

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

AEP Power Marketing, Inc., AEP Service Corporation, CSW Power Marketing, Inc., CSW Energy Services, Inc., and Central and South West Services, Inc.

Docket Nos. ER96-2495-020
ER97-4143-008
ER97-1238-005
ER98-2075-014
ER98-542-010
(Not consolidated)

Motion to Intervene and Comments of the
Electricity Consumers Resource Council
(ELCON)

The Electricity Consumers Resource Council (ELCON) respectfully submits this motion to intervene in the above captioned docket. ELCON is the national trade group representing large industrial consumers of electricity. ELCON member companies operate major manufacturing facilities and generate or cogenerate electricity in all AEP retail service territories. ELCON member companies also operate similar facilities in many of AEP's "first-tier" markets.

On August 9, 2004, as supplemented on August 10, 2004 (Corrected Filing), American Electric Power Service Corporation (AEPSC), on behalf of the above-referenced AEP power marketers (collectively, AEP) submitted a market power analysis pursuant to the Commission's April 14, 2004 Order in Docket No. ER96-2495-016, et al., 107 FERC ¶ 61,018 and its July 8, 2004 Order in Docket No. ER96-2495-018, et al., 108 FERC ¶ 61,026.

AEPSC's analysis purports to demonstrate that AEP does not possess market power in any of the control areas to which it is directly connected. The interim screens were applied to

AEP's AEP-East control area and eighteen, "first-tier" control areas to which it is directly interconnected; AEP-SPP and its first-tier control areas (8 in SPP and 2 in SERC); and ERCOT. AEP did not pass the Market Share Analysis in its home control area in the AEP-SPP market and in the AEP-East control area until it is integrated with PJM. AEP's filing criticized FERC's test is indicative of market power and claimed that the test is flawed because it tends to produce false positive results for vertically-integrated utilities. AEP opted to submit additional information such as historical purchase and sales data in an attempt to rebut the failed tests. AEP did not submit the results of a Delivered Price Test, as provided in the Commission's April 14 Order, claiming that test was too burdensome for a company as widely interconnected as AEP.

Comments

AEPSC's application of the interim screens produced two failures with different fact-specific circumstances. AEP-East did not pass the Market Share Analysis as applied to its own control area but only until it is successfully integrated with PJM. AEP-SPP also did not pass the Market Share Analysis in its home control area. The Commission's April 14, 2004 Order on Rehearing requires FERC to initiate an investigation into whether AEP should continue to have market-based rate authority pursuant to Section 206 of the Federal Power Act and establish a refund effective date sixty days after notice of its order initiating such investigation.

ELCON recommends that, with respect to AEP-East, FERC initiate the Section 206 investigation, but stay such action as long as AEP remains on track to expeditiously join PJM and fully complies with FERC Order No. 2000. Any slippage of the integration of AEP with PJM—for whatever reason—should trigger an immediate lifting of the stay. We are deeply

concerned that any continued exercise of market power be stopped because the adverse impact on prices imposes excessive costs on end-use consumers.

ELCON further recommends with respect to AEP-SPP that a Section 206 investigation be immediately initiated with no opportunity for a stay. FERC has not yet given final approval to SPP's RTO status given that the Commission has not yet found SPP's filings to be fully compliant with Order No. 2000. Additionally, once FERC approval is obtained, approval will be required from a number of state regulators before control over transmission facilities may be transferred to the RTO. *Accordingly FERC should initiate a Sec 206 investigation to definitively determine whether AEP-SPP can exercise market power in its home control area in which case, to protect consumers, AEP-SPP should be forced to mitigation.*

An important concern that ELCON wishes to emphasize in these comments is that vague promises of participating in or joining an ISO or RTO in the indefinite future must not be an excuse to delay the initiation of the Section 206 investigation.

NOTICES AND COMMUNICATIONS

Notices and communications should be addressed to:

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Respectfully submitted,

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Dated: August 30, 2004

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Comments were today mailed to parties on the service lists of these proceedings by U.S. mail, postage prepaid.

Dated at Washington, D.C., this 30th day of August 2004.

/s/ Jennifer Morrissey

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