

FILE

93-7000-EL-FAD¹¹

**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

AEP Power Marketing, *et al.* : Docket Nos. ER96-2495-030
: ER97-4143-018
: ER98-2075-024
: ER98-542-020
: ER07-26-001

**REQUEST FOR FURTHER CONSIDERATION AND ANALYSIS
SUBMITTED ON BEHALF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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Executive Summary

The Public Utilities Commission of Ohio (“Ohio” or “Ohio Commission”) submits an analysis showing that AEP fails the market share screen when certain factual conditions and circumstances are taken into account. The Federal Energy Regulatory Commission (“FERC” or “Commission”) should require AEP to conduct and submit a delivered price screen before deciding whether to grant AEP continuing market based rate authority from 2009 through 2011.¹

Discussion

AEP submitted its market power analysis update on January 14, 2008, pursuant to Order 697.² AEP requested that the Commission grant continuing market based rate authority. This discussion bears upon the screens and related analyses most relevant to Ohio, which use the PJM footprint as the relevant geographic market.

AEP’s market share analysis is based upon the false premise that all PJM uncommitted generation may compete with AEP’s uncommitted generation.³ Not all of PJM’s uncommitted generation is available or deliverable to compete with AEP’s

¹ The remedy sought here is different from the remedy sought in 112 FERC ¶ 61320. The Ohio Commission is interested in assuring that the market power screen analyses are properly grounded in reality. Ohio is not seeking to challenge the market monitoring framework.

² 18 C.F.R. § 35.37 (2008).

³ This is different from the issues raised in 112 FERC ¶ 61320. The emphasis here is on the clear error in AEP’s filing that all uncommitted generation is available and deliverable to compete with AEP’s uncommitted generation.

uncommitted generation. Some of PJM's uncommitted generation is never available or deliverable, and some is only available or deliverable some of the time.

Evidence of these facts abound in the PJM Market Monitor's latest State of the Market Report.

- "Specific geographic areas of PJM exhibited moderate to high levels of concentration when transmission constraints defined local markets."⁴
- "The result of the introduction of the Three Pivotal Supplier test was to limit offer capping to times when the local market structure was noncompetitive and specific owners had structural market power. The analysis of the application of the Three Pivotal Supplier test demonstrates that it is working successfully to exempt owners when the local market structure is competitive and to offer cap owners when the local market structure is noncompetitive."⁵
- For the 2007/2008, 2008/2009 and 2009/2010 RPM Auctions, all defined markets failed the preliminary market structure screen (PMSS). In each auction all participants in the total PJM market as well as the locational deliverability area (LDA) markets failed the Three Pivotal Supplier (TPS) market structure test. The result was that offer caps were applied to all sell offers in all three auctions.⁶
- The congestion cost in the AEP zone was \$185.5 million in 2007. This is the fourth largest congestion cost of all PJM zones in 2007.⁷

The relevant market for purposes of the analysis is therefore not the entirety of generation in the PJM footprint, as AEP has assumed in its analysis. Rather, it is a subset of that generation.

⁴ 2007 State of the Market Report: Volume 1: INTRODUCTION. Market Monitoring Unit, March 11, 2008, at 8.

⁵ *Id* at 11.

⁶ *Id* at 27.

⁷ *Id* at 39.

Ohio has performed its own analysis of AEP's market share screen. AEP's results as filed are displayed in Attachment A. Attachment B incorporates changes to AEP's analysis, based upon the fact that not all of PJM's uncommitted generation can compete with AEP's uncommitted generation. The results demonstrate that AEP fails the market share screen in the summer and in the fall if only a third of PJM's uncommitted generation is unavailable or undeliverable to compete with AEP's uncommitted generation. The Ohio Commission believes that accounting for these factors will have a similar effect on the pivotal supplier screen. Not enough data is available, however, to the Ohio Commission at this time to make the parallel adjustments to the pivotal supplier screen.

AEP's analysis should have accounted for the fact that a portion of PJM's uncommitted generation will be unavailable or undeliverable to compete with AEP's uncommitted generation at any time. Further, the analysis should have accounted for the fact that another portion of PJM's generation will be unavailable or undeliverable to compete with AEP's generation for at least some of the time. Accounting for intermittent deliverability would necessitate that the results of the analysis be expressed in terms of how often and how much of the time AEP would be deemed to have market power.

Given that the deliverability of generation is a time differentiated parameter, the Commission should require AEP to conduct the market power screen that explicitly accounts for time differentiation – the delivered price screen. In the alternative, for purposes of the market share screen and the pivotal supplier screen, a full analysis and accounting of which PJM generation is available and deliverable to compete with AEP's

uncommitted generation should determine the relevant market. If some of PJM's generation is not available or deliverable for some of the time, that amount of capacity should be prorated or removed from competitors' uncommitted generation to reflect that it is not always deliverable.

Conclusion and Recommendations

AEP's market power analyses are inadequate because they ignore known facts. The analyses assume that all of PJM's uncommitted generation is available and can be delivered to compete with AEP's uncommitted generation when it cannot. Even if competitors' uncommitted generation is available and deliverable to compete with AEP's uncommitted generation, it may not be able to compete on the basis of price.

Accounting for known facts significantly changes the calculus of market power for AEP. Based upon the analyses in Attachment B to this filing, Ohio has demonstrated that when the above factors are taken into account, AEP fails the market share screen. Ohio therefore recommends the Commission require AEP to conduct a Delivered Price Screen.

Respectfully submitted,

/s/ Thomas W. McNamee

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing have been served in accordance with 18 C.F.R. Section 385.2010 upon each person designated on the official service list compiled by the Secretary in this proceeding.

/s/ Thomas W. McNamee

Thomas W. McNamee

Assistant Attorney General

Dated at Columbus, Ohio this March 17, 2008.

Attachment A

The table below portrays the results of AEP's market share screen in a format that facilitates comparison with the Ohio Commission Staff's alternative analysis. Nothing has been changed from AEP's filed analysis.

Attachment A: Market Share Analysis (Original AEP Filing)								
			Season					
No	Category	Effect	Summer	Fall	Winter	Spring	Calculation	Comments
Calculations of the MP								
1	Nameplate Capacity	+	28,057	27,958	28,624	27,958		
2	Long Term Firm Purchases	+	0	0	0	0		
3	Imports	+	382	383	383	383		
4	Native Load Committed	-	18,665	15,785	17,753	15,804		
5	Operating Reserve	-	1,120	947	1,065	948		
6	Planned Outages	-	461	1,923	1,339	4,804		
7	Long Term Firm Sales	-	1,444	1,415	1,431	1,464		
8	MP Uncommitted Capacity		6,749	8,227	1,419	6,321		
Calculations of the AEP								
9	Nameplate Capacity	+	137,106	137,775	138,444	137,775		
10	Long Term Firm Purchases	+	0	0	0	0		
11	Imports	+	0	0	0	0		
12	Native Load Committed	-	91,314	70,459	77,666	67,881		
13	Operating Reserve	-	7,561	4,833	5,639	4,678		
14	Planned Outages	-	1,560	13,539	4,672	15,829		
15	Long Term Firm Sales	-	0	0	0	0		
16	Σ Other Uncommitted Capacity		36,671	48,944	50,467	49,387	9+10+11-12-13-14-15	
17	Total Uncommitted Capacity		43,420	57,216	57,898	54,708	16-15	
18	MP Share		15.5%	14.5%	12.8%	9.7%		
19	MP Status		PASS	PASS	PASS	PASS		

Attachment B

The table below portrays the results of AEP's market share screen with a single change.

The assumption implicit in AEP's original analysis, that all of PJM's uncommitted generation is available and deliverable to compete with AEP's uncommitted generation, has been modified to reflect that one third of PJM generation is not available or deliverable. This single change causes AEP to fail the market share screen.

Attachment B: Market Share Analysis (Case 1)									
		Season							
No	Category	%	Summer	Fall	Winter	Spring	Calculation	Comments	
Calculations of the MP									
1	Nameplate Capacity	100%	28,067	27,958	28,624	27,958			
2	Long Term Firm Purchases	100%	0	0	0	0			
3	Imports	100%	382	383	383	383			
4	Native Load Committed	100%	18,665	15,785	17,753	15,804			
5	Operating Reserve	100%	1,120	947	1,065	948			
6	Planned Outages	100%	461	1,923	1,339	4,804			
7	Long Term Firm Sales	100%	1,444	1,415	1,431	1,464			
8	MP Uncommitted Capacity		6,719	8,277	7,419	5,321			
Calculations of the MP									
9	Nameplate Capacity	100%	137,106	137,775	138,444	137,775			
10	Long Term Firm Purchases	100%	0	0	0	0			
11	Imports	100%	0	0	0	0			
12	Native Load Committed	100%	91,314	70,459	77,666	67,881			
13	Operating Reserve	100%	7,561	4,833	5,639	4,678			
14	Planned Outages	100%	1,560	13,539	4,672	15,829			
15	Long Term Firm Sales	100%	0	0	0	0			
16	ΣOther Uncommitted Capacity	67%	24,570	32,792	33,813	33,089	67%(9+10+11+12+13+14+15)		
17	Total Uncommitted Capacity		31,289	41,063	41,232	38,410			
MP Share									
18	MP Share		21.8%	20.1%	18.0%	13.9%			
Pass/Fail			FAIL	FAIL	PASS	PASS			

**UNITED STATES OF AMERICA
BEFORE THE
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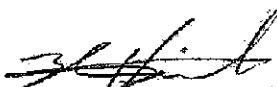
**AFFIDAVIT OF HISHAM M. CHOUEIKI, Ph.D., P.E.
ON BEHALF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO**

State of Ohio :
County of Franklin :

I, Hisham M. Choueiki, having been duly sworn, state that:

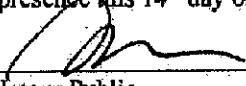
1. I am employed as a Senior Energy/Telecommunications Specialist in the Policy and Market Analysis Division of the Public Utilities Commission of Ohio.
2. I performed the analysis contained in Attachment B of the accompanying Request for Further Consideration and Analysis.
3. The data with which my analysis was conducted was provided by the Applicants either in filings before this Commission or in response to requests for information from the Staff of the Public Utilities Commission of Ohio.
4. The facts set forth in the accompanying Request for Further Consideration and Analysis filed on behalf of the Public Utilities Commission of Ohio are true and correct to the best of my knowledge, information, and belief.

Further affiant sayeth naught.



Hisham M. Choueiki, Ph.D., P.E.

Sworn to before me and subscribed in my presence this 14th day of March, 2008.



Notary Public
My Commission Expires: THOMAS W. KEMMERT
NOTARY PUBLIC STATE OF OHIO
MY COMMISSION NEVER EXPIRES