UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	)	
	)	**Administrative Proceeding**
American Electric Power Company, Inc.	)	**File No. 3-11616**

POST-HEARING REPLY BRIEF OF THE DIVISION OF INVESTMENT MANAGEMENT

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Dated: February 28, 2005

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I. INTRODUCTION

The Division of Investment Management ("Division" or "staff") welcomes the opportunity to respond to the various briefs filed in this matter.[1] As we argued in our Initial Brief,[2] we believe that Commission precedent establishes clear standards against which to determine whether utility properties are "interconnected or capable of interconnection" and whether a utility system is "within a single area or region."[3] Once those standards are properly identified, the only issue in this proceeding is whether the Applicants (American Electric Power Company, Inc. ("AEP") and Central and South West Corporation ("CSW") (collectively, "Applicants" or "AEP")) have submitted sufficient credible evidence into the record to meet their burden of proof. We stated in our Initial Brief that we believed that the Applicants had met their burden of proof.[4] We continue to believe that they have done so.

Before addressing the opposing parties'[5] specific arguments as to why the Applicants have failed to meet their burden, we believe that it is useful to clarify what

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1 Initial Brief For The National Rural Electric Cooperative Association And The American Public Power Association (February 14, 2005) ("NRECA/APPA Brief"), Initial Brief of Public Citizen, Inc. (February 14, 2005) ("Public Citizen Brief"), Post-Hearing Brief Submitted By American Electric Power Company, Inc. (February 14, 2005).

2 Post-Hearing Brief And Statement Of Position Of The Division Of Investment Management (Corrected) (February 15, 2005) ("Initial Brief").

3 The Public Utility Holding Co. Act of 1935, as amended ("ACT"), section 2(a)29(A) (15 U.S.C. section 79b(a)(29(A)), requires, among other things, that an integrated public utility system be interconnected and in a single area or region. Section 2(a)29(A) is enforced through section 11 of the Act.

4 Initial Brief at 3 and 44-45.

5 The American Public Power Association ("APPA") and the National Rural Electric Cooperative Association ("NRECA") were granted their motion to intervene as full parties (collectively, "NRECA/APPA"). Public Citizen, Inc., ("Public Citizen") was granted a motion to intervene as a limited party.

this proceeding is not about. First, it is not about the meaning of the D.C. Circuit Court's remand to the Commission. The Commission, in setting this matter down for hearing, gave this Court a specific task – determining whether the combined AEP/CSW system is interconnected and whether it is in a single area or region. Given the Commission's order, this Court need not examine issues outside the scope of the order setting the hearing.

Second, this case is not about the expertise of the Division of Investment Management with respect to interpreting the Federal Power Act, interpreting other Federal Energy Regulatory Commission ("FERC") precedent, or transmission engineering. The Commission – not the staff in the Division – is responsible for administering the Act. Moreover, while the expertise of witnesses (and hence the credibility of their testimony) is highly relevant, the expertise of the parties and of their attorneys and other employees has nothing to do with this case. Public Citizen's view of the Division's expertise in these matters is simply that – an irrelevant view rooted more in its frustration that the Commission has not administered the Act the way Public Citizen would like it to be administered than in anything relevant to this case.

Third, and finally, this case is not about the meaning of FERC policies and orders, about what the FERC was intending to accomplish through those orders, or about whether the FERC has made wise policy choices in regulating the electric industry in the United States. Rather, this case is about facts – facts that tend to show whether the Applicants' system is interconnected and facts about whether it is in a single area or region – and the application of the Act to those facts. Those facts may be affected by what FERC has done. Hence, a discussion of FERC orders may provide some

background information regarding those facts, but ultimately the question is what facts are in the record. Thus, there is no need to debate what these FERC orders mean and which of the parties in this matter is best qualified to explain those orders.

As we have said before, this case comes down to two questions:

What is Commission precedent regarding the two requirements at issue in this case?

Have the Applicants demonstrated that their system fits within that precedent?

In this context, the opposing parties' briefs are remarkably devoid of any discussion of Commission precedent – with respect to each requirement, the parties effectively ignore sixty-plus years of Commission action. Public Citizen cites virtually no Commission precedent, instead seemingly assuming that two documents drafted by then-Chairman Douglas in 1938 and 1939 represent the Commission's last word on the Act. Moreover, Public Citizen's Brief is an untethered analysis of what it believes the various components of the integration requirement should mean -- a question not at issue here -- and why AEP doesn't meet those requirements. It is hard for the Division to understand how that, in any way, is helpful to determining whether the Applicants have met their burden of proof. The NRECA/APPA Brief similarly barely discusses Commission precedent. Although it does attempt to discredit AEP's evidence – an attempt that is, in our view, unsuccessful – it does not, for the most part, place that attack in the context of Commission precedent. NRECA/APPA's analysis is, thus, similarly unhelpful.

II. OPPOSING PARTIES' ARGUMENTS DO NOT UNDERMINE THE DIVISION'S CONCLUSION THAT THE AEP/CSW SYSTEM IS INTERCONNECTED

In our Initial Brief, we carefully traced the Commission's historical approach to the interconnection requirement, showing how Commission precedent currently permits interconnection to be demonstrated in a number of ways. We then applied that precedent to facts that are in the record, reaching the conclusion that, within the contours of existing precedent, the Applicants had met their burden of proof of demonstrating interconnection.

Both Public Citizen and NRECA/APPA take a different course. Their briefs do not discuss the Commission's historical approach to interconnection in any significant way – indeed, their briefs are almost bereft of any discussion of, or even citation to, Commission precedent. Instead, without any support from precedent, each of the opposing parties posits a definition of interconnection (or, more broadly, integration) that it believes makes sense and then argues that the Applicants' system does not meet their definition.

Although we discuss the opposing parties' arguments in more detail below, it is worthwhile to note that this is simply not an appropriate form of argument. The Commission has been interpreting the interconnection requirement for 70 years now. To ignore that precedent and effectively start over is unnecessary, makes little sense and, in the end, is an unhelpful means of assessing whether the AEP/CSW system meets the requirement.

A. Public Citizen's Arguments Fail to Undermine the Conclusion that the Combined AEP/CSW System Is Interconnected

Public Citizen's arguments that the AEP/CSW system is not "interconnected or capable of interconnection" are rooted in its assertion that an "integrated" utility system for purposes of meeting the interconnection requirement under the Act is "one that provides back-up for outages of its own generation to ensure reliability."[6] It then argues that because AEP/CSW's system does not meet this definition, the system is not interconnected for purposes of the Act.[7]

There are several problems with this argument. Most importantly, Public Citizen assumes, without apparent basis, that this is the Commission's interpretation of the interconnection requirement. However, Public Citizen cites no authority for this. Indeed, Public Citizen's definition of interconnection is completely inconsistent with the Commission's traditional approach to interconnection that is described in our Initial Brief.

Public Citizen mistakenly confuses the terms integration and interconnection. Nonetheless, even assuming that the term integration was appropriately relevant here, Public Citizen's approach is incorrect. In a 1992 opinion, the D.C. Circuit Court discussed the Commission's view on the relationship between integration and interconnection. The Court concluded that the Commission imposes a less stringent requirement for an integrated public utility system, noting that the Commission's approach requires "that facilities, in addition to their physical interconnection, be

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6 Public Citizen Brief at 15.

7 *See, e.g., id.* at 20.

consolidated so as to take advantage of efficiencies."[8] In *City of New Orleans*, similar to Public Citizen's assertion here, the challenging party had insisted that the system must be "operated so that every unit of power is offered first for in-System use."[9] The Court rejected that reading of the statutory standard, concluding that the Commission's interpretation of the standard, focusing on overall economic efficiencies, neither contravened Congress' intent nor was unreasonable. The Commission has continued to follow this approach. For example, in *Conectiv*, a case we discussed in our Initial Brief, but which is ignored by Public Citizen, the Commission found the interconnection element was satisfied and did not require construction of a transmission line directly connecting the two merging companies because the parties were interconnected through lines owned by others and the new construction would be uneconomic.[10]

Public Citizen's use of the evidence in the record is similarly unhelpful. Most notably, Public Citizen does not use its own witness, Mr. Casazza, in any significant way. Mr. Casazza's testimony offers only the briefest, general opinions on interconnection, hardly mentioning AEP. In this context, his clearest statement is that "[t]he large number of transmission facilities intervening between the two AEP systems increases the probability that constraints will occur somewhere, *limiting* AEP's ability to operate as an

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8 *City of New Orleans v. SEC*, 969 F.2d 1163, 1168 (D.C. Cir. 1992) ("City of New Orleans") (*citing with approval Environmental Action, Inc. v. SEC*, 895 F.2d. 1255, 1263 (D.C. Cir. 1990).

9 *Id*.

10 *Conectiv, Inc*., Holding Co. Act Release No. 26832 at n. 27 (February 25, 1998) (*citing Unitil Corp*., Holding Co. Act Release No. 25524 (April 24, 1992), and *Electric Energy, Inc.,* 38 SEC 650 at 669 (November 28, 1958)).

integrated system."[11] Moreover, Mr. Casazza's testimony tends to support AEP's testimony as his general testimony on the potential limit on AEP's ability to operate in this fashion is a concession that there is an ability to operate and, therefore, an ability to capture efficiencies as required under the Commission's interpretation of the statutory standard.

Since its own witness does not support the overly stringent position it has taken on brief, Public Citizen turns to the testimony it elicited from Mr. Johnson on cross-examination. Public Citizen began its cross examination of Mr. Johnson on this issue by asking about an "integrated system" in terms of electrical engineering,[12] even asking the witness to respond in terms of the engineering idea of integration "as opposed to whatever it is for purposes of [PUHCA]."[13] Mr. Johnson -- an electrical engineer and not an attorney or someone otherwise in a position to offer a view on what is required by the Act[14] -- responded as requested, giving an answer that explained, purely from an engineering perspective, the ability of various parts of the system to back up other parts

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[11] Public Citizen Exhibit No. 1 (Prepared Direct Testimony of John A. Casazza) ("Public Citizen Exhibit No. 1") at 9 (emphasis supplied). Even Public Citizen's witness agrees that there are useful interconnections between the two segments. He is simply testifying that there is a probability that the usefulness may at times be limited. He is not testifying that the interconnections do not allow power to flow at any time.

[12] January 10, 2005, Hearing Transcript ("Transcript") at 77-78.

[13] Transcript at 78:4. We note that the Transcript erroneously reads "CUCOR" instead of PUCHA. This error is apparent from the fact that "CUCOR" has no meaning in this case and that counsel for Public Citizen had prefaced the question with the statement "that the term integrated utility system actually has a meaning in electric systems, apart from whatever meaning it may have in this case." *See* Transcript at 76:23 – 77:1.

[14] AEP Exhibit No. 2 (Prepared Direct Testimony of Paul B. Johnson)("AEP Exhibit No. 2") at 2:13 – 3:8, and Transcript at 71:24 – 72:20.

of the system.[15] Based on what it perceives as Mr. Johnson's concession that instantaneous back-up is not possible, Public Citizen concludes that the AEP/CSW system is not "integrated" and, therefore, that the interconnection requirement is not satisfied.

This is not, however, the approach that the Commission takes. The interconnection requirement does not impose a requirement that any generator within the system can be used to back up any other part of the system. Rather, interconnection is focused on the ability to move power through the system so as to capture efficiencies that would otherwise be unavailable to the system. As we showed in our Initial Brief, AEP has amply demonstrated that sufficient transmission is available to allow it to accomplish this goal.[16]

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[15] In his response, he distinguished between a "vertical system" and a horizontal system when he responded "as opposed to the horizontal integration across, for example, a transmission system, such as the regional transmission organizations (" RTOs"), or interconnections, or so on." Transcript at 78:7-17. Counsel for Public Citizen then clarified that it was asking about a "vertically integrated system." Transcript at 78:18-20. It is within that framework – an electrical engineer's definition of a vertically integrated public utility system – that Mr. Johnson makes the statement that Public Citizen relies upon on page 20 of its initial brief regarding re-positioning or backing up generation to maintain a reliable system. Public Citizen, ignoring the major portion of Mr. Johnson's testimony, simply misapplies Mr. Johnson's description of the engineering requirements for operating a vertically integrated system to a horizontally integrated system when it asks how a generator in Ohio backs up a generator in Texas.

[16] More specifically, Public Citizen's attempt on cross examination to apply the operational requirements of a vertically integrated system to a horizontally integrated system led to confusion (*see, e.g.,* Transcript at 81:15 – 83:6) – a confusion that persists in its initial brief. Public Citizen does not address Mr. Johnson's earlier statement distinguishing between vertical integration (traditional utility structure) and horizontal integration (RTOs or other interconnections), his testimony that a generator operating on an interconnected system would back-up his own generation with that of a neighbor (Transcript at 82:5-16) and his testimony that, while the Ohio plant could not back up the Texas demand in the "very short term" (seconds) (Transcript at 82:20-21), it could in the long term within the limits of the transmission system (Transcript at 83:4-6). As a result

Public Citizen is also incorrect when it argues that the need to rely on others' transmission systems undercuts the conclusion that it is interconnected – as we have shown, the Commission has long permitted interconnection to be found on the basis of facts like these. Within the context of Commission precedent, the evidence supports a finding that AEP is in a position to rely on a combination of a firm transmission path in one direction, non-firm rights in the other direction, and various open-access transmission tariffs ("OATTs") (available, as AEP demonstrated, under FERC order and the practices of the regional transmission organizations ("RTOs") in the area in which it operates) to interconnect its system. Similarly, nothing can be made of Public Citizen's assertions regarding AEP's failure to commit to renew the contract path. Although Public Citizen claims that the "best that AEP can promise…is that it will make a formal renewal request

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of its selective approach to Mr. Johnson's testimony (it prefers the portion on vertically integrated utilities), Public Citizen incorrectly reasons that AEP cannot meet the interconnection element. Mr. Johnson's testimony, taken as a whole, shows that while a pure vertically integrated utility would rely on its own generation for back-up, a utility relying on a horizontally integrated system need not because it can rely on neighboring generation. Since AEP will be relying on the RTO (one of Mr. Johnson's horizontally integrated bodies) at least in part, as well as the existing contract path ("Contract Path") and other interconnections, Public Citizen's argument based on vertically integrated operations must fail and is, in fact, irrelevant. In contrast, the AEP testimony, taken as a whole and including Mr. Johnson's, is consistent with the Commission's standard as described by the Court of Appeals in *City of New Orleans* above.

in 2005,"[17] AEP testified that it would seek to renew the Contract Path[18] and there is additional testimony, that no party challenged, that AEP has a right of first refusal.[19]

Public Citizen's arguments, therefore, do not in any way demonstrate that the AEP/CSW system is not interconnected.

B. NRECA/APPA Also Fail to Undermine the Conclusion that the Combined AEP/CSW System is Interconnected

NRECA/APPA's discussion of interconnection is largely a policy argument. APPA did not offer any testimony of its own during the hearing. Specifically, apart from its cross-examination of AEP's witnesses, NRECA/APPA did not provide any testimony or evidence to refute the case put on by AEP.

In contrast, the Division described the Commission's current interpretation of the interconnection requirement, as well as the evolution of that policy since the mid-1940's, in its Initial Brief. NRECA/APPA appears to disagree with that approach. This may explain why its brief is virtually bereft of citation to Commission precedent. In outlining its disagreement, it makes four key arguments.

Two of NRECA/APPA's arguments – that because the Contract Path is firm in one direction only, AEP has not shown a basis for interconnection and that the

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17 Public Citizen's Brief at 24.

18 It is worth noting that FERC is discouraging these firm contracts because they adversely impact the allocation of various RTO costs and availability of transmission capacity. *Southwest Power Pool, Inc.*, 106 FERC ¶61,110 at 61,382 – 61,383 (2004). We note that this case is included in the Compendium Of Federal Energy Regulatory Commission Orders produced in this proceeding by counsel for AEP.

19 Transcript at 102:9-16. AEP Exhibit 5 (Prepared Direct Testimony of J. Craig Baker)("AEP Exhibit 5") at 10-13 and 19:18-21. *See also*, Order No. 888, FERC Regulations Preambles ¶31,036 at 31,665 and Order No. 888-A, FERC Regulations

Commission's policy precludes the use of third party contracts to satisfy the interconnection requirement – are based on an incorrect understanding of Commission precedent as shown in the Division's Initial Brief and will not be addressed again here.[20] It is sufficient to note that the Commission's actual practice shows that it will and has accepted third party contracts as a means of meeting the interconnection requirement in appropriate cases. AEP has shown that it has several alternatives for moving power between the two parts of its system, any one of which would meet the interconnection requirement under the Act.[21]

NRECA/APPA, as the point of departure for the first of its two remaining arguments, notes that the Contract Path expires under its own terms at the end of June 2005. There is no dispute about this fact. NRECA/APPA appears to believe that AEP has some obligation to renew this path at least seven months in advance of the contract termination if it is to satisfy the interconnection requirement and, thus, argues that AEP's failure to present any evidence suggesting that it has requested and obtained a renewal of the path is fatal to its ability to demonstrate interconnection. NRECA/APPA's characterization of the implications arising from the fact is misleading and incorrect.

Preambles ¶31,048 at 31,197. We address a similar argument made by NRECA/APPA in more detail below, at pages 11-13.

[20] *See, e.g.,* Initial Brief at 22-33 (discussing the relevant precedent and how the facts presented by AEP fit within that precedent).

[21] If NRECA/APPA's views are not a misunderstanding of Commission precedent, then they must represent a simple policy-based disagreement with the Commission's approach. However, that is not enough, for as long as the Commission's interpretations of the Act are not unreasonable and its application of its interpretation is not arbitrary and capricious, then the Commission is well within its authority.

First, the evidence supports the conclusion that AEP will renew the contract.[22] Second, and more importantly, the path is one of a number of arrangements that show that the AEP/CSW system is interconnected. The possibility that the path might not exist in the future does not demonstrate that the system, at that time, will not be interconnected, as we similarly do not know what arrangements might take its place. For example, as we discussed in our Initial Brief, in *CP&L*, the Commission concluded that the "absence of [an existing] contract path … does not preclude a finding that [the system is] physically interconnected, because *CP&L* can obtain adequate transmission service through open access under the Open Access Transmission Tariff of Duke Power and other transmission arrangements with Duke Power and AEP to establish physical interconnection of the two areas."[23] More recently, and as noted in the Division's Initial Brief, the Commission concluded that permitting Exelon to allow an existing firm contract path to expire and instead rely on transmission available through the PJM RTO did not preclude a finding that the system satisfied the interconnection requirement.[24]

In light of the Commission's decisions, it is perhaps not surprising that AEP would not renew an expensive contract before it was required under the applicable tariff or was necessary for business or regulatory reasons. When that time does arrive however, AEP testified that it does expect to renew the contract.[25] AEP also testified that

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[22] Indeed, this case is about whether the AEP/CSW system is interconnected now, not whether it will be at some future time. If, in the future, the AEP system is no longer interconnected, the Commission can institute a proceeding under section 11 of the Act to remedy the situation. In any event, as stated above, AEP has a protected renewal right.

[23] *CP&L Energy, Inc.*, 54 SEC 996 at 1012 (November 27, 2000), Holding Co. Act Release No. 27284.

[24] *Exelon Corp.*, Holding Co. Act Release No. 27904 (October 28, 2004).

[25] Transcript at 102:9-16.

it has renewal rights although these rights, as NRECA/APPA noted, are subject to conditions.[26] NRECA/APPA has not provided any reason to believe that AEP cannot or will not meet these conditions or any reason to doubt that AEP will meet the interconnection requirement through a renewal of the Contract Path or otherwise.

NRECA/APPA's last argument is a late entry into this proceeding. NRECA/APPA has attached a Final Judgment and Consent Order to its Initial Brief. That Consent Order resolved a matter wherein five of AEP's natural gas traders allegedly knowingly provided false information to a gas industry publication in an attempt to influence at least one of the gas price indexes reported by that publication and, thereby, attempt to manipulate prices for natural gas. NRECA/APPA rely on the Consent Order to argue that "the data that AEP has presented of post-acquisition energy transfers between AEP and CSW is of dubious probative value" and specifically cites to AEP Exhibit 6 and 7.[27]

We do not believe that the Consent Order diminishes the probative value of these two exhibits. Apart from the fact that the Consent Order does not conclude that the gas markets were successfully manipulated, the period covered by the Consent Order is November 2000-July 2002. The transaction data shown, and otherwise unchallenged by APPA, on AEP Exhibits 6 and 7 covers the period July 2000-October 2004 – a period that extends four months before the purported manipulation began and 27 months after it ended. Therefore, even if there were manipulation, there is no evidence in the record suggesting that it affects 31 months of transactional data between the two portions of the

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[26] *See* n. 21, *infra.*

[27] NRECA/APPA Brief at 17.

AEP system.[28] The Consent Order, thus, does little to cast doubt on the validity or relevance of the information in AEP Exhibits 6 and 7.

In sum, NRECA/APPA have also done little to discredit the Division's conclusion that the AEP/CSW system is interconnected.

C. The AEP/CSW System is Interconnected

For the reasons outlined above and in our Initial Brief, we believe that AEP/CSW has met its burden of showing that its system is interconnected. The opposing parties have not undermined this conclusion. This Court should conclude that the AEP/CSW system satisfies the interconnection requirement.

III. OPPOSING PARTIES' ARGUMENTS DO NOT UNDERMINE THE DIVISION'S CONCLUSION THAT THE AEP/CSW SYSTEM IS IN A SINGLE AREA OR REGION

As with their analysis of the interconnection requirement, the opposing parties' discussion of the single area or region requirement focuses more on their beliefs, in the abstract, of what the correct policy should be regarding the interpretation of the Act. Once again, in contrast to our Initial Brief, the opposing parties' initial briefs are virtually bereft of any discussion of, or analysis of, Commission precedent regarding the single area or region requirement. Rather, they insist on arguing that the AEP/CSW system does not fit with their notions of what good policy should be.

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[28] Furthermore, the Consent Order notes at least up to 38 natural gas delivery points or hub sites for which the traders could have reported false data. APPA makes no showing however that AEP actually purchased gas at any of these hubs for the gas fired generation on the western side of its system whose load was displaced through the transactions with coal-fired generation in the eastern portion as evidenced by AEP Exhibits 6 and 7. More importantly, NRECA/APPA do not offer any evidence tending to show that the conduct described in the Consent Order materially affected how AEP operates its electric system or that it even created an incentive for AEP to do so.

As we demonstrated in our Initial Brief, the Commission has long focused on the nature and scope of electric markets in defining regions for purposes of the Act. This analysis is sometimes supplemented by a discussion of the general economic characteristics of the region in question. In contrast, the opposing parties in this matter -- especially NRECA/APPA -- cling to a geographical notion of "region" that neither meshes with the modern-day electric industry nor is consistent with the Commission's traditional approach to this requirement. APPA and NRECA would like to read a geographic requirement into the Act for the definition of "single area or region." However, the Act makes no mention of geography. Likewise, APPA and NRECA would like to see the use of similarities to define the region.[29] But again, neither the Act nor Commission precedent requires that the region must have similarities. Instead, according to Commission precedent, the single area or region requirement is defined not as the opposing parties would have, but by the realities of the modern electric industry, which is market oriented, not geographically or demographically oriented, as explained and discussed in detail in the Division's Initial Brief.

With "geography" as their mantra, NRECA/APPA more than once talk about the merged system stretching across the eastern part of the country – from Brownsville, Texas, to Canton, Ohio, from Canada to Mexico, from Virginia to Michigan to the Gulf Coast.[30] The combined systems, we are told, have "significant distance" between them,[31] "skipping hundreds of miles."[32] In reality, the assets of the combined system are 250

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29 NRECA/APPA Brief at 38-39.

30 *Id*. at 35, 37.

31 *Id.* at 41.

32 *Id*. at 35.

miles apart at the closest point -- a distance that is shorter than the distance between merging systems approved in other Commission orders and that is relatively small in terms of the modern electricity industry.[33]

More important, however, is the nature of the underlying market. Defining the market does not, as Public Citizen and NRECA/APPA argue, require this Court to conclude that "the entirety of the United States between the Atlantic Ocean and the Rocky Mountains" – that is, the whole of the Eastern Interconnection -- is a single area or region within the meaning of the Act.[34] The question before the Court is whether the combined system is in a single area or region, not whether the Eastern Interconnection is.

Although the uncontroverted evidence in the record shows that the Eastern Interconnection operates from an electrical standpoint as "one big machine," throughout the eastern part of the country,[35] there is no evidence in the record that suggests that there is only one market for electricity within the Interconnection. Put more broadly, the market-based approach to the single area or region requirement is not about whether there is a theoretical possibility that electricity might be traded between two points, but rather whether those two points are within a functioning market for electricity. Thus, the evidence in the record does not require any legal conclusion that the Eastern Interconnection should be the region that satisfies the "single area or region" requirement

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33 *See* Initial Brief at 23-24. AEP Exhibit 2 at 13:2-6.

34 NRECA/APPA Brief at 35, 37 and 52. Public Citizen Brief at 16.

35 AEP Exhibit 5 (Prepared Direct Testimony of J. Craig Baker) ("AEP Exhibit 5") at 21.

for an "integrated public utility system" under the Act. Instead, as we outlined in our Initial Brief, the evidence introduced into the record shows that AEP operates within a single electricity market that overlaps the footprint of its system.[36] The accuracy and credibility of the evidence was not challenged by the other parties, and standing by itself, it provides a more than adequate basis upon which to conclude that the AEP/CSW system is in a single area or region. Moreover, these conclusions are supported by Dr. Harrison's conclusions regarding the existence of other single markets that broadly overlie the footprint of the AEP/CSW system.

Finally, the NRECA/APPA Brief, in its discussion of Mr. Harrison's testimony that regions are to be defined by their context,[37] aptly points out that the "context in this case" is the "proposed merger of two electric utility holding companies." We agree. The legal analysis of the single area or region must be in the factual context of the two systems and whether they are within a single area or region, not whether the Eastern Interconnection, for example, is a region or whether the RTOs form a single region. The single area or region requirement must be decided in context – in the context of the CSW and AEP systems together and in the context of the modern power industry. As we show in our Initial Brief, this approach is not at odds with the Act, its legislative history or Commission precedent, as NRECA and APPA would have this Court believe.

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[36] In addition to the Eastern Interconnection, other facts that facilitate this finding are the transmission of electricity across the RTOs that the AEP/CSW system is within, the open access transmission of electricity through OATTs, other technological advances in the electricity industry, and the recent development of larger, broader electricity markets that has resulted from the changing manner in which transmission is regulated by the FERC.

[37] *Id.* at 38.

IV. CONCLUSION

As discussed above, nothing in any of the post-hearing briefs filed in this matter draws into question our initial conclusion that, based on the evidence in the record and the Commission's well-established precedent, AEP has met the "interconnection" and "single area or region" requirements. Accordingly, as we stated in our Initial Brief, this Court should enter an order holding that the AEP and CSW systems satisfy the requirements of sections 10(c)(1) and 11(b)(1) of the Act, and, thereby, permit the Commission to reaffirm its earlier approval of AEP's and CSW's joint application seeking authority for AEP's acquisition of CSW.

Respectfully submitted,

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