UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PacifiCorp	Docket Nos.	ER97-2801-006
		ER97-2801-008
PPM Energy, Inc.		ER03-478-005
		ER03-478-006
		ER03-478-011
PacifiCorp and PPM Energy, Inc.		EL05-95-000

ORDER ON MARKET-BASED RATES AND
TERMINATING 206 PROCEEDING

(Issued June 20, 2006)

1. On May 9, 2005, the Commission issued an order[1] on an updated market power analysis filed by PacifiCorp and PPM Energy, Inc. (PPM) instituting a proceeding under section 206 of the Federal Power Act (FPA)[2] to investigate generation market power issues in the PacifiCorp East[3] and Idaho Power Company (Idaho Power) control areas. In this order, the Commission finds that PacifiCorp and PPM have rebutted the presumption of market power in the PacifiCorp East and Idaho Power control areas and satisfy the Commission's generation market power standard. Accordingly, this order terminates the section 206 proceeding in Docket No. EL05-95-000.

2. In this order, the Commission further finds that, with PacifiCorp's and PPM's compliance filing addressing the remaining relevant control areas, PacifiCorp and PPM satisfy the Commission's generation market power standard with regard to the PacifiCorp

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[1] *PacifiCorp*, 111 FERC ¶ 61,205 (2005) (May Order).

[2] 16 U.S.C. § 824e (2000).

[3] PacifiCorp has two control areas, PacifiCorp East and PacifiCorp West. The PacifiCorp East control area includes areas of the states of Idaho, Utah and Wyoming. The PacifiCorp West control area includes areas of the states of California, Montana, Oregon, Washington and Wyoming.

West control area, each of the directly interconnected first-tier control areas examined, as well as for the Public Service Company of Colorado (Colorado), Alliant West, and Northern States Power Company (NSP) control areas.

I. **Background**

3. On February 14, 2005, PacifiCorp and PPM submitted for filing an updated market power analysis pursuant to the requirements of the Commission's orders granting PacifiCorp and PPM authority to sell capacity and energy at market-based rates.[4] The filing indicated that PacifiCorp and PPM failed the pivotal supplier screen in the Idaho Power control area and the wholesale market share screen for each of the four seasons in the PacifiCorp East control area. As discussed below, the filing also indicated that PacifiCorp and PPM passed the indicative screens in the other relevant control areas, with the exception of the Portland General Electric (Portland Electric) control area, for which PacifiCorp and PPM did not file indicative screens.

4. In an order issued on April 14, 2004,[5] the Commission stated that, where an applicant is found to have failed either generation market power screen, such failure provides the basis for instituting a proceeding under section 206 of the FPA and establishes a rebuttable presumption of market power in the section 206 proceeding. Accordingly, in the May Order the Commission instituted a proceeding pursuant to section 206 of the FPA to determine whether PacifiCorp and PPM may continue to charge market-based rates in the PacifiCorp East and Idaho Power control areas and established a refund effective date under section 206.

5. PacifiCorp and PPM were directed to file a compliance filing within 60 days from the date of issuance of that order to either: (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 will adopt the April 14 Order's default cost-based rates or propose other cost-based rates

[4] *PacifiCorp,* 79 FERC ¶ 61,383 (1997); *PacifiCorp Power Marketing, Inc.*, 74 FERC ¶ 61,139 (1996).

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

and submit cost support for such rates.[6] In addition, as the Commission stated in the April 14 Order, applicants or intervenors may present evidence such as historical sales data to support their arguments that the applicants do or do not have market power.[7]

6. In addition, the Commission found that PacifiCorp and PPM satisfy the Commission's requirements for market-based rates regarding transmission market power, other barriers to entry, and affiliate abuse. The Commission conditionally accepted PacifiCorp's and PPM's analysis for PacifiCorp West and each of the directly interconnected first-tier control areas examined, as well as for three additional control areas in which PacifiCorp and PPM own generation. The Commission found that PacifiCorp's and PPM's submittal was incomplete and contained inappropriate assumptions and that they failed to adequately support some of the inputs in their screens. With regard to the indicative screens for these areas, the Commission questioned PacifiCorp's and PPM's deduction for station use, long-term purchases and sales, data adjustments, and import capability estimates.[8] The Commission directed PacifiCorp and PPM to make a compliance filing within 30 days of the date of that order to revise their generation market power analysis for those control areas. The Commission also directed PacifiCorp and PPM to provide an analysis for the Portland Electric control area, a first-tier control area that is directly interconnected with PacifiCorp West, within 30 days of the date of that order.

7. On June 8, 2005, PacifiCorp and PPM provided the first of two compliance filings directed by the Commission in the May Order with regard to an analysis of Portland Electric and amended generation market power screens for the other relevant control areas not subject to the section 206 proceeding (June 8 filing).

8. On July 8, 2005, PacifiCorp and PPM provided the second compliance filing, which contains a DPT analysis for the PacifiCorp East and Idaho Power control areas as well as alternative evidence which PacifiCorp and PPM state demonstrates that they do not have generation market power (July 8 filing). PacifiCorp and PPM state that they fail only certain elements of the DPT using economic capacity, and pass almost all the elements of the DPT using available economic capacity.

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[6] *See* April 14 Order, 107 FERC ¶ 61,018 at P 201, 207-209.

[7] *Id*. at P 37.

[8] May Order, 111 FERC ¶ 61,205 at P 16-20.

9. On January 27, 2006, the Director, Division of Tariffs and Market Development – West, acting under delegated authority, issued a data request seeking additional information relating to PacifiCorp's and PPM's compliance filings. On March 29, 2006, PacifiCorp and PPM filed their response to the data request.

10. On April 10, 2006, PPM filed a motion to terminate its refund liability for transactions occurring on or after March 21, 2006, the date on which PPM became disaffiliated with PacifiCorp.

II. Notice of Filings and Responsive Pleadings

11. Notice of the institution of the section 206 proceeding in Docket No. EL05-95-000 and of the refund effective date was published in the *Federal Register*, 70 Fed. Reg. 29,296 (2005).

12. Notice of PacifiCorp's and PPM's June 8, 2005 filing was published in the *Federal Register*, 70 Fed. Reg. 35,663 (2005), with interventions or protests due on or before June 29, 2005.

13. On June 29, 2005, Utah Division of Public Utilities (Utah DPU) filed a motion to intervene and comments, stating that as a regulated load-serving entity, PacifiCorp is required by state law and regulation to plan for and to have sufficient generation to serve Utah's annual peak load. The Utah DPU states that PacifiCorp's regulatory obligation to serve Utah's summer peak load, which is rapidly growing, virtually guarantees that PacifiCorp will have substantial excess capacity in shoulder hours during peak periods, and that defining the relevant market as the PacifiCorp East control area may yield a false indication of the extent of PacifiCorp's market power.

14. Notice of PacifiCorp's and PPM's July 8, 2005 filing was published in the *Federal Register*, 70 Fed. Reg. 42,051 (2005), with interventions or protests due on or before July 29, 2005. None was filed.

15. Notice of PacifiCorp's and PPM's March 29, 2006 filing was published in the *Federal Register*, 71 Fed. Reg. 19,494 (2006), with interventions or protests due on or before April 19, 2006. None was filed.

16. Notice of PPM's April 10, 2006 filing was published in the *Federal Register*, 71 Fed. Reg. 21,008 (2006), with interventions or protests due on or before May 1, 2006. None was filed.

III. **Discussion**

A. **Procedural Matters**

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motion to intervene of Utah DPU serves to make it a party to this proceeding.

B. **Generation Market Power**

18. As discussed more fully below, after reviewing PacifiCorp's and PPM's DPT analysis, the Commission finds that they satisfy the Commission's generation market power standard for the grant of market-based rate authority. The presumption of market power as it relates to generation has been rebutted.

1. **Delivered Price Test**

19. In the April 14 Order, the Commission 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.[9] The DPT is used to analyze the effect on competition for transfers of jurisdictional facilities in section 203 proceedings,[10] using the framework described in Appendix A of the Merger Policy Statement and revised in Order No. 642.[11] The DPT is a well established test that has been used routinely to

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

[10] 16 U.S.C. § 824b (2000).

[11] *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).

analyze market power in the merger context for many years, and it has been affirmed by the courts.[12] The DPT has also been used to examine generation market power for the grant of market-based rate authority.[13]

20. 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.[14] 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.

21. 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.

22. 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.

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

[13] *Duke Power*, 111 FERC ¶ 61,506 (2005); *Kansas City Power & Light Co.*, 113 FERC ¶ 61,074 (2005).

[14] Super-peak, peak, and off-peak, for winter, shoulder and summer periods and an additional highest super-peak for the summer.

23. 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.

24. Under the DPT, applicants must also calculate the market concentration using the Hirschman-Herfindahl Index (HHI) based on market shares.[15] 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.[16]

25. 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

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[15] 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 = $(20)^2 + (20)^2 + (20)^2 + (20)^2 + (20)^2 = 400 + 400 + 400 + 400 + 400 = 2,000$.

[16] *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.")

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).[17]

26. 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.[18]

2. The PacifiCorp East Control Area

a. Delivered Price Test for PacifiCorp East

27. PacifiCorp's and PPM's DPT analysis for the PacifiCorp East control area indicates that, using the available economic capacity measure, the market concentration analysis are all well below 2,500 (the threshold set forth in the April 14 Order) for all ten season/load periods under study (the lowest being 567 in shoulder peak and the highest being 1,067 in summer off-peak).[19] PacifiCorp's and PPM's market share using available economic capacity is below the 20 percent threshold for eight of the season/load periods under study (with a zero percent market share in three season/load periods), and is 28 percent in summer and winter off-peak periods.

28. For the pivotal supplier analysis, PacifiCorp's and PPM's submittal indicates that they are pivotal suppliers in all seasons/load periods using available economic capacity. However, PacifiCorp and PPM did not properly perform the pivotal supplier analysis based on the available economic capacity measure as required by the April 14 Order.

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

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

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

PacifiCorp and PPM used total load for the pivotal supplier analysis under both the economic capacity and available economic capacity measures. The April 14 Order states that, for available economic capacity, native load in the relevant market must be subtracted from the load in each season/load period.[20] Our analysis indicates that had PacifiCorp and PPM performed the analysis properly, they would not be pivotal in any season/load period using available economic capacity.

29. When the economic capacity measure is used, PacifiCorp's and PPM's DPT results are higher than the results for available economic capacity. PacifiCorp and PPM are pivotal in five seasons/load periods using economic capacity (summer highest super-peak, super-peak, and peak, winter super-peak and shoulder super-peak). Using economic capacity, PacifiCorp's and PPM's market shares are above 20 percent in all periods and are highest in the summer periods. The HHIs exceed 2,500 in seven of the ten season/load periods under study.

30. PacifiCorp and PPM argue that because the economic capacity measure ignores PacifiCorp's retail load obligations, it is not the proper measure to assess market power concerns in areas such as PacifiCorp East, where there is no retail choice. The Utah DPU states that PacifiCorp's retail load in Utah exhibits a significant spike during peak load hours in the summer months, and PacifiCorp is required by state law to have sufficient generation in order to serve Utah's peak load.

31. PacifiCorp and PPM further argue that the Commission should not be concerned about the two periods in which PacifiCorp and PPM exceed 20 percent using available economic capacity. PacifiCorp and PPM state that the HHIs in those periods barely exceed 1,000 and that they are unlikely to be able to exercise market power in an unconcentrated market. They also state that at these off-peak times, low-cost coal units are used to supply virtually all load and there is likely to be a flat supply curve, making exercise of market power highly unlikely.

b. Commission Determination

32. After weighing all of the relevant factors, the Commission finds that, on balance, based on PacifiCorp's and PPM's DPT analysis in the PacifiCorp East control area, PacifiCorp and PPM 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.[21] As noted above, PacifiCorp's and PPM's DPT analysis for the

[20] *Id*. at P 108.

[21] *Id*. at P 111.

PacifiCorp East 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. 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.[22]

33. 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.[23] Available economic capacity accounts for native load requirements. While available economic capacity reflects native load obligations when assessing the potential for generation market power, a clear distinction between generation serving native load and generation competing for wholesale load is not easily made.[24] The portion of capacity that will be solely dedicated to serving native load changes as market conditions change.[25] The Commission therefore also considers economic capacity in assessing generation market power because it is the maximum capacity available for all types of sales.[26] Because PacifiCorp must have sufficient generation capacity to meet its retail load obligations, the results using economic capacity are higher than those using available economic capacity (which is expected for a traditional utility in its own control area). The HHIs using the economic capacity measure are below the 2,500 threshold for two of the season/load periods, and the pivotal supplier results indicate that half of the season/load periods PacifiCorp and PPM are not pivotal.

34. Under the available economic capacity measure of the DPT, PacifiCorp and PPM are not pivotal, have less than a 20 percent market share in most season/load periods (the exceptions are summer and winter off-peak periods in which PacifiCorp and PPM have a 28 percent market share), and do not exceed the 2,500 HHI threshold in any season/load period. While PacifiCorp and PPM do have a 28 percent market share in winter and

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

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

[24] *Id.*

[25] *Id*. At P 90.

[26] *Id.* at P 89.

summer off-peak times, the HHIs in those times indicate an unconcentrated market. PacifiCorp and PPM are not pivotal using available economic capacity measure and in eight of the ten season/load periods, the HHIs are all below 1,000.

35. Our analysis indicates that the results for the available economic capacity measure are robust even when available economic capacity is increased. For example, our review shows that a 20 percent increase in PacifiCorp's and PPM's available economic capacity in the eight seasons/load periods where market share is below 20 percent still yields market shares below 20 percent in seven of those season/load periods. The exception is winter peak, in which the market share would be 20.5 percent. At the same time, PacifiCorp and PPM remain non-pivotal suppliers, and the market concentration as measured by the HHIs remains below 2,500. In addition, PacifiCorp's and PPM's sensitivity analysis indicates that the results do not vary significantly in response to small variations in price.

36. PacifiCorp is a utility with a native load obligation that is obligated to secure and devote resources to that native load. Some or all of those resources are not available to the wholesale market depending on load conditions. The DPT analyses balance both recognition of the obligations to serve native load and the Commission's need to ensure that supplier's generation presence in wholesale markets is accurately measured.[27] Accordingly, after weighing all of the relevant factors, the Commission concludes that, on balance, based on PacifiCorp's and PPM's DPT analysis in the PacifiCorp East control area, PacifiCorp and PPM 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.

c. **Alternative Evidence**

37. The Commission stated in the April 14 and July 8 Orders that, in addition to the DPT, applicants may present historical evidence to show that they satisfy the generation market power concerns. The evidence that will be considered is historical sales and/or access to transmission to move supplies within, out of, and into a control area.[28]

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[27] *Id*. at P 90.

[28] April 14 Order, 107 FERC ¶ 61,018. at P 37 n. 11; July 8 Order, 108 FERC ¶ 61,026 at P 25.

i. Alternative Evidence for PacifiCorp East

38. To demonstrate their lack of market power, PacifiCorp and PPM submitted historical data regarding the conditions in the long- and short-term markets in the PacifiCorp East control area. Specifically, PacifiCorp and PPM examine the resource positions of certain load-serving entities (LSEs) in the PacifiCorp East control area relative to those LSEs' resource requirements and historical purchase and sales data. PacifiCorp and PPM also filed a "contestable load analysis" and a price analysis comparing standard product sales in the PacifiCorp East control area to competitive index prices at a regional hub for periods in which PacifiCorp was a net seller. According to PacifiCorp and PPM, the analyses, data, and other evidentiary submissions demonstrate that PacifiCorp and PPM do not have, and could not exercise, market power in the PacifiCorp East control area.

ii. Commission Determination

39. In light of our determination that PacifiCorp and PPM rebutted the presumption of generation market power for the PacifiCorp East control area with the results of the DPT alone, we need not address the alternative evidence submitted by PacifiCorp and PPM and will not discuss the merits of that evidence here.

d. Geographic Market

i. Arguments of the Utah DPU, PacifiCorp and PPM

40. The Utah DPU states that the Commission should consider evidence that supports the expansion of the relevant geographic market that PacifiCorp uses in the Commission's generation market power screens. It states that in the April 14 Order, the Commission declined to adopt a different definition of the relevant market for Western applicants, but the Commission recognized that "due to the integrated Western resource system," larger regional market definitions "may be more appropriate."

41. PacifiCorp and PPM state, in their July 8 submittal, that an analysis of historical data suggests that the prices PacifiCorp has received within the PacifiCorp and Idaho Power control areas have not differed significantly from the competitive prices in broader geographic areas. They conclude that the relevant geographic market may be broader than the control area. However, PacifiCorp and PPM state that a study of, among other things, transmission limits and geographic dispersion of prices is time-consuming, and they chose not to undertake such a study.

ii. Commission Determination

42. PacifiCorp and PPM did not propose a broader geographic market than the default relevant markets established in the April 14 Order. The Commission allows applicants and intervenors to present additional sensitivity runs as part of their market power studies to show that some other geographic market should be considered as the relevant market in a particular case.[29] The Utah DPU did not submit such an analysis. Regardless, because the Commission finds herein that PacifiCorp and PPM have rebutted the presumption of generation market power, it is unnecessary to consider a broader geographic market.

3. The Idaho Power Control Area

a. Delivered Price Test for the Idaho Power Control Area

43. PacifiCorp's and PPM's DPT analysis for the Idaho Power 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.[30] Under economic capacity, PacifiCorp and PPM are not pivotal in any season/load period, and PacifiCorp's and PPM's market shares are below 20 percent in all season/load periods. The market concentration analysis shows HHIs greater than 2,500 in seven season/load periods under the economic capacity measure.

b. Commission Determination

44. The Commission finds that, based on PacifiCorp's and PPM's DPT results for the Idaho Power control area, PacifiCorp and PPM 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. As noted above, PacifiCorp's and PPM's DPT analysis for the Idaho Power control area shows that, under both the economic capacity and available economic capacity measures, PacifiCorp and PPM have less than 20 percent market share and are not pivotal in any season/load period. Furthermore, in those season/load periods where the HHIs exceed 2,500 measured by economic capacity, PacifiCorp and PPM have no greater than four percent market share. This indicates that they are not significantly contributing to the high market concentration in the Idaho Power control area at those times.

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[29] April 14 Order, 107 FERC ¶ 61,018 at P 75.

[30] *Id.* at P 111.

45. After weighing all of the relevant factors, the Commission finds that, on balance, based on PacifiCorp's and PPM's DPT analysis for the Idaho Power control area, they 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.

c. Alternative Evidence for the Idaho Power Control Area

i. PacifiCorp's and PPM's Alternative Evidence

46. PacifiCorp and PPM filed alternative evidence for the Idaho Power control area, including a "contestable load analysis," an analysis of short-term sales of PacifiCorp to Idaho Power as a percentage of all Idaho Power's short-term purchases, a discussion of how LSEs in the Idaho Power control area meet their capacity obligations entirely from sources other than PacifiCorp, and a price comparison with the Palo Verde index. PacifiCorp and PPM state that this evidence shows that they do not have market power in the Idaho Power control area.

ii. Commission Determination

47. PacifiCorp's and PPM's alternative evidence for the Idaho Power control area is similar to that for the PacifiCorp East control area, and for the same reasons discussed above, we will not discuss the merits of these arguments because of the Commission's finding that PacifiCorp and PPM have rebutted the presumption of generation market power for the Idaho Power control area with the results of the DPT alone.

4. Docket No. EL05-95-000

48. The Commission terminates Docket No. EL05-95-000. That proceeding was established to investigate generation market power issues in the PacifiCorp East and Idaho Power control areas. Based on the above findings with regard to these control areas, the Commission finds that there is no further need for the proceeding in this docket.

49. In its motion to terminate its refund liability, PPM states that its parent company sold PacifiCorp to an unaffiliated entity, so consequently PPM is no longer affiliated with PacifiCorp.[31] PPM states that the sale occurred on March 21, 2006. Therefore, PPM requests that the Commission terminate the refund liability for transactions occurring on

[31] *MidAmerican Energy Holdings Co.*, 113 FERC ¶ 61,298 (2006).

or after that date. The Commission finds this issue to be moot, given our determination that PacifiCorp and PPM lack market power.

5. Amended Indicative Screens for Other Control Areas

a. June 8 Filing

50. In the June 8 filing, PacifiCorp and PPM submitted an analysis of Portland Electric and amended generation market power screens for the other control areas directly interconnected to PacifiCorp East and PacifiCorp West (except for the Idaho control area), the PacifiCorp West control area, and the Colorado, NSP, and Alliant West control area (in which PacifiCorp and PPM own generation). They: (1) eliminated the station use adjustment; (2) addressed the long-term purchases and sales issues; (3) identified all adjustments that were made to the generation data set; and (4) calculated the screens under various proxy amounts for import capability estimates. PacifiCorp's and PPM's submittal indicates that they pass both the pivotal supplier and wholesale market share screens in these control areas.

b. Commission Determination

51. The Commission concludes that, with the additional submittals, which include an analysis of Portland Electric and amended generation market power screens for the other relevant control areas not subject to the section 206 proceeding, PacifiCorp and PPM satisfy the Commission's generation market power standard for market-based rate authority in PacifiCorp West and each of the directly interconnected first-tier control areas examined, as well as for the Colorado, NSP and Alliant West control areas. We note that NSP and Alliant West are located in the market administered by the Midwest Independent Transmission System Operator, Inc. (Midwest ISO). The Midwest ISO is considered the default relevant geographic market for the generators located in these areas, and an analysis of the Alliant West and NSP control areas individually is considered a simplifying assumption.[32]

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[32] *See, e.g., Alliant Energy Corporate Services, Inc.,* 109 FERC ¶ 61,289 (2004), *order on reh'g,* 111 FERC ¶ 61,025 (2005); *Northern Indiana Public Service Co.,* 111 FERC ¶ 61,041 (2005).

C. Revised Tariffs

1. June 8 Filing

52. In the June 8 filing, in compliance with the May Order, PacifiCorp and PPM submitted revised tariff sheets to incorporate the change in status reporting requirement pursuant to Order No. 652.[33]

2. Commission Determination

53. In the June 8 filing, PacifiCorp and PPM complied with the May Order regarding the change in status reporting requirement. However, on March 20, 2006, in Docket Nos. ER06-774-000 and ER06-770 respectively, PacifiCorp and PPM submitted further revised market-based rate tariff sheets to the Commission to reflect the fact that they are no longer affiliated, which the Commission accepted.[34] Accordingly, the revised tariff sheets submitted by both PacifiCorp and PPM in this proceeding on June 8, 2005 are dismissed as moot.

54. However, the Commission notes that PacifiCorp's tariff sheets filed in Docket No. ER06-774-000 did not contain the change in status reporting requirement. Accordingly, PacifiCorp is directed, within 30 days of the date of issuance of this order, to revise its market-based rate tariff to incorporate the change in status reporting requirement.

D. Reporting Requirement

55. PacifiCorp and PPM 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.[35]

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[33] *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).

[34] *MidAmerican Energy Co.,* Docket No. ER96-719-009 (May 3, 2006) (unpublished letter order); *PPM Energy, Inc.,* Docket No. ER06-770-000 (April 25, 2006) (unpublished letter order).

[35] *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).

56. PacifiCorp and PPM are both directed to file updated market power analyses within three years of the date of this order. The Commission also reserves the right to require such an analysis at any intervening time.

<u>The Commission orders</u>:

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

(B) The Commission hereby terminates Docket No. EL05-95-000.

(C) PacifiCorp's and PPM's next updated market power analyses are due within three years of the date of this order.

(D) PacifiCorp's and PPM's revised market-based rate tariff sheets are dismissed as moot, as discussed in the body of this order.

(E) PacifiCorp is directed to revise its market-based rate tariff within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.