

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Exelon Generation Company, LLC	Docket Nos. ER00-3251-009 ER00-3251-010 ER00-3251-011
AmerGen Energy Company LLC	Docket Nos. ER99-754-011 ER99-754-012 ER99-754-013
Commonwealth Edison Company	Docket Nos. ER98-1734-009 ER98-1734-010 ER98-1734-011
Unicom Power Marketing, Inc.	Docket Nos. ER97-3954-019 ER97-3954-020
PECO Energy Company	Docket Nos. ER99-1872-010 ER99-1872-011 ER01-1147-002
Exelon Energy Company	Docket Nos. ER01-1919-006 ER01-1919-007 ER01-1919-008
Exelon Edgar, LLC, Exelon West Medway, LLC, Exelon Wyman, LLC, Exelon New England Boston, LLC, and Exelon Framingham, LLC	Docket Nos. ER01-513-006 ER01-513-010 ER01-513-011 ER01-513-012 ER01-513-013 ER01-513-014 ER01-513-015
Exelon New England Power Marketing, L.P.	Docket Nos. ER99-2404-007 ER99-2404-008

Exelon Generation Company, LLC,
AmerGen Energy Company, LLC,
Commonwealth Edison Company,
Unicom Power Marketing, Inc., PECO
Energy Company, Exelon Energy Company,
Exelon Edgar, LLC, Exelon West Medway, LLC,
Exelon Wyman, LLC, Exelon New Boston, LLC,
Exelon Framingham, LLC, and Exelon New
England Power Marketing, L.P.

Docket No. EL05-132-000
EL05-132-001

ORDER ACCEPTING COMPLIANCE FILINGS, DISMISSING REQUEST FOR
REHEARING AND TERMINATING SECTION 206 PROCEEDING

(Issued April 3, 2006)

1. In this order, the Commission accepts Exelon's compliance filings revising its affiliates' market-based rate tariffs and addressing the affiliate abuse and reciprocal dealing part of the Commission's market power analysis. In light of the acceptance of the compliance filing addressing the affiliate abuse and reciprocal dealing part of the market power analysis, the Commission dismisses as moot Exelon Corporation's request for rehearing of the Commission's July 5 Order¹ and terminates the proceeding instituted in Docket No. EL05-132-000 pursuant to section 206 of the Federal Power Act (FPA).²

Background

2. On July 5, 2005, the Commission conditionally accepted the updated market power analysis filed by Exelon Corporation, on behalf of Exelon Generation Company, LLC (Exelon Generation), and its affiliates, AmerGen Energy Company, LLC, Commonwealth Edison Company (ComEd), Unicom Power Marketing, Inc. (Unicom),³ Exelon Edgar, LLC (Exelon Edgar), Exelon Framingham, LLC (Exelon Framingham), Exelon West Medway, LLC (Exelon West Medway), Exelon Wyman,

¹ *Exelon Generation Company, LLC*, 112 FERC ¶ 61,027 (2005) (July 5 Order).

² 16 U.S.C. § 824e (2000).

³ Unicom's notice of cancellation of Rate Schedule FERC No. 1, its market-based rate tariff, was accepted for filing in *Unicom Power Marketing, Inc.*, Docket No. ER06-178-000 (unpublished letter order) (December 7, 2005). In light of this notice of cancellation, any compliance filings for Unicom discussed herein are moot.

LLC (Exelon Wyman), and Exelon New Boston, LLC (Exelon New Boston), Exelon New England Power Marketing, L.P. (Exelon New England), PECO Energy Company (PECO), and Exelon Energy Company (Exelon Energy) (collectively, Exelon). In the July 5 Order, the Commission found that Exelon satisfied three of the four parts of the Commission's market power analysis, specifically generation market power, transmission market power, and other barriers to entry. The order, however, found that Exelon failed to address the affiliate abuse and reciprocal dealing part of the market power analysis. The Commission instituted a proceeding pursuant to section 206 of the FPA⁴ to determine whether Exelon may continue to charge market-based rates. The Commission directed Exelon to file, within 30 days of the date of that order, a compliance filing to address the affiliate abuse and reciprocal dealing part of the Commission's market power analysis.

3. In addition, the order directed Exelon to make compliance filings on behalf of certain of its affiliates incorporating the following in their market-based rate tariffs: (1) a code of conduct to govern their interactions with Public Service Enterprise Group, Inc. (PSEG) and its affiliates; (2) the market behavior rules;⁵ (3) a change in status provision;⁶ and (4) a prohibition on affiliate sales "without first receiving"

⁴ *Id.*

⁵ While the Commission directed Exelon and its affiliates to revise their tariffs to include the market behavior rules, that directive is no longer applicable. On February 16, 2006, the Commission issued an order rescinding Market Behavior Rules 2 and 6 effective February 27, 2006. *See Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 114 FERC ¶ 61,165 (2006) and *Conditions for Public Utility Market-Based Rate Authorization Holders, Order No. 674*, 71 Fed. Reg. 9,695 (Feb. 27, 2006), 114 FERC ¶ 61,163 (2006). The Commission also adopted a final rule codifying Market Behavior Rules 1, 3, 4 and 5 in the Commission's regulations, effective February 27, 2006. As a result, the Market Behavior Rules no longer will be part of sellers' market-based rate tariffs. Therefore, the tariff revisions submitted by Exelon on behalf of certain of its affiliates to incorporate the market behavior rules in their market-based tariffs are rejected as moot.

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).

Commission authorization of the transaction.⁷ The Commission also directed Exelon to file a revised generation market power update within 30 days of the consummation of the announced merger with PSEG.

4. On August 4, 2005, Exelon filed a request for rehearing of the July 5 Order in which it challenges the Commission's determination to institute a section 206 proceeding to address the affiliate abuse and reciprocal dealing part of the market power analysis and to establish a refund effective date. In the alternative, if Exelon's request for rehearing is denied, Exelon requests the Commission to consider its rehearing request to be the requisite compliance filing on affiliate abuse and reciprocal dealing, and dismiss the section 206 proceeding and rescind the refund effective date.

5. On August 4, 2005, August 5, 2005, August 11, 2005, January 19, 2006,⁸ February 2, 2006 and February 6, 2006, Exelon made a series of compliance filings revising its affiliates' market-based rate tariffs and addressing the affiliate abuse and reciprocal dealing part of the market power analysis, as directed in the Commission's July 5 Order.

Notice of Filings

6. Notice of Exelon's August 4, 2005 and August 11, 2005 compliance filings on behalf of Exelon Generation was published in the *Federal Register*, 70 Fed. Reg. 48,387 (2005) and 70 Fed. Reg. 49,270 (2005), respectively, with interventions or protests due on or before August 25, 2005 and September 1, 2005, respectively. None was filed.

7. Notice of Exelon's August 4, 2005 compliance filing on behalf of AmerGen was published in the *Federal Register*, 70 Fed. Reg. 48,387 (2005), with interventions or protests due on or before September 1, 2005. None was filed.

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

⁸ Exelon repeats in its January 19 compliance filing the assertions it raised in its request for rehearing. Exelon argues that it addressed in its 2003 triennial market power study update filing (2003 Triennial Update) all of the factors the Commission considers in determining whether a power supplier qualifies for market-based rates, including affiliate abuse.

8. Notice of Exelon's August 5, 2005 compliance filing on behalf of ComEd was published in the *Federal Register*, 70 Fed. Reg. 49,271 (2005), with interventions or protests due on or before August 26, 2005. None was filed.
9. Notice of Exelon's August 5, 2005 compliance filing on behalf of Unicom was published in the *Federal Register*, 70 Fed. Reg. 49,271 (2005), with interventions or protests due on or before August 26, 2005. None was filed.
10. Notice of Exelon's August 4, 2005 compliance filing on behalf of Exelon Energy was published in the *Federal Register*, 70 Fed. Reg. 48,387 (2005), with interventions or protests due on or before August 26, 2005. None was filed.
11. Notice of Exelon's January 19, 2006 compliance filing was published in the *Federal Register*, 71 Fed. Reg. 5,825 (2006), with interventions or protests due on or before February 9, 2006. None was filed.
12. Notice of Exelon's February 2, 2006 compliance filing on behalf of PECO Energy was published in the *Federal Register*, 71 Fed. Reg. 8,573 (2006) , with interventions or protests due on or before February 23, 2006.⁹ None was filed.
13. Notice of Exelon's February 6, 2006 compliance filing on behalf of all of its affiliates was published in the *Federal Register*, 71 Fed. Reg. 8,850 (2006), with interventions or protests due on or before February 26, 2006. None was filed.

Discussion

A. Exelon's Compliance Filings

14. As noted above, Exelon made compliance filings on August 4, 2005, August 5, 2005, August 11, 2005, February 2, 2006 and February 6, 2006 on behalf of its affiliates revising their market-based rate tariffs to include: (1) a code of conduct to govern their interactions with PSEG and its affiliates; (2) a change in status provision; and (3) a prohibition on affiliate sales "without first receiving" Commission authorization of the transaction.
15. In response to a December 29, 2005 deficiency letter, Exelon submitted a compliance filing on January 19, 2006 to address the affiliate abuse and reciprocal

⁹ On February 22, 2006, the Commission issued an erratum to the notice, adding Docket No. ER99-1872-011, and extending the comment period to February 27, 2006.

dealing part of the market power analysis (January 19 compliance filing). Exelon asserts that there has been no change in the circumstances on which the Commission based its previous finding. The Commission previously found that there were adequate pricing safeguards in place to permit Exelon to engage in inter-affiliate transactions at market-based rates.¹⁰ Exelon notes that both ComEd and PECO remain under retail rate freezes and ComEd's wholesale sales are made pursuant to long-term, fixed price contracts.

16. The Commission finds that Exelon's compliance filings comply with the Commission's directives in the July 5 Order. The Commission accepts Exelon's various compliance filings revising its affiliates' market-based rate tariff sheets, with the designations and effective dates requested.¹¹ In addition, the Commission finds

¹⁰ *Exelon Generation Company L.L.C.*, 93 FERC ¶ 61,140 (2000).

¹¹ Exelon Generation Company, LLC, FERC Electric Tariff, Original Volume No. 2, Original Sheet Nos. 2, 3 and 6; AmerGen Energy Company, LLC, FERC Electric Tariff, Original Volume No. 1, Original Sheet Nos.1-15; Commonwealth Edison Company, FERC Electric Tariff, Original Volume No. 1, Original Sheet Nos. 1-6; Exelon Energy Company, FERC Electric Tariff, First Revised Volume No. 1, First Revised Sheet No. 1 and Original Sheet Nos. 2-4; Exelon Edgar, LLC Eighth Revised FERC Electric Tariff No. 1, First Revised Original Sheet No.1 and Original Sheet Nos. 2-9; Exelon West Medway, LLC, Eighth Revised FERC Electric Tariff No. 1, First Revised Original Sheet No.1 and Original Sheet Nos. 2-9; Exelon Wyman, LLC, Eighth Revised FERC Electric Tariff No. 1, First Revised Original Sheet No.1 and Original Sheet Nos. 2-9; Exelon New Boston, LLC, Eighth Revised FERC Electric Tariff No. 1, First Revised Original Sheet No.1 and Original Sheet Nos. 2-9; Exelon Framingham, LLC, Eighth Revised FERC Electric Tariff No. 1, First Revised Original Sheet No.1 and Original Sheet Nos. 2-9; Exelon New England Power Marketing, L.P., FERC Electric Rate Schedule No.3, First Revised Original Sheet No. 1 and Original Sheet Nos. 2-5; PECO Energy Company, FERC Electric Tariff, Second Revised Volume No. 1, Original Sheet No. 1, First Revised Original Sheet No. 1, Original Sheet Nos. 3-13, First Revised Sheet No. 14, and Original Sheet No. 15; Exelon Generation Company, LLC, FERC Electric Tariff, Original Volume No. 2, Substitute Original Sheet No. 6; AmerGen Energy Company, LLC, FERC Electric Tariff, Original Volume No. 1, Substitute Original Sheet No. 15; Commonwealth Edison Company, FERC Electric Tariff, Original Volume No. 1, Substitute Original Sheet No. 6; Exelon Energy Company, FERC Electric Tariff, First Revised Volume No. 1, Substitute Original Sheet No. 4; Exelon Edgar, LLC Eighth Revised FERC Electric Tariff No. 1, Substitute Original Sheet No. 9; Exelon West Medway, LLC, Eighth Revised FERC Electric Tariff No. 1, Substitute Original Sheet (continued...)

that based on Exelon's representations in its January 19 compliance filing, Exelon satisfies the Commission's concerns with regard to affiliate abuse and reciprocal dealing and satisfies the Commission's standards for market-based rate authority. The Commission, therefore, terminates the section 206 proceeding instituted in Docket No. EL05-132-000. Given the Commission's acceptance of the January 19 compliance filing, there is no further need for this section 206 proceeding.

B. Exelon's Request for Rehearing

17. In its rehearing request, Exelon states that the Commission erred in finding that Exelon failed to address the affiliate abuse and reciprocal dealing part of the Commission's market power analysis and instituting a section 206 proceeding and establishing a refund effective date. Exelon argues that it addressed the affiliate abuse and reciprocal dealing part of the analysis in its 2003 triennial market power study update filing (2003 Triennial Update). Exelon explains that its subsequent September 2004 filing addressed only the change in the Commission's generation market power screen, as required in the Commission's May 13 Order, and not the other three parts of the Commission's market power analysis. Exelon contends that the Commission in the May 13 Order did not require applicants to re-file the entire market power analysis.¹² Instead, Exelon asserts that the Commission directed applicants with pending three-year market-based rate reviews to provide updated information regarding the other parts of the market power analysis only to the extent that the factual circumstances have changed from those described in the pending filing.

18. According to Exelon, it stated in its 2003 Triennial Update that the circumstances upon which the Commission had based its determination that Exelon did not have the opportunity to exercise affiliate abuse or reciprocal dealing had not

No. 9; Exelon Wyman, LLC, Eighth Revised FERC Electric Tariff No. 1, Substitute Original Sheet No. 9; Exelon New Boston, LLC, Eighth Revised FERC Electric Tariff No. 1, Substitute Original Sheet No. 9; Exelon Framingham, LLC, Eighth Revised FERC Electric Tariff No. 1, Substitute Original Sheet No. 9; Exelon New England Power Marketing, L.P., FERC Electric Rate Schedule No.3, Substitute Original Sheet No. 5. All pages and designations are accepted except for market behavior rules (*See* Footnote No. 5).

¹² *Citing Acadia Power Partners, LLC*, 107 FERC ¶ 61,168 (2004) (May 13 Order), the Commission's May 13 Order addressing the procedures for implementing the generation market power analysis and mitigation policy.

changed.¹³ Exelon states that the 2003 Triennial Update contains detailed explanations of the protections enjoyed by ComEd's customers and points to a statement in the body of the transmittal letter of the 2003 Triennial Update that explains that most of the load in ComEd's service territory is protected by price freezes or fixed price contracts until the end of 2006.¹⁴ In the Rehearing Request, Exelon states that customers of PECO, Exelon's other regulated utility affiliate, are also under retail rate freezes.¹⁵

19. Exelon then points to various statements in the affidavit attached to the 2003 Triennial Update. For example, Exelon points to statements: (1) noting that all Illinois retail customers have the right to choose a competitive energy supplier, but most continue to be served by ComEd at bundled retail rates that are frozen through 2006 (affidavit at 2); (2) explaining that the wholesale customers served by ComEd are under fixed price contracts through 2008 (affidavit at 3); and (3) detailing the development of retail access in the state of Illinois, demonstrating that none of the retail customers are captive and that any residential customers that continue being served by ComEd are served under frozen rates until the end of 2006 and any non-residential customers that continue being served by ComEd are served at rates that are either frozen or are set by the ICC (affidavit at 4-5).

20. Exelon, therefore, requests the Commission to grant rehearing and vacate its order as to the section 206 proceeding and the refund effective date. In the alternative, if the Commission denies Exelon's request for rehearing, then Exelon requests the Commission to consider the request for rehearing filing to be the requisite compliance filing, and dismiss the section 206 proceeding and rescind the refund effective date.

C. Commission Determination

21. The Commission dismisses Exelon's request for rehearing because Exelon subsequently made the January 19 compliance filing to address the affiliate abuse and reciprocal dealing part of the market power analysis, as directed by the Commission in the July 5 Order, and the Commission accepts that compliance filing here. As a result, Exelon's request for rehearing has been rendered moot by our actions herein.

22. However, while we find that Exelon has addressed the affiliate abuse part of

¹³ Exelon Request for Rehearing at 9.

¹⁴ *Id.* at 6-7, citing 2003 Triennial Update at 12.

¹⁵ *Id.* at 10.

the market power analysis based on the representations that it makes in the January 19 compliance filing, and thereby dismiss its rehearing request as moot, we reject Exelon's suggestion (made both in the January 19 compliance filing and its request for rehearing) that statements made in its 2003 Triennial Update were sufficient to address the affiliate abuse part of the market power analysis. Notwithstanding Exelon's arguments to the contrary, we find that Exelon failed to specifically address in its 2003 Triennial Update the affiliate abuse and reciprocal dealing part of the Commission's market-based rate analysis.¹⁶ In particular, Exelon's 2003 Triennial Update includes no cohesive argument addressing our affiliate abuse and reciprocal dealing concerns.

23. The burden is on Exelon to address specifically and clearly each part of the market-based rate analysis in its updated market power analysis. Exelon must make a demonstration of how it satisfies the affiliate abuse and reciprocal dealing part of the analysis, as well as the other parts of the market power analysis, each time it files an updated market power analysis. It did not do this in the 2003 Triennial Update. Instead, although the 2003 Triennial Update addresses generation market power, transmission market power, and other barriers to entry, it does not specifically address affiliate abuse and reciprocal dealing.

24. Exelon's attempt after the fact to point to various statements in its 2003 Triennial Update that it asserts would support a showing that it satisfies the Commission's concerns regarding affiliate abuse and reciprocal dealing is not sufficient. The burden is not on the Commission to cull through Exelon's 2003 Triennial Update along with its assorted attachments in order to identify evidence that, if pieced together, might support a finding that Exelon has addressed the affiliate abuse and reciprocal dealing part of the Commission's market power analysis standard.

25. On this basis, we reject Exelon's argument that other statements in the 2003 Triennial Update that make reference to protections enjoyed by the ComEd and PECO customers were sufficient to satisfy its burden to address the affiliate abuse and reciprocal dealing part of the analysis. First, the statements cited by Exelon from the 2003 Triennial Update and the affidavit as support for its argument that it addressed

¹⁶ We agree with Exelon that, consistent with the May 15 Order, it was not required to address the affiliate abuse and reciprocal dealing part of the analysis when it filed its September 2004 update to its pending triennial to the extent that the factual circumstances had not changed from those described in the 2003 Triennial Update. However, as we found in the July 5 Order and reaffirm here, the 2003 Triennial Update failed to specifically address the affiliate abuse and reciprocal dealing part of the analysis.

the affiliate abuse part of the analysis appear in the discussion of generation market power. Second, as presented in the 2003 Triennial Update, none of these statements are offered to address the affiliate abuse and reciprocal dealing part of the analysis. Instead, Exelon would have the Commission find that certain statements buried in the context of the generation market power discussion of its 2003 Triennial Update are adequate to also address the affiliate abuse and reciprocal dealing part of the analysis. We will not do so. As noted above, Exelon must make a separate demonstration of how it satisfies the affiliate abuse and reciprocal dealing part of the analysis. As discussed above, we conclude that Exelon subsequently did make such a demonstration in the January 19 compliance filing.

26. In Order No. 664, the Commission stated that it intends to no longer grant waivers of the full requirements of Part 45 in its orders granting market-based rate authority. Rather, persons seeking to hold interlocking positions will be required henceforth to comply with the full requirements of Part 45.¹⁷ With respect to an individual who currently is authorized to hold interlocking positions, that individual will not need to refile under the full requirements of Part 45 to continue to hold such interlocking positions (unless and until that individual assumes different or additional interlocking positions).¹⁸ Thus, consistent with Order No. 664, Exelon will be required to comply with the full requirements of Part 45.

The Commission orders:

- (A) Exelon's compliance filings are accepted, as discussed in the body of the order.
- (B) Exelon's request for rehearing of the July 5 Order is dismissed as moot, as discussed in the body of this order.
- (C) Exelon's revised tariff sheets are hereby accepted for filing, with the designations and effective dates requested.
- (D) Exelon will be required to comply with the full requirements of Part 45.

¹⁷ *Commission Authorization to Hold Interlocking Positions*, Order No. 664, 70 Fed. Reg. 55,717 (September 23, 2005), FERC Stats. & Regs. ¶ 31,194 (2005), *order on reh'g*, Order No. 664-A, 114 FERC ¶ 61,142 (2006).

¹⁸ *Id.* at P 36.

(E) The section 206 proceeding in Docket No. EL05-132-000 is hereby terminated, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.