

149 FERC ¶ 61,013  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;  
Philip D. Moeller, Tony Clark,  
and Norman C. Bay.

Arizona Public Service Company

Docket Nos. ER13-630-000  
ER10-2437-001  
EL14-98-000

ORDER ON UPDATED MARKET POWER ANALYSIS, CHANGE IN STATUS,  
INSTITUTING SECTION 206 PROCEEDING, AND ESTABLISHING REFUND  
EFFECTIVE DATE

(Issued October 3, 2014)

1. On December 27, 2012, as amended on March 19, 2013, December 11, 2013, and December 18, 2013, Arizona Public Service Company (APS) filed an updated market power analysis for the Southwest region in compliance with the regional reporting schedule adopted in Order No. 697.<sup>1</sup> Additionally, on January 29, 2014, APS filed a notice of change in status.
2. In this order, the Commission concludes that APS satisfies the Commission's standards for market-based rate authority in the Southwest region, with the exception of the Tucson Electric Power Company (TEP) and APS balancing authority areas and the Phoenix Valley Load Pocket.<sup>2</sup> In its filings, APS requests that the Commission lift the

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<sup>1</sup> See *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 848-850, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010), *aff'd sub nom. Mont. Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011), *cert. denied*, 133 S. Ct. 26 (2012).

<sup>2</sup> The Phoenix Valley (which does not include Northern Arizona) includes an APS and Salt River Project (SRP) integrated network and the Rogers substation, which is interconnected with two Western Area Power Administration transmission lines located in a portion of the Western Area Lower Colorado control area. The Phoenix Valley is

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current limitation on APS's market-based rate authority that prohibits APS from making market-based rate sales in the Phoenix Valley Load Pocket during the summer season. As discussed below, we find that APS has not rebutted the presumption that it has market power in the Phoenix Valley Load Pocket in the summer season and therefore has not supported its request to lift the limitation on its market-based rate authority in the Phoenix Valley Load Pocket during the summer season. Further, APS's failure of the wholesale market share screen in the APS balancing authority area and its concession that it fails the screens in the Phoenix Valley Load Pocket establish a rebuttable presumption of horizontal market power. This provides the basis for instituting a proceeding pursuant to section 206 of the Federal Power Act (FPA)<sup>3</sup> to determine whether market-based rate authority for APS in the APS balancing authority area and the Phoenix Valley Load Pocket is just and reasonable and for establishing a refund effective date. Although APS represents that it continues to pass the Commission's horizontal market power screens in the TEP balancing authority area, it did not submit screens in support of this claim as part of its January 29, 2014 change in status.

3. Accordingly, we direct APS, within 60 days of the date of issuance of this order, to: (1) show cause as to why the Commission should not revoke APS's market-based rate authority in the APS balancing authority area<sup>4</sup> and in the winter, spring, and fall seasons in the Phoenix Valley Load Pocket; (2) file a mitigation proposal tailored to its particular circumstances that would eliminate its ability to exercise market power; or (3) inform the Commission that it will adopt the default mitigation set forth in the Commission's regulations or propose other cost-based rates and submit cost support for such rates.<sup>5</sup> We also direct APS to submit an updated horizontal market power analysis in support of its representation that it continues to meet the Commission's standards for market-based rate authority in the TEP balancing authority area.

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served primarily from four major extra high voltage (EHV) substations: Westwing, Rudd, Pinnacle Peak, and Kyrene. These four EHV stations form the cornerstones of an extensive internal network of 230 kV transmission lines that constitute the high voltage energy delivery system within the Phoenix Valley. *Pinnacle West Capital Corp.*, 120 FERC ¶ 61,153, at P 1 n.2 (2007) (citing Pinnacle's February 18, 2005 Filing in Docket No. ER00-2268-010, Attachment C, "APS Reliability Must-Run Analysis 2003-2005," January 31, 2003, APS Transmission Planning, APS Resource Planning at 16).

<sup>3</sup> 16 U.S.C. § 824e (2012).

<sup>4</sup> The removal of APS's market-based rate authority in the APS balancing authority area would apply to all seasons.

<sup>5</sup> 18 C.F.R. § 35.38 (2014).

## **I. Background**

4. APS is a wholly-owned subsidiary of Pinnacle West Capital Corporation. APS is a vertically-integrated public utility engaged in the business of generating, transmitting and distributing electricity.

5. APS has authorization to make sales of energy, capacity and ancillary services at market-based rates during all seasons in all markets except for the Phoenix Valley Load Pocket during the months of June, July, and August (summer season).<sup>6</sup> During the summer season, APS must make sales in the Phoenix Valley Load Pocket at cost-based rates. In its updated market power analysis and notice of change in status, APS requests that the Commission lift the current limitation on APS's market-based rate authority that prohibits APS from making market-based rate sales in the Phoenix Valley Load Pocket during the summer season.

6. APS, in its notice of change in status, notifies the Commission that, on December 30, 2013, APS acquired 100 percent of Southern California Edison Company's ownership interests in Units 4 and 5 of the Four Corners Power Plant located near Farmington, New Mexico. APS states that this acquisition, along with other additions and retirements of generating capacity specified in the notice, resulted in a net increase of 228 megawatts (MW) in the amount of electric generation owned and/or controlled by APS and its affiliates compared to the amount of generating capacity included in APS's updated market power analysis. APS states that the net increase in the amount of electric generation owned and/or controlled by APS does not change the conditions the Commission relied upon in granting APS market-based rate authority. APS represents that it continues to meet the threshold for both of the indicative screens for all first-tier markets and thus, is presumed not to have horizontal market power in the those markets. For the APS balancing authority area and the Phoenix Valley Load Pocket, APS includes a Delivered Price Test (DPT) analysis.

## **II. Notice of Filings**

7. Notice of APS's December 27, 2012 filing, as amended on March 19, 2013, December 11, 2013, and December 18, 2013, was published in the *Federal Register*,<sup>7</sup> with interventions and comments due on or before January 8, 2014. None was filed.

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<sup>6</sup> See January 29, 2014 Filing at 2 (citing *Pinnacle West Capital Corp.*, 120 FERC ¶ 61,153 (2007)).

<sup>7</sup> 78 Fed. Reg. 2,388; 78 Fed. Reg. 19,477; 78 Fed. Reg. 77,669 (2013); 79 Fed. Reg. 128 (2014).

8. Notice of APS's January 29, 2014 filing, was published in the *Federal Register*,<sup>8</sup> with interventions and comments due on or before February 19, 2014. None was filed.

### **III. Discussion**

#### **A. Market-Based Rate Authorization**

9. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, horizontal and vertical market power.<sup>9</sup> As discussed below, the Commission concludes that APS satisfies the Commission's standards for market-based rate authority in the Southwest region, with the exception of the TEP and APS balancing authority areas and the Phoenix Valley Load Pocket. Also as discussed below, the Commission concludes that APS has failed to rebut the presumption of horizontal market power in the APS balancing authority area and Phoenix Valley Load Pocket created by its failure of the indicative screens in these markets; thus, it may not satisfy the Commission's standards for market-based rate authority with respect to these areas.

#### **1. Horizontal Market Power**

10. The Commission has adopted two indicative screens for assessing horizontal market power: the pivotal supplier screen and the wholesale market share screen.<sup>10</sup> The Commission has stated that passage of both screens establishes a rebuttable presumption that the applicant does not possess horizontal market power, while failure of either screen creates a rebuttable presumption that the applicant has horizontal market power.<sup>11</sup> An applicant that fails one or more of the indicative screens is provided with several procedural options including the right to challenge the market power presumption by submitting a DPT analysis, or, alternatively, sellers can accept the presumption of market power and adopt some form of cost-based mitigation.<sup>12</sup> The Commission has stated that if a seller wishes to file a DPT rather than the indicative screens it may do so.<sup>13</sup> In doing

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<sup>8</sup> 79 Fed. Reg. 7,445 (2014).

<sup>9</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 62, 399, 408, 440.

<sup>10</sup> *Id.* P 62.

<sup>11</sup> *Id.* PP 33, 62-63.

<sup>12</sup> *Id.* P 63. The results of the DPT can be used for pivotal supplier, market share, and market concentration analyses.

<sup>13</sup> *Id.* P 78.

so, the seller concedes that it fails the indicative screens, which concession establishes a rebuttable presumption of market power, and the Commission will issue an order initiating a section 206 proceeding to investigate whether the seller has market power and establishing a refund effective date for the protection of customers while the Commission evaluates the filed DPT.<sup>14</sup>

11. In its updated market power analysis APS prepared the pivotal supplier and wholesale market share screens for the California Independent System Operator Corp. (CAISO) market and the APS, Imperial Irrigation District (IID), Los Angeles Department of Water and Power (LADWP), PacifiCorp-East (PACE), Public Service Company of New Mexico (PNM), Salt River Project (SRP), TEP, and Western Area Power Administration-Lower Colorado (WALC) balancing authority areas, consistent with the requirements of Order No. 697.<sup>15</sup>

12. APS did not pass the market share screen in the APS balancing authority area and submitted a DPT analysis for this area. APS also submitted a DPT for the Phoenix Valley Load Pocket. APS did not submit indicative screens for the Phoenix Valley Load Pocket.

**a. Commission Determination**

**i. Indicative Screens**

13. The Commission has reviewed APS's pivotal supplier and wholesale market share screens for the relevant geographic markets that were submitted as part of its updated market power analysis and considered APS's representation in the notice of change in status that it continues to pass the horizontal market share screens in the first-tier markets. We find that APS passes the pivotal supplier and wholesale market share screens for the CAISO market and the IID, LADWP, PACE, PNM, SRP, and WALC balancing authority areas with market shares ranging as follows: for the CAISO market, 1.5 to 2.4 percent; for the IID balancing authority area, 2.4 to 4.0 percent; for the LADWP balancing authority area, zero to 1.3 percent; for the PACE balancing authority area, 3.9 to 5.1 percent; for the PNM balancing authority area, 5.1 to 5.5 percent; for the SRP balancing authority area, 1.7 to 2.4 percent; and for the WALC balancing authority area, zero percent in all four seasons. However, as discussed below, we require additional information regarding the TEP and APS balancing authority areas and the Phoenix Valley Load Pocket.

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.* PP 231-232.

14. As part of its notice of change in status, APS does not submit indicative screens for the first-tier markets, but represents that it “continues to meet the threshold for both of the indicative screens for all first tier markets . . . and thus, is presumed not to have horizontal market power in those markets.”<sup>16</sup> In its change in status filing, APS notes that in its December 2012 updated market power analysis it passed the pivotal supplier screen in all first-tier markets and, with the exception of the TEP balancing authority area, its largest market share in those markets was 5.5 percent.<sup>17</sup> However, the market shares for the TEP balancing authority area were 19.2 percent for the summer season before the change in status was filed.<sup>18</sup> We note that APS’s representation that it still passes the market share screen in the TEP balancing authority area appears to be based on an expanded definition of the TEP balancing authority area that was filed in a different docket and that has not yet been accepted by the Commission.<sup>19</sup> The Commission requires more information regarding the representations regarding the TEP balancing authority area. Therefore, we require that APS submit an updated horizontal market power analysis in support of its representation that it continues to meet the Commission’s standards for market-based rate authority in the TEP balancing authority area.

15. With respect to the APS balancing authority area, APS passes the pivotal supplier screen but does not pass the wholesale market share screen in any of the four seasons with market shares ranging from 37.0 to 66.9 percent.

16. APS’s failure of the wholesale market share screen in the APS balancing authority area and its concession that it fails the screens in the Phoenix Valley Load Pocket<sup>20</sup>

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<sup>16</sup> January 29, 2014 Filing at 5.

<sup>17</sup> December 27, 2012 Filing at Exhibit MEA-4 through MEA-19.

<sup>18</sup> *Id.* at Exhibit MEA-17.

<sup>19</sup> January 29, 2014 Filing at App. 2 at 6 (referencing a recent DPT analysis in Docket No. ER10-2564-000, which incorporates an expanded definition of the TEP balancing authority area to include the Santa Cruz region and stating that “[b]ased on that analysis, APS’s market share for the AEC measure is less than 10 percent and all the DPT metrics are met.”).

<sup>20</sup> The Commission has found that “if a seller wishes to file a [delivered price test] rather than the indicative screens, it may do so. In doing so, the seller concedes that it fails the indicative screens, which concession establishes a rebuttable presumption of market power, and the Commission will issue an order initiating a section 206 proceeding to investigate whether the seller has market power and establishing a refund effective

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provide the basis for the Commission to institute the instant proceeding in Docket No. EL14-98-000, pursuant to section 206 of the FPA, to determine whether APS may continue to make sales of energy and capacity at market-based rates in the APS balancing authority area and in the Phoenix Valley Load Pocket in the spring, winter, and fall seasons.

17. Under the section 206 proceeding established herein, APS must show cause, within 60 days of the date of issuance of this order, as to why the Commission should not revoke its market-based rate authority in the APS balancing authority area and in the Phoenix Valley Load Pocket in the spring, winter, and fall seasons. In this regard APS may present additional evidence such as historical sales and transmission data to rebut the Commission's finding that it has the ability to exercise market power in the APS balancing authority area and in the Phoenix Valley Load Pocket.<sup>21</sup> In the alternative, APS may (1) file a mitigation proposal tailored to its particular circumstances that would eliminate the ability to exercise market power; or (2) inform the Commission that it will adopt the Commission's default cost-based rates or propose other cost-based rates and submit cost support for such rates. In addition, we find that APS has not rebutted the presumption that it has market power in the Phoenix Valley Load Pocket in the summer season and therefore has not supported its request to lift the limitation on its market-based rate authority in the Phoenix Valley Load Pocket in the summer season. Additionally, APS has not provided sufficient evidence that it has rebutted the presumption of market power through its DPTs for both the APS balancing authority area and the Phoenix Valley Load Pocket and can submit corrected DPTs for those areas.

18. In cases where, as here, the Commission institutes a section 206 investigation on its own motion, the Commission is required to establish a refund effective date that is no earlier than publication of notice of the Commission's initiation of its investigation in the *Federal Register*, and no later than five months subsequent to that date. In order to give maximum protection to customers, and consistent with our precedent,<sup>22</sup> we will establish a refund effective date at the earliest date allowed. This date will be the date on which notice of our investigation in this proceeding is published in the *Federal Register*.

19. In addition, section 206 requires that, if no final decision has been rendered by the earlier of the refund effective date or the 180-day period commencing upon initiation of a

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date for the protection of customers while the Commission evaluates the filed [deliveredprice test].” Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 78.

<sup>21</sup> *Id.* P 117.

<sup>22</sup> *See, e.g., Canal Electric Co.*, 46 FERC ¶ 61,153, *order on reh'g*, 47 FERC ¶ 61,275 (1989).

proceeding pursuant to this section, the Commission shall state the reasons why it failed to do so and shall state its best estimate as to when it reasonably expects to make such a decision. We expect that we should be able to render a decision within five months of the date that APS submits the filing ordered below, or May 29, 2015.

**ii. DPT Discussion**

20. As the Commission has previously explained, the DPT identifies potential suppliers based on market prices, input costs, and transmission availability, and calculates each supplier's economic capacity and available economic capacity<sup>23</sup> for each season/load period.<sup>24</sup> Under the DPT, applicants must also calculate market concentration using the Hirschman-Herfindahl Index (HHI).<sup>25</sup> An HHI of less than 2,500 in the relevant market for all season/load periods, in combination with a demonstration that the applicants 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. A detailed description of the mechanics of the DPT is provided in Order No. 697.<sup>26</sup>

21. Although we are initiating the section 206 proceeding based on APS's screen failures, we take this opportunity to point out some questions and concerns we have with the DPT submitted by APS. APS's DPT analyses for the APS balancing authority area and the Phoenix Valley Load Pocket contain numerous structural and data errors which prevent the Commission from properly evaluating the results of the analyses.

22. For example, in Order No. 697, the Commission adopted the requirement that the Simultaneous Transmission Import Limit (SIL) study be used as a basis for establishing a

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<sup>23</sup> "Economic capacity" is the total generation capacity of a potential supplier that can compete in the destination market, given its costs and transmission availability. "Available economic capacity" is derived by subtracting each potential supplier's native load obligation from its total capacity and adjusting transmission availability accordingly. *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 96 n.78.

<sup>24</sup> Super-peak, peak, and off-peak, for winter, shoulder, and summer periods and an additional highest super-peak for the summer.

<sup>25</sup> 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,  $HHI = (20)^2 + (20)^2 + (20)^2 + (20)^2 + (20)^2 = 400 + 400 + 400 + 400 + 400 = 2,000$ .

<sup>26</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 104-117.

study area's import capability for both the indicative screens and the DPT analysis.<sup>27</sup> The Commission separately on February 25, 2014 accepted the SIL values that APS filed in its triennial.<sup>28</sup> However, APS did not use those same SIL values when performing its DPTs. Instead, APS states, "[t]he SILs used in the DPT analysis are consistent with the First Contingency Incremental Transfer Capability (FCITC) calculations in the Indicative Screen analyses, however the decrements or uses of the FCITC are based on the de-rated capacities used in the DPT analysis and incorporate whether remote generating resources meet the economic facet of the DPT."<sup>29</sup> The SIL study submitted with the DPT, and the values from that study used in the DPT, do not meet the Commission requirements for SIL studies.<sup>30</sup> Moreover, in performing its DPTs, APS only considered one constraint, the aggregate SIL values into the study area, and ignored potential constraints into the study area from individual first-tier areas.<sup>31</sup>

23. Additionally, APS does not detail the source for the derived load values in the Phoenix Valley Load Pocket. In some worksheets submitted with the DPT as well as in the DPT models submitted, the load values for the APS balancing authority area and the Phoenix Valley Load Pocket are the same, which appears to be incorrect because the latter covers a different geographic region than the former. Thus, it is unlikely that the

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<sup>27</sup> *Id.* P 19.

<sup>28</sup> *Public Service Co. of New Mexico*, 146 FERC ¶ 61,126 (2014).

<sup>29</sup> December 27, 2012 Filing, Arenchild Affidavit at n.45.

<sup>30</sup> *See Puget Sound Energy, Inc.*, 135 FERC ¶ 61,254 (2011).

<sup>31</sup> December 27, 2012 Filing at 24 n.42 (citing *NRG Energy, Inc.*, 141 FERC ¶ 61,207 (2012) (*NRG Energy*)). Applicants misunderstand the Commission's actions in *NRG Energy*. In that proceeding, the Commission simply reiterated its conclusions in Order No. 697 regarding the proper allocation of simultaneous transmission import capability. *Id.* P 63 n.112 (citing Order No. 697, FERC Stats. & Regs. ¶ 31,252 at n.361 & P 375). The Commission accepted applicants' study in *NRG Energy* based on the particular circumstances of that case, where "a large amount of uncommitted generation in the particular study areas negate[d] the [oversimplified *pro rata* allocation methodology] flaw in [a]pplicants' model." *NRG Energy*, 141 FERC ¶ 61,207 at P 64. The Commission did not in *NRG Energy* implement a new policy on the calculation or allocation of SILs that disregards the physical transfer limitations of the grid.

APS balancing authority area and Phoenix Valley Load Pocket will have the same load in any given hour.<sup>32</sup>

24. Furthermore, in the spreadsheets submitted as part of the DPT the location of multiple generation facilities is incorrect. This does not allow the Commission to properly analyze the results of the DPTs performed by APS. For example, the APS study represents that the full output of the Wildcat units is shown as supplying 985 MW of the 6,061 MW of Available Economic Capacity in the S\_SP1 season. Since this facility is not located in the Phoenix Valley Load Pocket, Wildcat should have been allocated a pro rata share of the SIL and its capacity “squeezed down” according to its proportion of Available Economic Capacity in the aggregated first tier or its capacity should otherwise have been reduced by using an economic allocation (least cost).<sup>33</sup>

25. APS argues that its DPTs demonstrate that it cannot exercise market power in the APS balancing authority area and Phoenix Valley Load Pocket, but the Commission is unable to properly analyze the results or rely on these DPTs due to their numerous errors. As noted above, these errors include, but are not limited to, insufficient data sourcing and supporting workpapers, misplaced generation, and incorrect methods of import allocation. This is in addition to the structural errors in the submitted model itself.

26. Thus, the Commission finds that APS has failed to rebut the presumption of horizontal market power in the APS balancing authority area and the Phoenix Valley Load Pocket and thus may not satisfy the Commission’s horizontal market power standard for the grant of market-based rate authority.

27. Finally, in light of our conclusion that APS has not rebutted the presumption that it has market power in the Phoenix Valley Load Pocket in the summer season, we will not accept APS’s proposed tariff revisions removing the current limitation on APS’s market-based rate authority that prohibits APS from making market-based rate sales in the Phoenix Valley Load Pocket during the summer season.

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<sup>32</sup> January 29, 2014 Filing, Exhibits MEA-3, MEA-4, and MEA-5.

<sup>33</sup> See *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018, at Appendix F n.217, *order on reh’g*, 108 FERC ¶ 61,026 (2004) (“Since there is usually more generation capable of supplying a destination market than available transmission, access to the critical interfaces must be allocated. Either an economic allocation (least cost) or pro-rata (shares based on share of supply) can be used.”).

## 2. Vertical Market Power

28. The Commission requires, in cases where a public utility or any of its affiliates owns, operates, or controls transmission facilities, that there be a Commission-approved Open Access Transmission Tariff (OATT) on file or that the seller has received waiver of the OATT requirement before granting a seller market-based rate authorization.<sup>34</sup>

29. APS states that the transmission facilities owned by APS are subject to the terms and conditions of APS's Commission-approved OATT and all requests for new transmission service over facilities owned by APS are governed by the APS OATT.

30. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.<sup>35</sup> The Commission requires a seller to provide a description of its ownership or control of, or affiliation with an entity that owns or controls, intrastate natural gas transportation, storage or distribution facilities; sites for generation capacity development; and physical coal supply sources and ownership of, or control over, who may access transportation of coal supplies (collectively, inputs to electric power production).<sup>36</sup> The Commission also requires sellers to make an affirmative statement that they have not erected barriers to entry into the relevant market and will not erect barriers to entry into the relevant market.<sup>37</sup> In Order No. 697, the Commission adopted a rebuttable presumption that the ownership or control of, or affiliation with any entity that owns or controls, inputs to electric power production does not allow a seller to raise entry barriers but will allow interveners to demonstrate otherwise.<sup>38</sup>

31. APS states that it does not own or control, and is not affiliated with entities that own or control, intrastate natural gas transportation, storage or distribution facilities, nor do APS or any of its affiliates own or control any sources of coal supplies or

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<sup>34</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408.

<sup>35</sup> *Id.* P 440.

<sup>36</sup> Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

<sup>37</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

<sup>38</sup> *Id.* P 446.

transportation of coal supplies. APS states that APS and/or certain of its affiliates own or control sites that may be potentially available for generation capacity development.<sup>39</sup>

32. APS affirmatively states that neither it, nor any of its affiliates, has erected barriers to entry into the market in which they are located. APS also affirmatively states that neither it, nor any of its affiliates, will erect barriers to entry into the market in which it is located.

33. Based on APS's representations, we find that APS satisfies the Commission's requirements for market-based rate authority regarding vertical market power in the Southwest region.

## **B. Reporting Requirements**

34. An entity with market-based rate authorization must file an Electric Quarterly Report (EQR) with the Commission, consistent with Order Nos. 2001<sup>40</sup> and 768,<sup>41</sup> to fulfill its responsibility under FPA section 205(c)<sup>42</sup> to have rates on file in a convenient form and place.<sup>43</sup> APS must file EQRs electronically with the Commission consistent

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<sup>39</sup> APS states that it will report such sites in accordance with the requirements of Order No. 697.

<sup>40</sup> *Revised Public Utility Filing Requirements*, Order No. 2001, FERC Stats. & Regs. ¶ 31,127, *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reh'g denied*, Order No. 2001-B, 100 FERC ¶ 61,342, *order directing filing*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002), *order directing filing*, Order No. 2001-D, 102 FERC ¶ 61,334, *order refining filing requirements*, Order No. 2001-E, 105 FERC ¶ 61,352 (2003), *order on clarification*, Order No. 2001-F, 106 FERC ¶ 61,060 (2004), *order revising filing requirements*, Order No. 2001-G, 120 FERC ¶ 61,270, *order on reh'g and clarification*, Order No. 2001-H, 121 FERC ¶ 61,289 (2007), *order revising filing requirements*, Order No. 2001-I, FERC Stats. & Regs. ¶ 31,282 (2008).

<sup>41</sup> *Elec. Mkt. Transparency Provisions of Section 220 of the Fed. Power Act*, Order No. 768, FERC Stats. & Regs. ¶ 31,336 (2012), *order on reh'g*, Order No. 768-A, 143 FERC ¶ 61,054 (2013).

<sup>42</sup> 16 U.S.C. § 824d(c) (2012).

<sup>43</sup> *See Revisions to Electric Quarterly Report Filing Process*, Order No. 770, FERC Stats. & Regs. ¶ 31,338, at P 3 (2012) (citing Order No. 2001, FERC Stats. & Regs. ¶ 31,127 at P 31).

with the procedures set forth in Order No. 770.<sup>44</sup> Failure to timely and accurately file an EQR is a violation of the Commission's regulations for which APS may be subject to refund, civil penalties, and/or revocation of market-based rate authority.<sup>45</sup>

35. APS 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.<sup>46</sup>

36. Additionally, APS must file an updated market power analysis for all regions in which it is designated as a Category 2 seller in compliance with the regional reporting schedule adopted in Order No. 697.<sup>47</sup> The Commission also reserves the right to require such an analysis at any intervening time.

The Commission orders:

(A) APS's updated market power analyses for the CAISO market and the IID, LADWP, PACE, PNM, SRP, and WALC balancing authority areas are hereby accepted for filing, as discussed in the body of this order.

(B) APS's notice of change in status for the CAISO market and the IID, LADWP, PACE, PNM, SRP, and WALC balancing authority areas is hereby accepted for filing, as discussed in the body of this order.

(C) APS's proposed tariff revisions are rejected, as discussed in the body of this order.

(D) APS is hereby directed to file updated market power analyses according to the regional reporting schedule adopted in Order No. 697, as discussed in the body of this order.

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<sup>44</sup> Order No. 770, FERC Stats. & Regs. ¶ 31,338.

<sup>45</sup> The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2014). Forfeiture of market-based rate authority may require a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

<sup>46</sup> *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005); 18 C.F.R. § 35.42 (2014).

<sup>47</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 848-850.

(E) 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 FPA, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R., Chapter I), the Commission hereby institutes a proceeding in Docket No. EL14-98-000 concerning the justness and reasonableness of APS's market-based rates in the APS balancing authority area and Phoenix Valley Load Pocket, as discussed in the body of this order.

(F) The Secretary shall promptly publish in the *Federal Register* a notice of the Commission's initiation of the proceeding under section 206 of the FPA in Docket No. EL14-98-000.

(G) The refund effective date in Docket No. EL14-98-000, established pursuant to section 206(b) of the FPA, shall be the date of publication in the *Federal Register* of the notice discussed in Ordering Paragraph (F) above.

(H) For the APS balancing authority area, for all seasons, and for the Phoenix Valley Load Pocket, in the spring, winter and fall seasons, APS is directed, within 60 days from the date of issuance of this order, to (1) show cause as to why the Commission should not revoke its market-based rate authority; (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 will adopt the Commission's default cost-based rates or propose other cost-based rates and submit cost support for such rates.

(I) For the TEP balancing authority area, APS is directed, within 60 days from the date of issuance of this order, to submit an updated horizontal market power analysis in support of its representation that it continues to meet the Commission's standards for market-based rate authority in the TEP balancing authority area.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.