

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

January 13, 2006

In Reply Refer To:
Docket Nos. ER96-2495-026
ER97-4143-014
ER97-1238-021
ER98-2075-020
ER98-542-016
EL04-131-000

Steptoe and Johnson, LLP, Attorneys at Law
ATTN: Steven J. Ross, Esq.
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Dear Mr. Ross:

1. On October 28, 2005, you filed an Offer of Settlement and two related Settlement Agreements on behalf of affiliated power marketing entities AEP Power Marketing, Inc.; CSW Power Marketing, Inc.; CSW Energy Services, Inc.; and Central and South West Services, Inc. (collectively "AEP") that would resolve the dispute in the above captioned proceeding. The dispute relates to market-based rate tariffs in the AEP-Southwest Power Pool, Inc. control area (AEP-SPP); specifically, AEP's proposed revisions to its market-based rates tariffs for sales in the AEP-SPP control area that would provide for up to cost-based rates applicable to sales of electric power that sink within the AEP-SPP control area. On November 17, 2005, the Commission Trial Staff filed comments in support of the Offer of Settlement and the Settlement Agreements. On November 28, 2005, AEP filed reply comments. No other comments were received. On November 30, 2005, Presiding Judge Robert K. Rogers, Jr. certified the Offer of Settlement and Settlement Agreements to the Commission as uncontested.¹

¹ *AEP Power Marketing, Inc.*, 113 FERC ¶ 63,027 (2005).

2. On August 9, 2004, as amended on August 10, 2004, September 16, 2004, and November 19, 2004, AEP submitted for filing the generation market power screens in compliance with the Commission's orders issued on April 14, 2004 and July 8, 2004.² Because AEP's filing indicated that it failed the wholesale market share screen, the Commission issued an order on December 17, 2004 instituting a section 206 proceeding in Docket No. EL04-131-000 to investigate generation market power in the AEP-SPP control area.³ Accordingly, for the AEP-SPP control area, AEP was directed within 60 days from the date of issuance of the December 17 Order to: (1) file a Delivered Price Test analysis; (2) file a mitigation proposal tailored to its particular circumstances that would eliminate the ability to exercise market power; or (3) inform the Commission that it will adopt the April 14 Order's default cost-based rates or propose other cost-based rates and submit cost support for such rates.

3. AEP submitted a compliance filing in accordance with the December 17 Order. In the compliance filing, AEP proposed revisions to its market-based rate tariffs for sales in the AEP-SPP control area that would provide for up to cost-based rates applicable to sales of electric power at wholesale that sink within the AEP-SPP control area. Noting that the Commission found in the December 17 Order that AEP satisfied both of the indicative screens in all first-tier markets interconnected with the AEP-SPP control area, AEP stated that it would continue to use its market-based tariff to arrange capacity and energy sales transactions with entities that serve load outside the AEP control area in SPP and/or third parties on their behalf. By order issued July 7, 2005, the Commission accepted the proposed tariff revisions for filing, suspended them for a nominal period, made them effective March 6, 2005, subject to refund, and set the up to cost-based rates for hearing.⁴

4. By order issued September 20, 2005,⁵ the Commission denied rehearing of the December 17 Order. On October 28, 2005, you filed the Offer of Settlement and the two Settlements. The revised tariff sheets submitted revise the monthly, weekly, daily, and hourly "Demand Charge" as shown on Schedule A of each of the Proposed Cost Tariffs submitted.

² *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004) (July 8 Order).

³ *AEP Power Marketing, Inc.*, 109 FERC ¶ 61,276 (2004) (December 17 Order).

⁴ *AEP Power Marketing, Inc.*, 112 FERC ¶ 61,047 (2005).

⁵ *AEP Power Marketing, Inc.*, 112 FERC ¶ 61,320 (2005).

5. A review of the proposed tariffs finds they contain three errors that require correction, to wit:

(a) AEP 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. Order No. 652 requires that the change in status reporting requirement be incorporated in the market-based rate tariff of each entity authorized to make sales at market-based rates.⁶ Accordingly, AEP is directed, within 30 days of the date of issuance of this order, to revise their market-based rate tariffs to incorporate the following provision:

[insert market-based rate seller name] must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority. A change in status includes, but is not limited to, each of the following: (i) ownership or control of generation or transmission facilities or inputs to electric power production other than fuel supplies, or (ii) affiliation with any entity not disclosed in the application for market-based rate authority that owns or controls generation or transmission facilities or inputs to electric power production, or affiliation with any entity that has a franchised service area. Any change in status must be filed no later than 30 days after the change in status occurs.

(b) The market-based rate tariff language proposed by AEP does not comply with the market behavior rules as established by the Commission.⁷ Specifically section 2(b) of AEP's market behavior rules should state, "(...or scheduling non-firm service for products sold as firm)." Accordingly, AEP is directed, within 30 days of the date of issuance of this order, to revise their market-based rate tariffs to include such language, without variation, consistent with the Commission's market behavior rules.

(c) The tariffs as proposed by AEP do not prohibit sales to AEP affiliates "without first receiving" Commission authorization of the transaction under section 205

⁶ *Reporting Requirement for Changes in Status for Public Utilities With Market-Based Rate Authority*, Order No. 652, 70 Fed. Reg. 8,253 (Feb. 18, 2005), FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005) (Order No. 652).

⁷ *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218 (2003), *order on reh'g*, 107 FERC ¶ 61,175 at 61,712 (2004).

of the FPA.⁸ Specifically the tariffs should state “[insert market-based rate seller name] will not sell electric energy or capacity to [insert market-based rate seller name affiliates] or any other affiliate with a franchised service area pursuant to this Rate Schedule without first receiving Commission authorization, pursuant to a separate filing under Section 205 of the Federal Power Act.” Accordingly, AEP is directed, within 30 days of the date of issuance of this order, to revise their market-based rate tariffs to include such language, without variation.

3. With the corrections to the tariffs set forth above, the Offer of Settlement and two Settlement Agreements are in the public interest and are hereby accepted. The Commission’s acceptance of this Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding. The Commission retains the right to investigate the rates, terms and conditions under the just and reasonable and not unduly discriminatory or preferential standard of Section 206 of the Federal Power Act, 16 U.S.C. § 824c (2000).

4. This order terminates Docket Nos. ER96-2495-026, ER97-4143-014, ER97-1238-021, ER98-2075-020, ER98-542-016, and EL04-131-000.

By the direction of the Commission.

Magalie R. Salas,
Secretary.

cc: All Parties

⁸ *Aquila, Inc.*, 101 FERC ¶ 61,331, at P 7-9, 12 (2002).