

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

The New PJM Companies	Docket Nos.	ER03-262-009
American Electric Power Service Corp.		ER03-262-008
On behalf of its operating companies		ER03-262-007
Appalachian Power Company		
Indiana Michigan Power Company		
Kentucky Power Company		
Kingsport Power Company		
Ohio Power Company, and		
Wheeling Power Company		
Commonwealth Edison Company, and		
Commonwealth Edison Company of Indiana, Inc.		
The Dayton Power and Light Company, and		
PJM Interconnection, LLC		
American Electric Power Company	Docket Nos.	EC98-40-000
and		ER98-2770-000
Central and South West Corporation		ER98-2786-000

**NOTICE OF INTERVENTION AND REQUEST  
FOR EXTENSION OF TIME OF  
THE ALABAMA PUBLIC SERVICE COMMISSION**

The Alabama Public Service Commission (APSC), being an interested commission of the State of Alabama, having jurisdiction to regulate rates and charges for the sale of electricity to consumers within the state of Alabama, hereby gives notice of its intervention in the above-entitled docket, pursuant to Rule 214 of Rules of Practice and Procedure of the Federal Energy Regulatory Commission. (18 C.F.R. 385.214.)

The following persons should be included on the official service list and all correspondence and communications concerning these proceedings should be addressed to:

Mr. Eugene G. Hanes, Federal Affairs Advisor  
Alabama Public Service Commission  
P.O. Box 304260  
Montgomery, Alabama 36130

### **MOTION FOR LEAVE TO INTERVENE OUT OF TIME**

The APSC believes that its Notice of Intervention is adequate for it to become a party to this proceeding. However, pursuant to Rule 212 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (18 CFR §385.212), the APSC respectfully requests leave to intervene out of time, if such permission is required. In support of its motion, the APSC states as follows:

1. On November 25, 2003, the Federal Energy Regulatory Commission (Commission) entered its *Order Making Preliminary Findings and Giving Public Notice and Setting the Matter for Public Hearing Under PURPA Section 205(A)* (Order) in Docket No. ER03-262, *et al.* 105 FERC ¶ 61,251 (Nov. 25, 2003). In its Order, the Commission “preliminarily” determined that it would be appropriate to act under Section 205(a) of Public Utility Regulatory Policy Act to exempt American Electric Power Company (AEP) from the requirements of the Virginia Restructuring Act and an order of the Kentucky Public Service Commission.

2. The Commission also set for hearing before Judge William Cowan the following specific issues: (1) whether AEP’s voluntary commitment to join PJM is designed to obtain economical utilization of facilities and resources in the Midwest and Mid-Atlantic areas; (2) whether the Virginia and Kentucky laws, rules and regulations are preventing AEP from fulfilling both its voluntary commitment in merger proceedings to join an RTO and its application pursuant to Order No. 2000 to do so; and (3) whether the Virginia and Kentucky laws, rules and regulations in question are (i) neither required by

federal law nor (ii) designed to protect public health, safety, welfare or the environment, to conserve energy or mitigate fuel shortage emergencies.

3. The Commission redocketed this proceeding for hearing as Docket No. ER03-262-009.

4. Pursuant to state law (Title 37-4-40/41, Code of Alabama 1975), jurisdictional utilities providing electricity service in Alabama must obtain APSC approval that the proposed sale and conveyance or lease is consistent with the public interest. The Commission's decision in Docket No. ER03-262-009 conflicts with and may affect the APSC's ability to enforce state law. No other party is able to adequately protect these interests of the APSC.

5. In the Commission's own words, it made only a "preliminary" decision to exempt AEP from the requirements of the Virginia Restructuring Act and an order of the Kentucky Public Service Commission. Thus, the APSC could not have anticipated sooner that specific states rights issues related to that preliminary decision would be addressed and set for hearing in a new sub-docket.

#### **EXTENSION OF TIME FOR INITIAL DECISION**

The APSC fully supports the *Emergency Motion of the Virginia State Corporation Commission and the Kentucky Public Service Commission to Extend the Date For Initial Decision and Request For Shortened Response Time and Expedited Consideration*. The issues broached in the Commission's Order are too novel, far reaching, complicated and important to be dealt with in a hasty manner, and the request by the Virginia and Kentucky Commission's is both reasonable and necessary.

For the reasons set forth above, the Commission should grant permission for the APSC to intervene out of time if such permission is required. In addition, the Commission should grant an extension of time for the initial decision.

Respectfully submitted,

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Dated: December 12, 2003