, given KCPL's explanation, it is able to reconcile the differing results. However, it states that inclusion of second-tier generation assumes deliverability of that generation, noting that it has concerns about the deliverability of generation beyond first-tier resources. In addition, the Board of Public Utilities argues that the Commission's procedures did not permit it a meaningful opportunity to evaluate the data submitted or to conduct discovery to understand, let alone challenge, the analysis proffered. The Board of Public Utilities suggests that a complete record has not yet been developed to enable it or the Commission to know if KCPL lacks market power. The Board of Public Utilities proposes recommendations to the Commission for implementation in future market-based rate proceedings, as well as pending investigations. For example, the Board of Public Utilities argues that intervenors should have more time to respond and should have the opportunity to obtain clarification of applicants' analyses.

Commission Determination – Board of Public Utilities control area

44. The Commission finds that, based on KCPL's DPT results for the Board of Public Utilities control area, KCPL has rebutted the presumption of generation market power and satisfies the Commission's generation market power standard for the grant of market-based rate authority. [21] As noted above, KCPL's DPT analysis for the Board of Public Utilities control area shows that, under both the economic capacity and available economic capacity measures, KCPL has less than 20 percent market share and is not pivotal in any season/load period. However, in those season/load periods where the HHIs exceed 2,500, KCPL has no greater than 11 percent market share, and in two of the season/load periods, it has zero percent market share, indicating that KCPL is not contributing to the market concentration in the Board of Public Utilities control area at those times. Therefore, it is unlikely that KCPL possesses market power in the Board of Public Utilities control area.

45. The Board of Public Utilities' statement that it has concerns about assuming the deliverability of supplies from second-tier markets when performing the DPT analysis is vague. We find that the Board of Public Utilities has not provided any support for this statement, nor has it presented evidence of the nature or extent of these deliverability concerns. A DPT analysis defines the relevant market by, among other things, identifying transmission availability through the use of a simultaneous import capability study.[22] As such, KCPL's analysis has taken into account limits on bringing in external suppliers. The record in this case indicates that the Board of Public Utilities regularly purchases from second-tier markets, a claim that the Board of Public Utilities has not disputed. Thus, the Commission finds that this argument does not present an adequate basis to call into question the DPT analysis submitted by KCPL. Regarding the Board of Public Utilities' procedural recommendations to the Commission and concerns about the length of time given intervenors to adequately respond, we encourage the Board of Public Utilities to participate in the generic rulemaking proceeding in Docket No. RM04-7-000.[23]

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[21] *Id*.

[22] *Id.* at P 106. KCPL's simultaneous import capability study was accepted by the Commission in the December Order.

[23] *Market-Based Rates for Public Utilities*, 107 FERC ¶ 61,019 (2004).

46. The Commission will dismiss the arguments raised by the Board of Public Utilities concerning mitigation because the Commission finds herein that KCPL does not have market power in the Board of Public Utilities control area.

47. After weighing all of the relevant factors, the Commission concludes that, on balance, based on KCPL's DPT analysis for the Board of Public Utilities control area, KCPL has rebutted the presumption of generation market power and satisfies the Commission's generation market power standard for the grant of market-based rate authority.

<u>Reporting Requirements</u>

48. KCPL 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.[24] 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, KCPL is directed, within 30 days of the date of issuance of this order, to revise its market-based rate tariff 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.

49. KCPL is 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.

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[24] *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).

Docket No. EL05-3-000

50. The Commission terminates Docket No. EL05-3-000. That proceeding was established to investigate generation market power issues in the KCPL and Board of Public Utilities control areas. Based on the above findings, the Commission finds that there is no further need for the proceeding in this docket.

Great Plains' Notice of Cancellation

51. In its notice of cancellation, Great Plains states that it has never made sales pursuant to its market-based rate tariff and no longer wants to retain its market-based rate authorization. The Commission accepts Great Plains' notice of cancellation, effective the date of this order. Great Plains is hereby informed of the tariff designation.[25]

52. The Commission notes that, because the request by Great Plains to cancel its market-based rate authority is granted herein, any waivers and authorizations previously granted in connection with its market-based rate authority are no longer applicable.

The Commission orders:

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

(B) KCPL is directed to file an updated market power analysis within three years of the date of this order.

(C) KCPL is directed, within 30 days of the date of issuance of this order, to revise its market-based rate tariff to include the change in status reporting requirement adopted in Order No. 652.

(D) The section 206 proceeding in Docket No. EL05-3-000 is terminated, as discussed in the body of the order.

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[25] Rate Schedule FERC No. 1, First Revised Sheet No. 1 (cancels Rate Schedule FERC No. 1).

(E) Great Plains' notice of cancellation is accepted for filing, as discussed in the body of the order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.