

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Generation, LLC	Docket Nos. ER99-3693-001 ER99-3693-002
EME Homer City Generation, L.P.	ER99-666-002 ER99-666-003
Edison Mission Marketing & Trading, Inc.	ER99-852-006 ER99-852-007
Midwest Generation Energy Services, LLC	ER03-30-001
CP Power Sales Twelve, L.L.C.	ER99-893-007 ER99-893-008
CP Power Sales Seventeen, L.L.C.	ER99-4229-005 ER99-4229-006
CP Power Sales Nineteen, L.L.C.	ER99-4228-005 ER99-4228-006
CP Power Sales Twenty, L.L.C.	ER99-4231-004 ER99-4231-005

ORDER ACCEPTING UPDATED MARKET POWER ANALYSIS

(Issued April 14, 2005)

1. In this order we accept an updated market power analysis filed by Edison Mission Energy (EME), on behalf of its wholly-owned public utility subsidiaries Midwest Generation, LLC (Midwest Generation), EME Homer City Generation, L.P. (EME Homer City), Edison Mission Marketing & Trading, Inc. (Edison Mission), Midwest Generation Energy Services, LLC (Midwest Generation Energy Services), CP Power

Sales Twelve, L.L.C. (CPS Twelve), CP Power Sales Seventeen, L.L.C. (CPS Seventeen), CP Power Sales Nineteen, L.L.C. (CPS Nineteen), and CP Power Sales Twenty, L.L.C. (CPS Twenty) (collectively referred to as the EME Companies). As discussed below, we conclude that, with the tariff modification directed herein, the EME Companies satisfy the Commission's standards for market-based rate authority. This order benefits customers by reviewing the conditions under which market-based rate authority is granted, thus ensuring that the prices charged for jurisdictional sales are just and reasonable. The EME Companies' next updated market power analysis is due three years from the date of this order.

### **Background**

2. The EME Companies state that Midwest Generation is a wholly-owned subsidiary of EME formed for the purpose of acquiring and operating certain plants divested by Commonwealth Edison Company (Com Ed). The Commission approved the transfer of jurisdictional assets associated with the sale of these facilities by ComEd to Midwest Generation.<sup>1</sup> The EME Companies state that Midwest Generation owns or controls approximately 7,583 MW of former ComEd generation in the Pennsylvania-New Jersey-Maryland (PJM) market.
3. The EME Companies state that EME Homer City leases and operates a 2,012 MW facility located in Indiana County, Pennsylvania in the PJM market.
4. The EME Companies state that Edison Mission is a power marketer that does not own any generation facilities, however, Edison Mission holds contractual rights to the uncommitted energy from the generating facilities of Midwest Generation and EME Homer City.
5. The EME Companies state that Midwest Generation Energy Services is a power marketer that was authorized to engage in the sale of electricity at market-based rates effective September 23, 1999. According to the submittal Midwest Generation Energy Services has not engaged in any sale or purchase of energy since being granted market-based rate authority.
6. EME states that the Commission has authorized CPS Twelve, CPS Seventeen, CPS Nineteen, and CPS Twenty to engage in the sale of electricity at market-based rates and that none of these companies own or control any generation or transmission facilities nor have they engaged in any sale or purchase of energy since being granted market-based rate authority.

---

<sup>1</sup> See *Commonwealth Edison Co.*, 89 FERC ¶ 62,105 (1999).

7. The EME Companies state that they are affiliated with Southern California Edison Company, a franchised public utility located in the California Independent System Operator Corporation (CAISO).

8. On April 1, 2002, the EME Companies filed an updated market power analysis including a supply margin assessment of generation market power pursuant to the Commission's orders granting the EME Companies authority to sell electric energy and capacity at market-based rates.<sup>2</sup> In that filing, the EME Companies stated that they satisfy the Commission's standards for generation market power, transmission market power, barriers to entry, and affiliate abuse or reciprocal dealing.

9. On November 9, 2004, as amended November 18, 2004<sup>3</sup>, the EME Companies submitted for filing a revised updated market power analysis, pursuant to the Commission's order issued on May 13, 2004.<sup>4</sup> The May 13 Order addressed the procedures for implementing the generation market power analysis that the Commission announced on April 14, 2004, and clarified on July 8, 2004.<sup>5</sup>

10. We note that in the November 9, 2004 submittal, the EME Companies also filed amendments to each of the EME Companies' respective market-based rate tariffs to incorporate the Commission's market behavior rules.<sup>6</sup>

### **Notice and Responsive Pleadings**

11. Notice of the EME Companies' April 1, 2002 filing was published in the *Federal Register*, 67 Fed. Reg. 17,986 (2002), with protests and interventions due on or before April 22, 2002. Exelon Generation Company, LLC (Exelon GenCo) and its affiliate ComEd together submitted a motion to intervene. The Illinois Commerce Commission (Illinois Commission) filed comments regarding the filing submitted by the EME

---

<sup>2</sup> *Oswego Harbor Power LLC*, 88 FERC ¶ 61,219 (1996), *EME Homer City Generation, L.P.*, 86 FERC ¶ 61,016 (1999), *Edison Mission Mktg. & Trading, Inc.*, 86 FERC ¶ 61,072 (1999); *CP Power Sales Nineteen, L.L.C.* Docket Nos. ER99-4228-000, *et al.* (unpublished delegated letter order); *CL Power Sales Fifteen, L.L.C.*, Docket Nos. ER99-890-000 (unpublished delegated letter order).

<sup>3</sup> On November 18, 2004, EME submitted CD's containing the workpapers to each of the market power analyses submitted on November 9, 2004.

<sup>4</sup> *Acadia Power Partners, LLC*, 107 FERC ¶ 61,168 (2004) (May 13 Order).

<sup>5</sup> *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004) (July 8 Order).

<sup>6</sup> *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorization*, 105 FERC ¶ 61,218 (2003), *order on reh'g*, 107 FERC ¶ 61,175 (2004).

Companies. The Illinois Commission requested that the Commission: 1) allow the EME Companies to continue making sales at market-based rates conditioned on the requirement that one of the EME Companies, Edison Mission, file an updated market power analysis whenever the generation capacity under its control exceeds 5,000 MW and the transmission facilities of ComEd are not under the control of a Commission-approved RTO subject to Commission approved market-monitoring and mitigation; 2) require Edison Mission to file a market power analysis a minimum of three months prior to the expiration of the contracts between Exelon Gen Co and Midwest Generation on the basis that the expiration of these contracts could significantly affect the amount of generation under the control of Edison Mission, 3) require Edison Mission to notify both the Commission and the Illinois Commission if, and when, Exelon GenCo releases any contracted capacity; and 4) require Edison Mission to recalculate its supply margin assessment using the simultaneous import capacity figure of 3,000 MW.

12. Notice of the EME Companies' November 9, 2004 filing was published in the *Federal Register*, 69 Fed. Reg. 68,894 (2004), with protests and interventions due on or before November 26, 2004. None was filed.

## **Discussion**

### **Procedural Matters**

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

### **Market-Based Rate Authorization**

14. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, market power in generation and transmission and cannot erect other barriers to entry. The Commission also considers whether there is evidence of affiliate abuse or reciprocal dealing.<sup>7</sup>

15. As discussed below, with the tariff modification directed herein, the Commission concludes that the EME Companies satisfy the Commission's standards for market-based rate authority.

---

<sup>7</sup> See, e.g., *Progress Power Marketing, Inc.*, 76 FERC ¶ 61,155 at 61,919 (1996); *Northwest Power Marketing Co., L.L.C.*, 75 FERC ¶ 61,281 at 61,899 (1996); accord *Heartland Energy Services, Inc.*, 68 FERC ¶ 61,223 at 62,062-63 (1994).

### **Generation Market Power**

16. In the April 14 Order, the Commission adopted two indicative screens for assessing generation market power, the pivotal supplier screen and the wholesale market share screen. The EME Companies state they have prepared the pivotal supplier and the wholesale market share screens for the PJM market where Midwest Generation and EME Homer City are located, for the New York Independent System Operator market (NYISO) to which EME Homer City is interconnected via transmission lines partially owned by New York State Electric and Gas Corporation and, to be conservative, for the ISO New England, Inc. (ISO-NE) market in which certain CPS entities purchase and resell power under long-term contracts.

17. The EME Companies state that although the Commission's new rules require that the applicants file an analysis using the most recent complete set of historical data, the EME Companies have computed the indicative screens using 2003 data, but also have reflected two events that occurred in 2004. The EME Companies state their analysis reflects the expansion of PJM in October of 2004 to include American Electric Power (AEP) and Dayton Power and Light (DP&L). The EME Companies' analysis also reflects the termination of two long-term sales contracts that expired in December 2004. The Commission finds that including AEP and DP&L represents current conditions in PJM, and exclusion of the long-term sales contracts is a conservative assumption resulting in greater uncommitted capacity controlled by the EME Companies, therefore, the EME Companies' assumptions are acceptable.

18. The EME Companies also state that they do not include Dominion Virginia Power or Duquesne Light as part of the PJM market even though they may integrate with PJM in January of 2005.

19. The Commission has reviewed the EME Companies' generation market power screens and has determined that the EME Companies pass the screens in the PJM, ISO-NE, and NYISO markets. Accordingly, the Commission finds that the EME Companies satisfy the Commission's generation market power standard for the grant of market-based rate authority.

20. With regard to the Illinois Commission's April 2002 comments, we note that the Commission requires that applicants timely report any change in status that would reflect a departure from the characteristics the Commission initially relied upon in granting market-based rate authority.<sup>8</sup> Specifically, the Commission has concluded that market-

---

<sup>8</sup> *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 (2005) (Change in status order).

based rate sellers must report as a change in status each cumulative increase in generation of 100 MW or more that has occurred since the most recent notice of a change in status filed by that seller.<sup>9</sup> The Commission also stated that reports of changes in status must be filed no later than 30 days after the legal or effective date of the change in status. Further, the April 14 Order requires that transmission providing utilities seeking to obtain or retain market-based rate authority provide a simultaneous import capability study for its home control area and directly interconnected first-tier markets.<sup>10</sup> Therefore, the Commission finds that the Illinois Commission's comments are already addressed by the Commission's change in status reporting requirement and the indicative screens adopted in the April 14 Order.

### **Transmission Market Power**

21. The EME Companies state that neither the EME Companies nor their affiliates own or control any transmission facilities, other than limited interconnection facilities which cannot be used by competitors in the wholesale market. Further, no intervenors have raised transmission market power issues. Based on the EME Companies' representation, the Commission finds that the EME Companies satisfy the Commission's transmission market power standard for the grant of market-based rate authority.

### **Other Barriers to Entry**

22. The EME Companies state that neither the EME Companies nor their affiliates own or control any resources or inputs to power generation that could impede potential competition. The EME Companies state that they are aware that, consistent with Commission precedent, should the EME Companies or any of their affiliates deny, delay or require unreasonable terms, conditions or rates for fuel or services to potential electric competitors in bulk power markets, the Commission could suspend the EME Companies' authority (or that of any affiliate) to sell power at market-based rates. In addition, no intervenors have raised barrier to entry concerns. Based on the EME Companies' representations, the Commission is satisfied that the EME Companies cannot erect barriers to entry.

### **Affiliate Abuse**

23. The EME Companies state that their franchised public utility affiliate Southern California Edison Company operates in the Western Interconnection and that the EME Companies' market-based rate tariffs include a specific prohibition on the sale of power to, or purchase of power from, affiliated entities absent separate Commission approval

---

<sup>9</sup> See *Change in status order*, P 68.

<sup>10</sup> See *April 14 Order*, at P 86.

under section 205 of the Federal Power Act (FPA). The EME Companies further state that the EME Companies have adopted a code of conduct that conforms to the Commission's requirements for affiliates of franchised utilities and that these tariff and code of conduct provisions eliminate any concern over affiliate abuse or reciprocal dealing. In addition, no intervenors have raised affiliate abuse concerns.

24. The Commission's review of the EME Companies' market-based rate tariffs reveals that the EME Homer City tariff does not state that EME Homer City will not make sales to its affiliates "without first receiving" Commission authorization of the transaction under section 205 of the FPA. Therefore, consistent with Commission precedent, EME Homer City is directed to make a compliance filing within 30 days of the date of issuance of this order to revise its market-based rate tariff to include such language.<sup>11</sup> Based on the representations of the EME Companies, and subject to the tariff revision we direct herein, the Commission finds that the EME Companies satisfy the Commission's concerns with regard to affiliate abuse.

### **Reporting Requirements**

25. Consistent with the procedures the Commission adopted in Order No. 2001, an entity with market-based rates must file electronically with the Commission an Electric Quarterly Report containing: (1) a summary of the contractual terms and conditions in every effective service agreement for market-based power sales; and (2) transaction information for effective short-term (less than one year) and long-term (one year or greater) market-based power sales during the most recent calendar quarter.<sup>12</sup> Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.<sup>13</sup>

26. The EME Companies must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in

---

<sup>11</sup> *Aquila Inc.*, 101 FERC ¶ 61,331 at P12 (2002).

<sup>12</sup> *Revised Public Utility Filing Requirements*, Order No. 2001, 67 Fed. Reg. 31,043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127 (2002). Required data sets for contractual and transaction information are described in Attachments B and C of Order No. 2001. The Electric Quarterly Report must be submitted to the Commission using the EQR Submission System Software, which may be downloaded from the Commission's website at <http://www.ferc.gov/docs-filing/eqr.asp>.

<sup>13</sup> The exact dates for these reports are prescribed in 18 C.F.R. § 35.10b (2004). Failure to file an Electric Quarterly Report (without an appropriate request for extension), or failure to report an agreement in an Electric Quarterly Report, may result in forfeiture of market-based rate authority, requiring filing of a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

granting market-based rate authority.<sup>14</sup> 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. Accordingly, the EME Companies are directed, within 30 days of the date of issuance of this order, to revise their market-based rate tariffs to incorporate the following provision:

[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.

27. The EME Companies are directed to file an updated market power analysis within three years of the date of this order, and every three years thereafter. The Commission also reserves the right to require such an analysis at any intervening time.

The Commission orders:

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

(B) The EME Companies' next updated market power analysis is due within three years of the date of this order.

(C) The EME Companies are directed, within 30 days of the date of issuance of this order, to revise their market-based rate tariffs to include the change in status reporting requirement adopted in Order No. 652.

(D) EME Homer City is directed, within 30 days of the date of issuance of this order, to revise the affiliate sales prohibition language in its tariff.

---

<sup>14</sup> *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 (2005).

(E) The EME Companies' revised tariff sheets incorporating the market behavior rules are accepted for filing effective December 17, 2003.

By the Commission.

( S E A L )

Linda Mitry,  
Deputy Secretary.