

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Automated Power Exchange, Inc.

Docket No. ER03-559-002

ORDER DENYING APPLICATION FOR MARKET-BASED RATES

(Issued July 24, 2003)

1. This order denies a request by Automated Power Exchange, Inc. (APX) to sell energy and capacity at market-based rates into the California ISO's imbalance energy market. This order benefits customers by preventing the conflict of interest and possible market abuse raised by APX's proposal.

Background

2. On February 26, 2003, as amended on March 7, 2003, APX filed an application, under Section 205 of the Federal Power Act (FPA),¹ seeking: (1) authority for APX to engage in wholesale sales of electric power at market-based rates in the California Independent System Operator (CAISO) imbalance market similar to a traditional power marketer,² and (2) approval of a code of conduct for APX. APX requested an effective date of March 7, 2003.

3. APX explains that it intends to operate as an Electric Service Provider in California to serve retail load. APX proposes to purchase and then resell power to retail customers in California. APX intends to purchase just enough power to meet its obligations to its retail customers. From time-to-time APX may be left holding power that its retail customers cannot take. In that case, APX would sell the power in the

¹16 U.S.C. § 824d (1994).

²The Commission previously granted APX market-based rate authority in Automated Power Exchange, Inc., 82 FERC ¶ 61,020 (1998), however, at that time, APX did not buy and sell power in the traditional sense.

CAISO imbalance market. APX states it would use its market-based rate authority only to sell into the CAISO market at the imbalance price determined by the CAISO, not by APX. APX states it would be a "price taker" only.

4. APX is a privately owned and operated company that offers computerized information management services and scheduling services. APX has no affiliate companies or subsidiaries in the U.S. Exelon Capital Partners (8%), FirstEnergy Corporation (5.9%), and HydroQuebec Capitech (2.4%), each provide equity capital in APX; however, APX claims that none of these entities qualifies as an "affiliate" because none of these entities hold a voting interest in APX. BEn Tech Ventures Holding LLC, an indirect wholly owned subsidiary of Bechtel Enterprises Holdings Inc. (BEn) provided 10.3% equity capital in APX, and holds a 1/7th voting interest on the APX board. BEn Tech Ventures Holding LLC does not own or control generation or transmission in the U.S. However, another subsidiary of BEn, Bechtel Enterprises Energy B V, does own four generation facilities in the U.S. APX includes with its application a code of conduct consistent with the Commission's requirements, which: (a) separates employees; (b) has protections against favorable treatment to its affiliates; and (c) includes the Commission's standard information sharing provision.

5. APX operates power exchange services in California, Mid-Columbia in the MidWest, and in the New York, New England, and Palo Verde markets. APX claims that these power exchange services neither take title to power nor control any decisions by any participants related to these purchases or sales of power. However, consistent with the Commission's requirements in Automated Power Exchange, Inc., APX filed rate schedules for these power exchange services.

6. APX also acts as a Scheduling Coordinator under the California Independent System Operator (Cal ISO) tariff. APX explains that, as a Scheduling Coordinator, it serves as a passive information channel through which: (1) information regarding balanced schedules of hourly energy trades for APX participants passes to the Cal ISO; and (2) information on Cal ISO charges and credits pass through to APX participants. APX states that it does not currently buy or sell energy in the wholesale market.

7. APX also operates a California Demand Reserves Program under a five-year contract with the California Power Authority. Under this Program, load enters into an agreement with the California Department of Water Resources (CDWR) under which the load and CDWR agree to terms under which CDWR will compensate the load for curtailing usage. APX explains that, in the context of this Program, it is merely a channel for communication between load and the CDWR and payment for curtailment from

CDWR to load. APX states that it neither determines the timing nor the amount of curtailment, nor the payment for it.³

8. Additionally, APX provides: (1) tracking service to NEPOOL; and (2) Qualified Scheduling Entity services and software to ERCOT for their Renewable Energy Credit (REC) Program. APX further operates a Balancing Service to ComEd. For this service, APX claims that it plays no role in determining or setting the price for such imbalances. APX further provides a service in the Midwest that facilitates compliance with environmental requirements (*i.e.*, attributes of generation bid in to the market (green ticket service)).

9. APX proposes conditions in its tariff that it states will ensure that APX's power exchange service operates separately from its market-based rate sales service.

Notice of Filing

10. Notice of APX's filing was published in the Federal Register,⁴ with comments, interventions or protests due on or before March 28, 2003. The California Electricity Oversight Board filed a timely motion to intervene in this proceeding, raising no issues.

Request for Further Information

11. On May 6, 2003, Commission Staff requested additional information from APX. Commission Staff requested, among other things, that APX: (a) provide a representative sample of the types of information APX receives from its customers; (b) identify all trading platforms operating in the Western Interconnect; and (c) provide a representation of APX's size in relation to other platform operators in California.

12. In its response, on June 13, 2003, APX stated that:

- (A) In addition to operating a platform on which customers can buy or sell power, APX serves as scheduling coordinator in the CASIO market. For each market, the information that APX receives includes an identification of generation facilities, the quantity requested, the run duration, and the price. APX forwards this information to the CAISO. APX also has three customers who have requested that APX establish customer-specific

³APX operates a similar Demand Response Program in Ohio.

⁴68 Fed. Reg. 11,541 (2003); 68 Fed. Reg. 13,293 (2003).

identification codes for adjustment bids and schedules, which CAISO uses to manage congestion. APX forwards these customers' bids and schedules to the CAISO separately from APX's other customers. Upon receipt of such adjustment bids, APX forwards those bids in a similar manner in which it forwards other bids and schedules.

- (B) To the best of APX's knowledge the other trading platforms operating in the Western Interconnect are: Intercontinental Exchange (ICE), TradeSpark, and Demand Exchange.
- (C) Finally, APX compares its sizes to others and states that ICE's volume was 19.93 million MWH and APX's was 260,000 MWH. For the first quarter of 2003, ICE's volume was 4.49 million MWH and APX's was 70,000 MWH. APX states that it does not have any information on the volume of trading conducted over the TradeSpark or Demand Exchange platforms and, in any event, the volume of power traded on the APX power exchange in the Western interconnect is minimal when compared to other platforms in that region. [⁵]

Discussion

13. 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. For an affiliate of a transmission-owning public utility to demonstrate the absence or mitigation of market power, the public utility must have on file with the Commission an open access transmission tariff for the provision of comparable services. The Commission also considers whether there is evidence of affiliate abuse or reciprocal dealing.⁶

14. Although APX's filing satisfies the Commission's generation market power, transmission market power, other barriers to entry, and affiliate abuse concerns, the filing

⁵Notice of APX's response to the Commission's request for further information was published in the Federal Register, 68 Fed. Reg. 38, 321 (2003), with comments due on or before July 7, 2003. No comments were received.

⁶E.g., Progress Power Marketing, Inc., 76 FERC ¶ 61,155 at 61,919 (1996), letter order approving settlement, 79 FERC ¶ 61,149 (1997); Northwest Power Marketing Company, L.L.C., 75 FERC ¶ 61,281 at 61,889 (1996); accord Heartland Energy Services, Inc., et al., 68 FERC ¶ 61,223 at 62,060-063 (1994).

presents the further issue of whether it is appropriate for a platform operator to also be a market participant in the same market in which it operates its platform. We conclude that a platform operator such as APX should not also be a market participant in the same market in which it operates its platform.

15. While APX commits to sell power under its market-based rate schedule only to the CAISO imbalance market, a trading platform operator has information that other market participants do not have and can use that information to its advantage to take strategic, and profitable, positions in other markets. The March 2003 Staff report in Docket No. PA02-2-000, Final Report on Price Manipulation in Western Markets (Final Report), illustrates in detail the harm to competitive markets that can occur when the operator of an electronic trading platform is also a market participant that is able to buy and sell in the market.⁷

16. Through the operation of its trading platform, APX will know some of the relative positions of other market participants that buy or sell in the subset of the California energy markets executed through its platform and would be in a position to use information from the day-ahead market to take advantage of arbitrage opportunities in the CAISO real-time imbalance market, even as a price taker. We find that APX's proposal to sell excess energy into the CASIO imbalance energy market at market-based rates could give APX an unfair advantage. Because we are concerned that this would compromise confidence in the integrity of the market, we will deny APX's request to sell power at market-based rates.

17. The Commission is charged with ensuring that rates for sales for resale of electric energy are just and reasonable. The market can be distorted if some market participants have preferential access to market information. As a result, platform operators should not both operate platforms and participate in the market for electric energy; to both operate a platform and function as a market participant would impede the ability of the competitive market to produce just and reasonable rates.

18. We believe a structural approach precluding platform operators from electric market participation is the appropriate way to ensure that such entities will focus their business on facilitating competitive transactions without concern as to proprietary participation in the market. This approach best advances confidence in competitive markets.

⁷Final Report at p. IX-30 - IX-32.

The Commission orders:

The application is hereby denied, as discussed in the body of this order.

By the Commission. Chairman Wood dissenting with a separate statement attached.

(S E A L)

Magalie R. Salas,
Secretary.

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Wood, Chairman, dissenting:

While I share my colleagues' concerns about a platform operator also being a participant in the same market in which it operates the platform, I believe that this concern can be addressed differently. The anticompetitive concerns regarding access to information can be addressed by requiring APX to be a zero bid, price taker. APX proposed as much. See P 3, supra. APX seeks to make sales in the California ISO imbalance market as an adjunct to its efforts to serve retail customers in California. We should be supportive of that effort. Accordingly, I respectfully dissent.

Pat Wood, III
Chairman