

111 FERC ¶ 61,079
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

AES Huntington Beach, LLC	Docket Nos. ER98-2184-006 ER98-2184-007
AES Alamitos, LLC	ER98-2185-006 ER98-2185-007
AES Redondo Beach, LLC	ER98-2186-006 ER98-2186-007
AES Placerita, Inc.	ER00-33-003 ER00-33-005 ER00-1026-006
Indianapolis Power & Light Co.	ER00-1026-008 ER00-1026-010
AES Red Oak, L.L.C.	ER01-2401-002
Condon Wind Power, LLC	ER02-305-004

ORDER ACCEPTING UPDATED MARKET POWER ANALYSES
AND PROVIDING GUIDANCE ON THE SCOPE OF COMPLIANCE FILINGS

(Issued April 18, 2005)

1. In this order we accept the updated market power analyses filed by the subsidiaries of AES Corporation (AES): AES Huntington Beach, LLC (AES Huntington); AES Alamitos, LLC (AES Alamitos); AES Redondo Beach, LLC (AES Redondo); AES Placerita, Inc. (AES Placerita); AES Red Oak, L.L.C. (AES Red Oak); Indianapolis Power & Light Co. (IPL); and one company that may become an indirect subsidiary of AES: Condon Wind Power, LLC (Condon) (collectively, Applicants). As discussed below, we conclude that, with the tariff modifications directed herein, all of the

Applicants satisfy the Commission's standards for market-based rate authority. We also accept revisions to the market-based rate tariffs of AES Huntington, AES Alamitos, AES Redondo, AES Placerita, (collectively, AES California companies) and AES Red Oak to include the Commission's market behavior rules.¹ 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. Each entity's next updated market power analysis is due three years from the date of this order.

2. In this order, we reject as outside the scope of the compliance filings of AES Huntington, AES Alamitos, AES Redondo, and AES Red Oak certain proposed tariff revisions that they included with their updated market power analyses.

Background

3. AES Corporation is the parent company of the AES California companies, AES Red Oak, and an affiliate of IPL and Condon. The AES California companies own capacity located within the California Independent System Operator Corporation (CAISO) market. AES Red Oak owns capacity located within the Pennsylvania-New Jersey-Maryland (PJM) market and Condon owns generation located in the Bonneville Power Administration control area.

4. On May 7, 2001, AES Huntington, AES Alamitos, and AES Redondo filed an updated market power analysis pursuant to the Commission's order granting them authority to sell electric energy and capacity at market-based rates.² On November 22, 2002, AES Placerita filed an updated market power analysis pursuant to the Commission's order granting it authority to sell electric energy and capacity at market-based rates.³

5. On October 5, 2004, the AES California companies filed updated market power analyses in Docket Nos. ER98-2184-007, ER98-2185-007, ER98-2186-007, and ER00-33-005 pursuant to the Commission's order issued May 13, 2004.⁴ The May 13

¹ *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 (2004).

² *AES Huntington Beach, LLC*, 83 FERC ¶ 61,100 (1998).

³ Commission Letter Order, 89 FERC ¶ 61,202 (1999).

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

Order addressed the procedures for implementing the generation market power analysis announced on April 14, 2004, and clarified on July 8, 2004.⁵ All four entities filed the same market power analysis.

6. AES Huntington, AES Alamitos, and AES Redondo, also submitted revisions to their respective market-based rate tariffs to reflect a change in corporate affiliations and to modify the tariff language regarding ancillary services. As discussed below, we reject these as beyond the scope of their previously-directed compliance filings. Furthermore, we put the industry on notice that, consistent with Commission precedent, any such market-based rate tariff revisions that are beyond the scope of Commission-directed compliance filings will be deemed automatically rejected at the time of filing.

7. AES Red Oak is an 818 MW gas-fired combined cycle unit located in New Jersey in the PJM market. On November 22, 2004, AES Red Oak filed an updated market power analysis in Docket No. ER01-2401-002 pursuant to the Commission's November 20, 2001 Letter Order accepting AES Red Oak's market-based rate tariff. AES Red Oak also submitted a revision to its market-based rate tariff to include the market behavior rules.

8. AES Red Oak also amended its market-based rate tariff to reflect a change in corporate affiliations and to remove an ancillary services market. These changes, as noted elsewhere in this order are beyond the scope of a previously-directed compliance filing and are rejected.

9. On October 28, 2003, IPL filed an updated market power analysis pursuant to the Commission's order granting IPL authority to sell electric energy and capacity at market-based rates.⁶

10. On November 9, 2004, as amended February 8, 2005, IPL submitted for filing a revised updated market power analysis pursuant to the Commission's May 13 Order.

11. IPL states that it is principally engaged in the generation, transmission, and distribution of electric power to retail customers in central Indiana and is located within the Midwest ISO. IPL owns three primarily coal-fired generating stations and additional gas-fired peaking plants with a total nameplate generating capacity of 3,548 MW.

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

⁶ *Indianapolis Power & Light Co.*, 90 FERC ¶ 61,180 (2000).

IPL states that it has turned over operational control of its transmission facilities to the Midwest ISO. The Commission has previously accepted the market behavior rules for IPL.⁷

12. Condon is a 49.8 MW wind facility located in Condon, Oregon. Condon filed notice on January 12, 2005 that AES may acquire an indirect ownership interest in Condon of 38.9 percent.⁸ To date, Condon has not informed the Commission that this acquisition has taken place.

13. In a filing submitted January 26, 2005, Condon states that it presents an updated market power analysis. The January 26 submittal appears to refer to a filing submitted by Condon on January 12, 2005 in Docket Nos. ER02-305-003 and ER05-442-000 which addressed, among other things, its acquisition by an affiliate of AES and related market power issues.⁹

Notice and Responsive Pleadings

14. Notice of AES Huntington's, AES Alamitos', and AES Redondo's May 7, 2001 filings was published in the *Federal Register*, 66 Fed. Reg. 27,641 (2001) with protests and interventions due on or before May 29, 2001. Timely motions to intervene, along with protests and some motions for immediate suspension and termination of market-based rate authority, were filed by the CAISO; Duke Energy North America, LLC and Duke Energy Trading & Marketing, LLC; the City and County of San Francisco (San Francisco); the People of the State of California *ex. rel.* Bill Lockyer; the California

⁷ *Acadia Power Partners, LLC*, Docket No. ER03-1372-001 (March 29, 2004) (unpublished Letter Order).

⁸ This notice was accepted for filing on February 23, 2005 by a delegated letter order in several dockets including Docket No. ER02-305-002. On February 18, 2005, in Docket No. EC05-36-000, the disposition of jurisdictional facilities was authorized by delegated letter order. *AES Western Wind, LLC, Condon Wind Power, LLC, SeaWest Holdings, Inc.*, 110 FERC ¶ 62,155 (2005).

⁹ Condon's notice of change in status and tariff amendments in Docket Nos. ER05-442-000 and ER02-305-003 were accepted for filing in an unpublished letter order dated February 23, 2005. Among other things, the tariff amendments included the market behavior rules and a code of conduct. Condon also included a provision prohibiting sales of energy, capacity, or ancillary services to affiliates with a franchised service territory.

Electricity Oversight Board (CEOB); the Public Utilities Commission of the State of California (CPUC); and the Pacific Gas & Electric Company (PG&E) and Southern California Edison Company (SoCal Edison).

15. CAISO argues that AES Huntington's, AES Alamitos', and AES Redondo's market power must be analyzed in conjunction with capacity owned by AES sold under long-term contract to Williams Energy Marketing and Trading Company (Williams). PG&E and SoCal Edison argue that the Commission should either reject the May 7, 2001 filing or revoke AES Huntington's, AES Alamitos', and AES Redondo's market-based rates based in part on the insufficiency of the Commission's hub-and-spoke test for generation market power. The CPUC argues that retention of the flawed hub-and-spoke model as the sole criterion for authorizing market-based rates would be arbitrary and capricious given the situation in California. CEOB states that given the long-term contract with Williams and William's exercise of market power, the Commission should suspend AES Huntington's, AES Alamitos', and AES Redondo's market-based rate authority. San Francisco states that if the Commission finds that AES Huntington's, AES Alamitos', and AES Redondo's market analyses comply with its test for market dominance, then the Commission's hub-and-spoke test is not a true indicator of market power in the California market.

16. Notice of AES Huntington, AES Alamitos, and AES Redondo's October 5, 2004 filings were published in the *Federal Register*, 69 Fed. Reg. 61,367 (2004), with protests and interventions due on or before October 26, 2004. On October 18, 2004, the California Electricity Oversight Board filed a motion to intervene raising no substantive comment. On November 8, 2004, SoCal Edison filed a motion to intervene out-of-time raising no substantive comments.

17. Notice of AES Placerita's November 22, 2002 Filing was published in the *Federal Register*, 67 Federal Register 79,597 (2002) with protests and interventions due on or before December 30, 2002. None was filed.

18. Notice of AES Placerita's October 5, 2004 Filing was published in the *Federal Register*, 69 Fed. Reg. 61,369 (2004), with protests and interventions also due on or before October 26, 2004. On October 18, 2004, the CEOB filed a motion to intervene raising no substantive comments. On November 8, 2004, SoCal Edison filed a motion to intervene out-of-time raising no substantive comments.

19. Notice of AES Red Oak's November 22, 2004 Filing was published in the *Federal Register*, 69 Fed. Reg. 70,437 (2004), with protests and interventions due on or before December 13, 2004. None was filed.

20. Notice of IPL's October 28, 2003 Filing was published in the *Federal Register*, 68 Fed. Reg. 64,331 (2003), with protests and interventions due on or before November 18, 2003. None was filed.

21. Notice of IPL's 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 30, 2004. None was filed.

22. Notice of IPL's February 8, 2005 Filing was published in the *Federal Register*, 70 Fed. Reg. 9,637 (2005), with protests and interventions due on or before March 1, 2005. None was filed.

23. Notice of Condon's January 26, 2005 Filing was published in the *Federal Register*, 70 Fed. Reg. 6,435 (2005), with protests and interventions due on or before February 16, 2005. None was filed.

Discussion

Procedural Matters

24. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to these proceedings. We will grant SoCal Edison's motion to intervene out-of-time given its interest, the early stage in the proceeding, and the absence of undue prejudice or delay.

Market-Based Rate Authorization

25. 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.¹⁰

¹⁰ 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).

26. As discussed below, the Commission concludes that AES Huntington, AES Alamitos, AES Redondo, AES Placerita, AES Red Oak, IPL, and Condon satisfy the Commission's standards for market-based rate authority with the tariff modifications directed herein.¹¹

Generation Market Power

27. 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.¹² The AES California companies have prepared indicative screens for the CAISO market. They state that almost all of their capacity is committed under long-term contracts, however, there are times when the AES California companies' generation is not entirely dispatched pursuant to long-term contracts, therefore the AES California companies state they have applied the indicative screens under the assumption that none of their capacity is under contract to third parties.

28. The Commission has reviewed the generation market power screen analyses of the AES California companies and has determined that they pass both the pivotal supplier and wholesale market share screens in the CAISO market. Accordingly, the Commission finds that the AES California companies satisfy the Commission's generation market power standard for the grant of market-based rate authority.

29. AES Red Oak owns and operates an 818 MW facility (Red Oak facility) located in Sayreville, New Jersey, the PJM market. AES Red Oak states that construction of the Red Oak Facility commenced in June 1999.

30. In addition to the Red Oak facility, AES owns Ironwood, a 778 MW facility located in Lebanon County, Pennsylvania, also in the PJM market. Construction of the Ironwood facility began in June 1999. All of the capacity from the Ironwood facility is committed under long-term contract through December 2021.

¹¹ With regard to the protests filed in response to AES Huntington, AES Alamitos, and AES Redondo's May 7, 2001 market power analysis, we note that the Commission has now abandoned the hub and spoke analysis, as discussed in the April 14, May 13, and July 8 Orders. As a result, the protest asserting that the hub and spoke analysis is inadequate is moot.

¹² *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (2004).

31. AES also owns AES Beaver Valley, L.L.C. (Beaver Valley) and AES Warrior Run, L.P. (Warrior Run). Beaver Valley is a 149 MW facility located in Pennsylvania and connected to the Duquesne Light Company's system which at the time of filing was not part of PJM, however, AES Red Oak states that it has conservatively included Beaver Valley in its analysis as part of the PJM market. Warrior Run is a 229 MW facility located in Maryland.

32. AES states that since the construction of the Red Oak and Ironwood facilities began post-July 9, 1996, Red Oak and Ironwood meet the Commission's section 35.27 exemption. However, since Beaver Valley and Warrior Run are both pre-1996 units AES has studied whether the Red Oak and Ironwood facilities' new capacity, when added to pre-July 9, 1996 capacity, raises generation market power concerns.

33. The Commission has reviewed the generation market power screens analysis of AES Red Oak and has determined that AES Red Oak passes both the pivotal supplier and wholesale market share screens in the PJM market. Accordingly, the Commission finds that AES Red Oak satisfies the Commission's generation market power standard for the grant of market-based rate authority.

34. In its November 9, 2004 Filing, IPL revised its pending updated market power analysis to comply with the Commission's April 14 and July 8 Orders. On February 8, IPL amended its November 9 Filing to use the Midwest ISO as the relevant geographic market for the purposes of the Commission's generation market power screens. In the February 8 Filing, IPL states that the results from this analysis confirm IPL's conclusion provided in the November 9, 2004 Filing that IPL passes both the pivotal supplier screen and wholesale market share screen in the Midwest ISO.

35. The Commission noted in the April 14 Order that once Midwest ISO becomes a single market and performs functions such as a central commitment and dispatch with Commission-approved market monitoring and mitigation, Midwest ISO would be considered to have a single geographic market for purposes of our generation dominance screens.¹³

¹³ Because the Midwest ISO became a single market and began performing the central commitment and dispatch functions with Commission-approved market monitoring and mitigation on April 1, 2005, we have used the Midwest ISO market as the geographic market for purposes of analyzing IPL's generation market power screens.

36. The April 14 Order stated, when performing the generation market power screens adopted, applicants located in ISO/RTOs with sufficient market structure and a single energy market may consider the geographic region under the control of the ISO/RTO as the default relevant geographic market for purposes of completing their analyses.

37. Finally, in the April 14 Order, the Commission stated that it is acceptable for an applicant to offer a simplifying assumption as long as it does not affect the underlying methodology utilized by our screens and would not change the results.¹⁴ As a simplifying assumption, IPL only considered itself and its first-tier markets located in the Midwest ISO when it performed the generation market power screens for the Midwest ISO market. The Commission has reviewed IPL's simplifying assumption and has determined that IPL passes the screens in the Midwest ISO market. Accordingly, the Commission finds that the IPL satisfies the Commission's generation market power standard for the grant of market-based rate authority.

38. In a January 12, 2005 Filing, Condon states it is owned by SeaWest Holdings (Seawest), along with three wind power projects that are located in the Western Electricity Coordinating Council market. Condon states that AES will be acquiring an indirect interest in a portion of all of these projects. In the January 12 Filing, Condon states that it owns and operates a wind power facility with a total maximum output of 49.8 MW located near Condon Oregon in the Bonneville Power Administration control area. Condon states that it does not control the output of the Condon facility and that the output is fully committed under long-term contract until 2022. Condon states that the output of the three wind projects owned by SeaWest is also committed under long-term contract until 2015. Condon asserts that since it does not own any uncommitted generation neither it nor its affiliates can exercise generation market power in the Bonneville Power Administration control area.

39. The Commission notes that Condon uses a streamlined process to address the Commission's concerns regarding generation market power. We also note that the acquisition of Condon by AES has not yet been consummated. Consistent with our practice, we have analyzed Condon's generation market power in this proceeding on a stand-alone basis.¹⁵ Based on Condon's representations that it has no uncommitted

¹⁴ April 14 Order, 107 FERC ¶ 61,018 at P 113-17 and 187.

¹⁵ See *Delmarva Power and Light Co.*, 76 FERC ¶ 61,331 at 62,582 (1996), *Consolidated Edison Energy, Inc.*, 83 FERC ¶ 61,236 at 62,033 (1998), and *Central and South West Services, Inc.*, 82 FERC 61,001 at 61,002 (1998).

capacity, the Commission has determined that Condon passes the indicative screens. Accordingly, based on these representations, Condon satisfies the Commission's generation market power standard for the grant of market-based rate authority.

Transmission Market Power

40. When a transmission-owning public utility seeks market-based rate authority, the Commission has required the public utility to have an open access transmission tariff (OATT) on file before granting such authorization.

41. The AES California companies state that they own only certain limited interconnection facilities, none of which could be used by another party to effectuate sales of electric energy, capacity, or ancillary services at wholesale. No intervenor has raised transmission market power concerns. Based on the AES California companies' representations, the Commission finds that the AES California companies satisfy the Commission's transmission market power standard for the grant of market-based rate authority.

42. IPL states that it has an OATT on file with the Commission.¹⁶ In addition, in 2001, the Commission approved the transfer of functional control over IPL's transmission system to the Midwest ISO.¹⁷ Further, no intervenor has raised transmission market power concerns. Based on IPL's representation, the Commission finds that IPL satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

43. AES Red Oak states that it does not own or control any transmission facilities other than certain limited interconnection facilities, none of which could be used by another party to effectuate sales of electric energy, capacity or ancillary services at wholesale. AES Red Oak states that accordingly it cannot exercise transmission market power. Based on AES Red Oak's representations, the Commission finds that AES Red Oak satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

44. Condon states that neither it nor the other SeaWest affiliates own transmission facilities other than limited interconnection facilities. Based on Condon's representations, the Commission finds that Condon satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

¹⁶ *Indianapolis Power and Light*, 90 FERC ¶ 61,180 (2000).

¹⁷ *Indianapolis Power & Light Co.*, 97 FERC ¶ 62,235 (2001).

Other Barriers to Entry

45. The AES California companies state they do not have control over sites or other scarce inputs into generation, do not engage in the manufacturing of electric equipment, do not have the ability to hinder the siting of generation plants or block others from siting new plants, or own or control resources that could impede potential competitors from gaining access to alternative generation suppliers. The AES California companies also state they do not own or control any natural gas distribution facilities or natural gas pipelines nor do they own or control, other than for their own uses, raw materials, fuels, emissions allowances, or other inputs needed to build or operate electric production, distribution, or transmission facilities. No intervenors have raised concerns regarding barriers to entry. Based on these representations, the Commission is satisfied that the AES California companies cannot erect barriers to entry.

46. AES Red Oak states that neither AES nor its affiliates own or control, other than for their own uses, raw materials, fuels, emissions allowances, or other inputs needed to build or operate electric production, distribution or transmission facilities. Nor do they engage in the manufacturing of electric equipment, have the ability to hinder the siting of generation plants or block others from siting new plants in PJM or own or control resources that could impede potential competitors from gaining access to alternative generation suppliers. AES Red Oak also states that neither AES Red Oak nor its affiliates control any natural gas distribution facilities or natural gas pipelines currently constructed and in operation and cannot foreclose competitors' procurement of fuel.¹⁸ No intervenor has raised concerns regarding barriers to entry. Based on these representations, the Commission is satisfied that AES Red Oak cannot erect barriers to entry.

47. IPL states that it does not control any barriers to entry or have control over generation sites. IPL states that land it holds might in the future support additional generating units; however, such ownership does not confer upon IPL or its affiliates the ability to prevent entry at other potentially suitable sites in the relevant market. The Commission notes that IPL states that its affiliate, AES Ocean Express, LLC, proposes to

¹⁸ AES Red Oak states that it is affiliated with Ocean Express, a gas pipeline that is to be built from the Bahamas to Florida. It states that the Commission has required Ocean Express to comply with the gas pipeline standards of conduct. *AES Ocean Express, LLC*, 103 FERC ¶ 61,030 at P 35 (2003). Thus, AES Red Oak states, even when constructed and operational, AES cannot erect barriers to entry that would prevent competitors from participating in the relevant geographic market. *Citing Virginia Electric and Power Co.*, 108 FERC ¶ 61,242 (2004).

construct a natural gas pipeline off the coast of Florida and will interconnect at the southern tip of Florida, but there is no potential geographic overlap between IPL (or its first-tier markets) and the region to be served by Ocean Express. No intervenor has raised concerns regarding barriers to entry. Based on IPL's representations, the Commission finds that IPL cannot erect barriers to entry.

48. Condon states that neither it nor its affiliates own or control key resources such as plant sites, fuel supply or transportation facilities that could allow Condon or its affiliates to impose barriers to market entry by other wholesale power suppliers in the relevant markets. Condon states that while SeaWest subsidiaries own wind power sites in connection with development activities, there is no shortage of such sites. No intervenor has raised concerns regarding barriers to entry. Based on these representations, the Commission is satisfied that Condon cannot erect barriers to entry.

Affiliate Abuse

50. The AES California companies state that there continues to be no likelihood of affiliate abuse with respect to the AES California companies and their affiliates. Each company states that its market-based rate tariff and code of conduct prohibits transactions with IPL, as well as with any other affiliate having a franchised electric service area. Further, the AES California companies state, in light of AES's sale of Central Illinois Light Company (CILCO), AES Huntington, AES Alamitos, AES Redondo, and AES Placerita have amended their respective tariffs to reflect that they are no longer affiliated with CILCO. No intervenors have raised affiliate abuse concerns.

51. Based on the representations of the AES California companies, the Commission finds that the AES California companies satisfy the Commission's concerns with regard to affiliate abuse.

52. AES Red Oak states that its market-based rate tariff and its code of conduct prohibit transactions with IPL and any other affiliate with a franchised electric service area. AES Red Oak states in light of AES's sale of CILCO, AES Red Oak has amended its tariff to reflect that it is no longer affiliated with CILCO and to conform to the codes of conduct previously filed by other AES affiliates. No intervenors have raised affiliate abuse concerns.

53. The Commission's review of AES Red Oak's market-based rate tariff reveals that the tariff does not state that AES Red Oak will not make sales to its affiliates "without first receiving" Commission authorization of the transaction under section 205 of the Federal Power Act (FPA). Therefore, consistent with Commission precedent, AES Red

Oak 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.¹⁹ Based on the representations of AES Red Oak and subject to the tariff revision we direct herein, we find that AES Red Oak satisfies the Commission's concerns with regard to affiliate abuse.

54. IPL states that it continues to comply with the code of conduct it has on file with the Commission which governs its relationship to its affiliates. IPL further states that IPL's relationships with its affiliates, the AES California companies and AES Red Oak, have not substantially increased the potential for affiliate abuse or reciprocal dealing because IPL operates in a different geographic market. No intervenor has raised concerns regarding affiliate abuse with regards to IPL.

55. The Commission's review of IPL's market-based rate tariff reveals that the tariff does not state that IPL 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, IPL 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.²⁰ Based on the representations of IPL and subject to the tariff revision we direct herein, we find that IPL satisfies the Commission's concerns with regard to affiliate abuse.

56. Condon asserts that it has submitted a code of conduct and tariff provisions that prohibit sales to and from affiliates such as IPL with a franchised service territory. Condon also states that pending the consummation of the acquisition by AES, it commits to abide by the requirements of the filed code of conduct²¹ In addition, no intervenor has raised concerns regarding affiliate abuse. Based on these representations, we find that Condon satisfies the Commission's concerns with regard to affiliate abuse.

Reporting Requirements

57. 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: (i) a summary of the contractual terms and conditions in every effective service agreement for market-based power sales; and (ii) transaction

¹⁹ *Aquila Inc.*, 101 FERC ¶ 61,331 at P 12 (2002).

²⁰ *Aquila Inc.*, 101 FERC ¶ 61,331 at P 12 (2002).

²¹ Filing of January 12, 2005 at p. 13.

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.²² Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.²³

58. Applicants 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.²⁴ 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 AES California companies, AES Red Oak, IPL, and Condon 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:

[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.

²² *Revised Public Utility Filing Requirements*, Order No. 2001, 67 Fed. Reg. 31,043 (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>.

²³ 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.

²⁴ *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).

Applicants 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.

**Policy on Issues Outside the Scope of Market-Based Rate
Tariff Compliance Filing**

59. The filing of updated market power analyses pursuant to Commission orders, as well as the filing of revisions to the utility's market-based rate tariff to incorporate the Commission's market behavior rules, the change in status reporting requirement, and compliance with Order No. 614, constitute compliance filings. As stated above, in the October 5, 2004 and November 22, 2004 compliance filings, AES Huntington, AES Alamitos, AES Redondo, and AES Red Oak provided updated market power analyses pursuant to the Commission's orders granting them market-based rate authority, as well as tariff revisions to incorporate the Commission's market behavior rules. However, AES Huntington, AES Alamitos, AES Redondo, and AES Red Oak also included in their compliance filings several other changes to their market-based rate tariffs that go beyond the scope of their compliance filings (e.g., revisions to the code of conduct and ancillary services provisions).

60. The Commission has long established that compliance filings must be limited to the specific directives ordered by the Commission. The purpose of a compliance filing is to make the directed changes and the Commission's focus in reviewing them is whether they comply with the Commission's previously stated directives.²⁵ In this instance, AES Huntington, AES Alamitos, AES Redondo, and AES Red Oak identified their October 5, 2004 and November 22, 2004 Filings as triennial updated market power analyses and stated that they had submitted these analyses pursuant to the various orders granting them market-based rate authorization; however, they included with the updated market power analyses changes to their market-based rate tariffs not directed by the underlying orders. Therefore, the Commission will reject these proposed changes to the AES Huntington, AES Alamitos, AES Redondo, and AES Red Oak market-based rate tariffs submitted with the October 5, 2004 and November 22, 2004 triennial updated market power

²⁵ *Pacific Gas and Electric Company*, 109 FERC ¶ 61,336 at P 5 (2004); *Midwest Independent Transmission System Operator, Inc.*, 99 FERC ¶ 61,302 at 62,264 (2002); *ISO New England, Inc.*, 91 FERC ¶ 61,016 at 61,060 (2000); *Sierra Pacific Power Company*, 80 FERC ¶ 61,376 at 62,271 (1997); *Delmarva Power & Light Company*, 63 FERC ¶ 61,321 at 63,160 (1993).

analysis filings as outside the scope of those compliance filings. We reaffirm that compliance filings must only provide the changes directed by the Commission. Accordingly, market-based rate tariff revisions that are beyond the scope of a Commission-directed compliance filing will be deemed automatically rejected at the time of filing.

The Commission orders:

(A) Applicants' updated market power analyses are hereby accepted for filing, as discussed in the body of this order.

(B) Applicants' next updated market power analyses are due within three years of the date of this order.

(C) Applicants are directed, within 30 days of the 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) AES Red Oak is directed, within 30 days of the issuance of this order, to revise the affiliate sales prohibition language in its tariff, as discussed in the body of this order.

(E) IPL is directed, within 30 days of the issuance of this order to revise the affiliate sales prohibition language in its tariff, as discussed in the body of this order.

(F) Applicants' revised tariff sheets incorporating the market behavior rules are accepted for filing effective December 17, 2003.

(G) AES Huntington, AES Alamitos, AES Redondo, and AES Red Oak's revised tariffs sheets, with the exception of those discussed in Ordering Paragraph (F) above, are rejected, as discussed in the body of this order.

(H) The Secretary is hereby directed to publish a copy of this order in the *Federal Register*.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.