

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Market Based Rates for Public Utilities

Docket No. RM04-7-000

SUPPLEMENTAL NOTICE OF AGENDA  
FOR TECHNICAL CONFERENCE

(January 21, 2005)

The attachment to this supplemental notice provides additional information concerning the January 27 and 28, 2005 technical conference in the above-captioned rulemaking proceeding on market-based rates. (See December 22, 2004 Notice of Technical Conference.) The conference will begin at 9:00 a.m. (EST) and will conclude at approximately 4:30 p.m. and will be convened in the Commission Meeting Room at the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. Members of the Commission will attend the conference. All interested persons are invited to attend. Microphones will be available to enable those in the audience to participate in the discussion.

The topic of the conference will be issues associated with generation market power and affiliate abuse, two of the four prongs the Commission uses to determine market power for purposes of reviewing applications for market based rate authorization by electric public utilities. The first day of the conference will consider whether, and if so to what extent, the Commission should modify the interim generation market power screens adopted by the Commission and the appropriate mitigation for those found to have generation market power.<sup>1</sup> Participants are also encouraged to address whether the Commission should retain the provisions in part 35.27(a) of its regulations that exempt generation units built after July 9, 1996 from the requirement to demonstrate a lack of market power. The second day of the technical conference will address issues of affiliate abuse and reciprocal dealing, including any mitigation measures the Commission should consider.

Transcripts of the conference will be immediately available from Ace Reporting Company (202-347-3700 or 1-800-336-6646) for a fee. They will be available for the public on the Commission's eLibrary system seven calendar days after FERC receives the transcripts. Additionally, Capitol Connection offers the opportunity for remote listening of the conference via the Internet or a Phone Bridge Connection for a fee. Interested persons should make arrangements as soon as possible by visiting the Capitol

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<sup>1</sup> American Electric Power Marketing, Inc., 107 FERC ¶ 61,018 (2004), *order on reh'g*, 108 FERC ¶ 61,026 (2004).

Connection website at <http://www.capitolconnection.gmu.edu> and clicking on "FERC."  
If you have any questions contact David Reininger or Julia Morelli at the Capitol Connection (703-993-3100).

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an email to [accessibility@ferc.gov](mailto:accessibility@ferc.gov) or call toll free (866) 208-3372 (voice) or 202-208-1659 (TTY), or send a FAX to 202-208-2106 with the required accommodations.

For more information about the conference, please contact Kelly Perl at 202-502-6421 or [kelly.perl@ferc.gov](mailto:kelly.perl@ferc.gov).

Magalie R. Salas  
Secretary

**Attachment**

**Technical Conference on Generation Market Power and Affiliate Abuse  
Issues  
January 27-28, 2005  
9:00 A.M. – 4:30 P.M.**

Panelists will each be asked to address issues among the following in an overview prepared statement. The panelists' statements will be followed by questions and general discussion:

**Generation Market Power, January 27, 2005**

**Morning Panel:** Should the interim generation market power screens and approach to mitigation be retained? If not, how should they be revised, or what should replace them?

- a. Issues concerning application of the screens, including data issues, such as using seasonal capacity instead of nameplate capacity; ways to effectively use historical data; use of market behavioral data (e.g. sales) from sources such as the EQR to support the screen findings, and issues concerning the simultaneous import limit test (including its verification with OASIS data).
- b. Should the 20 percent threshold for passing the indicative market share screens be a bright line test?
- c. If a company does not pass the screens, are there alternatives to performing a Delivered Price Test or using historical data that would be appropriate to use in measuring whether an entity has generation market power?
- d. Do there exist situations where a company passes the screens but generation market power is still a concern?
- e. Should the generation market power screens be extended to cover capacity and generation based ancillary services, such as reserves and regulation?
- f. Should the Commission limit the number of market based rate authorizations for each corporate family? If not, should the Commission require that triennial review filings include an analysis of all affiliates with market based rate authority?
- g. Should the Commission retain the provisions in part 35.27(a) of its regulations that exempt generation units built after July 9, 1996 from the requirement to demonstrate a lack of market power?

**Panelists**

1. Louis Jahn, Director, Wholesale Market Policy, Edison Electric Institute
2. James Bushnell, Research Director, University of California Energy Institute
3. J. Stephen Henderson, Vice President, Charles River Associates

4. Julia Frayer, Managing Director, London Economics International, LLC
5. Denise Goulet, Senior Assistant Consumer Advocate, Pennsylvania Office of the Consumer Advocate
6. Mark Hegedus, Of Counsel, Spiegel & McDiarmid, representing APPA and TAPS

**Afternoon Panel:** Defining regional markets and appropriate mitigation for those that are found to have market power. This panel will address the issue of how best to define the geographic scope of electricity markets outside of RTOs or ISOs, and whether the Commission should analyze the competitiveness of the market rather than whether individual firms have market power. Such an approach holds the potential for using consistent data for applicants in the same region/market, obtaining more accurate results, and saving administrative costs for the Commission and market participants.

- a. What are the advantages and disadvantages of using a regional market approach? What would be required to implement it?
- b. What factors should be considered at the screen stage to demonstrate that the relevant geographic market is broader than a control area?
- c. What elements do buyers believe are necessary for a market to be competitive?
- d. Can a competitive market finding be compatible with a finding that competitors possess market power?
- e. If a region is found to be non-competitive, how will the interests of buyers and sellers that do not possess market power be protected?
- f. What types of generation market power mitigation should the Commission consider besides cost-based rates?

#### Panelists

1. Michael S. Wroblewski, Assistant General Counsel, Federal Trade Commission
2. Mathew J. Morey, Christensen Associates, representing NRECA
3. Michael Beer, Vice President, Federal Regulation & Policy, LG&E Energy, LLC
4. David Mills, Director of Power and Gas Supply Operations, Puget Sound Energy
5. Robert Stibolt, Senior Vice President, Tractabel North America, representing EPSA
6. Julie Solomon, Vice President, Charles River Associates

**Affiliate Abuse and Reciprocal Dealing: January 28, 2005**

**Morning Panel:** Are current regulations and enforcement that the Commission uses to address affiliate abuse and reciprocal dealing adequate? Are there other factors the Commission should consider when granting market-based rate authority?

- a. What should be the focus of the Commission's affiliate abuse policies: protecting competition in the wholesale market; wholesale captive customers only; wholesale and retail captive customers?
- b. The Code of Conduct: how does it aid in preventing affiliate abuse? What are its strengths and weaknesses? Who should be required to file it? Have past waivers of the Code of Conduct led to instances of affiliate abuse? Should the Code of Conduct contain additional provisions?
- c. Affiliate section 205 filings: are they effective in preventing affiliate abuse and a reasonable means of doing so?
- d. Are the three *Edgar* prongs effective criteria in mitigating and preventing affiliate abuse? Are competitive solicitations a feasible and reasonable means to ensure a level playing field?
- e. Do even legitimate affiliate dealings impede the development of competitive wholesale markets?

**Panelists**

1. R. Alan Kelley, Senior Vice President of Generation, Ameren Corporation
2. Robert M. "Bert" Garvin, Commissioner, Wisconsin Public Service Commission
3. Mathew J. Morey, Christensen Associates, representing NRECA
4. David DeRamus, Partner and Vice President, Bates White, LLC
5. Terry Huval, Director, Lafayette Utilities System, representing TAPS

**Afternoon Panel:** What can the Commission do to lessen the prospect of affiliate abuse and reciprocal dealing?

- a. As markets and companies expand, should the Commission be concerned with improper affiliate relationships between utilities? Utility and control area operator?
- b. To what extent is reciprocal dealing occurring, where the sale of one good is contingent upon the purchase of another, and how can the Commission monitor for it effectively?
- c. How can the Commission make better use of data to determine whether affiliate abuse has occurred?
- d. To what degree should the Commission rely upon structural rules and to what degree should the Commission rely upon behavioral rules to address affiliate abuse?
- e. Can or should enforcement efforts be expanded?

#### Panelists

1. Steve Corneli, Vice President of Regulatory Affairs, NRG Energy, Inc., representing EPSA
2. Ed Comer, General Counsel, Edison Electric Institute
3. Jan Smutny-Jones, Executive Director, Independent Energy Producers Association
4. Dennis Eicher, President, Power System Engineering
5. Allen Freifeld, Commissioner, Maryland Public Service Commission