

153 FERC ¶ 61,318
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Appalachian Power Company	Docket Nos. ER11-47-006
Indiana Michigan Power Company	ER12-1540-004
Kentucky Power Company	ER12-1541-004
Kingsport Power Company	ER12-1542-004
Wheeling Power Company	ER12-1544-004
AEP Texas Central Company	ER10-2981-006
AEP Texas North Company	ER14-2475-003
Public Service Company of Oklahoma	ER14-2476-003
Southwestern Electric Power Company	ER14-2477-003
Ohio Power Company	ER14-594-006
AEP Energy Partners, Inc.	ER11-46-009
CSW Energy Services, Inc.	ER10-2975-009
AEP Retail Energy Partners LLC	ER11-41-006
AEP Energy, Inc.	ER12-2343-004
AEP Generation Resources Inc.	ER13-1896-009

ORDER ACCEPTING UPDATED MARKET POWER ANALYSIS AND
SIMULTANEOUS TRANSMISSION IMPORT LIMIT VALUES FOR THE
SOUTHWEST POWER POOL REGION

(Issued December 18, 2015)

1. In this order, the Commission accepts an updated market power analysis submitted by Appalachian Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Wheeling Power Company, AEP Texas Central Company, AEP Texas North Company, Public Service Company of Oklahoma, Southwestern Electric Power Company, Ohio Power Company, AEP Energy Partners, Inc., CSW Energy Services, Inc., AEP Retail Energy Partners LLC, AEP Energy, Inc., and AEP Generation Resources Inc. (collectively, AEP Companies). As discussed below, we find that AEP Companies continue to satisfy the Commission's standards for market-based rate authority. Additionally, as discussed below, we accept Simultaneous Transmission Import Limit (SIL) values for the December 2012 – November 2013 study period for the Southwest Power Pool, Inc. (SPP) market.

I. Background

2. On June 26, 2015, as amended on October 19, 2015, AEP Companies submitted an updated market power analysis for the SPP region in accordance with the reporting schedule adopted in Order No. 697.¹

3. AEP Companies state that they own and operate approximately 9,929 megawatts (MW) of generation capacity in the SPP market, which includes 101 MW of remote generation, located in the Electric Reliability Council of Texas and imported into SPP using AEP Companies' long-term firm transmission rights. AEP Companies further state that they purchase 2,386 MW of generation capacity through long-term power purchase agreements, which includes 80 MW of generation capacity located in first-tier markets.

4. AEP Companies state that Appalachian Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Public Service Company of Oklahoma, Southwestern Electric Power Company, Wheeling Power Company, AEP Texas Central Company, and AEP Texas North Company are each wholly owned subsidiaries of American Electric Power, Inc. (AEP) and are public utilities that currently engage in the generation and/or transmission and/or distribution of electric power in their respective states and service territories and each has been granted market-based rate authority.²

5. AEP Companies state that Ohio Power Company is a wholly owned subsidiary of AEP that engages in the transmission and distribution of electric power in Ohio. They also state that AEP Energy Partners, Inc., AEP Energy, Inc., and CSW Energy Services, Inc. are each wholly owned subsidiaries of AEP and are each power marketers. They further state that AEP Generation Resources Inc. is a wholly owned subsidiary of AEP formed to own and operate generation resources that were previously owned by Ohio Power Company. AEP Companies state that AEP Retail Energy Partners LLC is a

¹ *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 882-893, *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).

² June 26, 2015 Filing at 2 (citing *American Electric Power Service Corp.*, 81 FERC ¶ 61,129 (1997); *Central and South West Services Inc.*, 82 FERC ¶ 61,001 (1998)).

wholly owned subsidiary of AEP formed to sell retail power. AEP Companies add that Ohio Power Company, AEP Partners, Inc., AEP Energy, Inc., CSW Energy Services, Inc., AEP Generation Resources Inc., and AEP Retail Energy Partners LLC have received market-based rate authorization.³

II. Notice of Filings

6. Notices of AEP Companies' June 26, 2015 and October 19, 2015 filings were published in the *Federal Register*,⁴ with interventions or protests due on or before November 9, 2015. None was filed.

III. Discussion

A. Market-Based Rate Authorization

7. 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.⁵ As discussed below, we find that AEP Companies satisfy the Commission's standards for market-based rate authority.

1. Horizontal Market Power

8. The Commission has adopted two indicative screens for assessing horizontal market power: the pivotal supplier screen and the wholesale market share screen.⁶ The Commission has stated that passage of both screens establishes a rebuttable presumption

³ June 26, 2015 Filing at 2-3 (citing *AEP Energy Partners, Inc.*, Docket No. ER14-593-000 (Feb. 5, 2014) (delegated letter order); *AEP Energy Partners, Inc.*, Docket No. ER11-46-000 (Jan. 21, 2011) (delegated letter order); *AEP Energy, Inc.*, Docket No. ER12-2343-000 (Aug. 29, 2012) (delegated letter order); *AEP Retail Energy Partners LLC*, Docket No. ER10-727-000 (Apr. 22, 2010) (delegated letter order); *AEP Generation Resources Inc.*, Docket No. ER13-1896-000 (Dec. 6, 2013) (delegated letter order); *CWS Energy Services, Inc.*, 83 FERC ¶ 61,111 (1998)).

⁴ 80 Fed. Reg. 38,194; 80 Fed. Reg. 65,731 (2015).

⁵ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 62, 399, 408, 440.

⁶ *Id.* P 62.

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.⁷

9. AEP Companies prepared the pivotal supplier and wholesale market share screens for the SPP market, consistent with the requirements of Order No. 697.⁸

10. We have reviewed AEP Companies' pivotal supplier screen and wholesale market share screen and we find that AEP Companies pass both screens in the SPP market.⁹ Accordingly, we find that AEP Companies satisfy the Commission's requirements for market-based rates regarding horizontal market power in the SPP region.

11. We note that AEP Companies' analysis of the SPP market considers imports and relies upon SIL values prepared by SPP for the December 2012 – November 2013 study period, which SPP submitted to the Commission in Docket No. AD10-2-005.¹⁰ SPP's SIL study includes two different sets of SIL values for the SPP market. The SIL values differ because SPP used two different methods to calculate the long-term transmission reservations into the SPP market.

12. SPP states that its primary method yields a more realistic amount of long-term firm transmission reservations.¹¹ SPP explains that its primary method calculates long-term firm reservations by using the per season firm transaction data in its modeling database that is based on multiple datasets submitted by the SPP Members.¹² SPP states that its primary method accounts for the model flows on lines and transformers only, making capacity available as required to replace unused reservations; therefore, any unused reservations are not included in the final calculations. SPP's primary method for calculating long-term firm transmission reservations yields SIL values in the SPP market of Winter 546 MW; Spring 1,697 MW; Summer 190 MW; and Fall 1,512 MW.

⁷ *Id.* PP 33, 62-63.

⁸ *Id.* PP 231-232.

⁹ Although AEP Companies' study used one set of SPP SIL values, we note that AEP Companies pass both the pivotal supplier screen and wholesale market share screen in the SPP market when the alternate SPP-provided SIL values of zero are used for all four seasons.

¹⁰ SPP Informational Filing, Docket No. AD10-2-005 (filed June 30, 2015, amended on September 3, 2015).

¹¹ *Id.* at 4.

¹² *Id.*

13. SPP also used a secondary method to calculate an alternative, higher amount of long-term transmission reservations.¹³ SPP explains that its secondary method calculates long-term firm reservations by using the per season firm transaction data from the Open Access Same-Time Information System (OASIS).¹⁴ According to SPP, the secondary method accounts for the flows on lines and transformers and disallows additional flow regardless of unused OASIS Reservations; therefore, any unused reservations are included in the final calculations.¹⁵ The secondary method for calculating long-term firm transmission reservations yields SIL values in the SPP market of 0 MW in all four seasons.

14. We note that long-term firm transmission reservations for generation resources that serve study area load reduce the amount of firm study area transmission capability available to potential competitors.¹⁶ SPP's proposed primary method excludes the unused portions of long-term firm reservations from the final calculation of long-term firm reservations.¹⁷ However, SPP has not provided sufficient evidence on whether each of these long-term firm reservations was fully utilized during the study periods.

15. We find that SPP's secondary methodology, which according to SPP includes unused reservations in the final calculations, is consistent with the policy set forth in

¹³ *Id.* at Attachment 1.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Puget Sound Energy, Inc.*, 135 FERC ¶ 61,254, at P 15 (2011).

¹⁷ *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 368-369 (The Commission concluded that while firm transmission reservations less than or equal to 28 days in duration are usually unpredictable, firm transmission reservations of a longer duration are not related to the unpredictable nature of real time events and are based upon planned and predictable events. The Commission clarified that a seller's firm, network, and grandfathered transmission reservations longer than 28 days, including reservations for designated resources to serve retail load, shall be fully accounted for in the SIL study). *See also* Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 143 (The Commission concluded that the objective of the SIL calculation is to determine the amount of transmission imports available to bring in supply from first-tier areas, and that an applicant's firm transmission reservations represent transmission that is not available to competing suppliers. The Commission noted that applicants who believe that their firm transmission reservations should be treated as available to import competing supply may present evidence that the Commission will consider on a case-by-case basis).

Order No. 697, which requires a seller's firm, network, and grandfathered transmission reservations longer than 28 days, including reservations for designated resources to serve retail load, to be fully accounted for in the SIL study.¹⁸ Accordingly, we accept the long-term firm reservation values as calculated under the secondary methodology. We note that SPP also appears to have utilized the secondary methodology when it submitted SIL values for the December 2011 – November 2012 study period in Docket No. AD10-2-003.¹⁹ Therefore, the seasonal SIL values for the SPP market accepted herein are 0 MW for all four seasons.

16. The Commission will use these Commission-accepted SIL values when reviewing the updated market power analyses submitted by transmission owners in the SPP region as well as any updated market power analyses filed by non-transmission owning sellers in the SPP region for this study period. Future sellers submitting screens for the SPP market for the December 2012 – November 2013 study period are encouraged to use these Commission-accepted SIL values. In the alternative, a seller may propose different SIL values provided that the seller's accompanying SIL studies comply with Commission directives and that the seller fully supports the values used and explains why the Commission should consider a different SIL value for the SPP market other than the Commission-accepted SIL values approved herein. In the event that the results for one or more of a particular seller's screens differ if the seller-supplied SIL value is used instead of the Commission-accepted SIL value, the order on that particular filing will examine the seller-supplied SIL study and address whether the seller-supplied SIL value is acceptable. However, when the overall results of the screens would be unchanged, i.e., the seller would pass using either set of SIL values or fail using either set of SIL values, the order would be based on the Commission-accepted SIL values and would not address the seller-supplied SIL values.

2. Vertical Market Power

17. In cases where a public utility, or any of its affiliates, owns, operates, or controls transmission facilities, the Commission requires 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.²⁰

¹⁸ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 369.

¹⁹ SPP Informational Filing, Docket No. AD10-2-003 (filed Dec. 24, 2013, amended on Jan. 24, 2014 and Feb. 10, 2014). The Commission accepted the SIL values submitted by SPP for the December 2011 – November 2012 study period in *Public Service Co. of Colorado*, 146 FERC ¶ 61,137 (2014).

²⁰ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408.

18. AEP Companies represent that as transmission-owning members of SPP, access to Southwestern Electric Power Company and Public Service Company of Oklahoma's transmission systems is provided under the SPP OATT.²¹

19. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.²² 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).²³ 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.²⁴ 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 intervenors to demonstrate otherwise.²⁵

20. Regarding other barriers to entry, AEP Companies state that neither AEP Companies nor their affiliates own or control intrastate natural gas transportation, storage or distribution facilities. AEP Companies provide information describing ownership or control of sites for generation capacity development, as well as sources of coal supplies and transportation of coal supplies.

21. Finally, consistent with Order No. 697, AEP Companies affirmatively state that neither they nor their affiliates have erected barriers to entry into the relevant geographic market and that they will not erect barriers into the relevant market.

22. Based on AEP Companies' representations, we find that they satisfy the Commission's requirements for market-based rates regarding vertical market power.

²¹ SPP, FERC FPA Electric Tariff, OATT, Sixth Revised Volume No. 1.

²² Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 440.

²³ Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

²⁴ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

²⁵ *Id.* P 446.

B. Reporting Requirements

23. An entity with market-based rate authorization must file an Electric Quarterly Report (EQR) with the Commission, consistent with Order Nos. 2001²⁶ and 768,²⁷ to fulfill its responsibility under the Federal Power Act section 205(c)²⁸ to have rates on file in a convenient form and place.²⁹ AEP Companies must file EQRs electronically with the Commission consistent with the procedures set forth in Order No. 770.³⁰ Failure to timely and accurately file an EQR is a violation of the Commission's regulations for which AEP Companies may be subject to refund, civil penalties, and/or revocation of market-based rate authority.³¹

²⁶ *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).

²⁷ *Electricity Mkt. Transparency Provisions of Section 220 of the Federal Power Act*, Order No. 768, FERC Stats. & Regs. ¶ 31,336 (2012), *order on reh'g*, Order No. 768-A, 143 FERC ¶ 61,054 (2013).

²⁸ 16 U.S.C. § 824d(c) (2012).

²⁹ *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).

³⁰ Order No. 770, FERC Stats. & Regs. ¶ 31,338.

³¹ The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2015). 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.

24. AEP Companies 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.³²

25. Additionally, AEP Companies must file updated market power analyses for all regions in which they are designated as Category 2 sellers in compliance with the regional reporting schedule adopted in Order No. 697.³³ The Commission also reserves the right to require such an analysis at any intervening time.³⁴

The Commission orders:

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

(B) The specific SIL values identified in this order are hereby accepted for purposes of analyzing updated market power analyses for the SPP region, as discussed in the body of this order.

(C) AEP Companies are 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.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

³² *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 (2015).

³³ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 882-893.

³⁴ *Id.* P 853.