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By Hand

The Honorable Anne K. Bingaman
Assistant Attorney General
U.S. Department of Justice
Antitrust Division
10th Street & Pennsylvania Ave., N.W.
Washington, D.C. 20530

Request for Business Review: Automated Interchange Matching System

Dear Ms. Bingaman:

This is a request for the Antitrust Division to state its enforcement intentions with respect to the proposed operations of Automated Interchange Matching System, Inc. ("AIMS"). This request is submitted pursuant to the Business Review Letter procedures of 28 C.F.R. § 50.6.

Introduction

AIMS is a not-for-profit corporation formed by some 26 investor-owned, federal, municipal, and rural cooperative electric utilities, as well as electric power marketers, for the purpose of establishing a computerized broker system to facilitate the purchase and sale of one-hour blocks of electric energy. A list of the initial members of AIMS is attached as Exhibit (1). As can be seen from this list, these entities do business in an area encompassing a substantial portion of the eastern United States, from Florida through Alabama in the south, to Pennsylvania and Illinois in the north, and west to Missouri.

AIMS was formed as a Delaware non-stock corporation on March 17, 1995. A copy

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of the Certificate of Incorporation of AIMS is attached as Exhibit (2), and a copy of the By-Laws of AIMS is attached as Exhibit (3). The purpose of the Corporation, as stated in the Operating Agreement between its members, is: "[T]o promote the interchange of hourly non-firm electric energy ('energy') by joining together in the ownership and operation of a computer-based network for the purpose of automatically matching quotes for the sale and purchase of hourly energy, adjusted for transmission and other considerations, on the principle of maximizing the savings among the Members during the one hour interchange transactions (the 'Matching System')." A copy of the Operating Agreement is attached as Exhibit (4).

Purpose of the Matching System

As part of their electric power businesses, each of the members of AIMS currently engages or could engage, from time to time, in bilateral purchases or sales of non-firm bulk electric power with various other members.^{1/} Such power is bought and sold in blocks of differing lengths, from one hour up to several days or more. It is generally not practical to sell blocks of power for periods of less than one hour. The bulk power acquired in such transactions is resold to the retail, commercial, industrial, and wholesale electric customers of the purchasing entities. A purchaser will generally be interested in buying whenever it can obtain a block of power for less than its cost of obtaining an equivalent block of power elsewhere, generally from its own generation. Likewise, a seller generally will be interested in selling if it can do so at a price greater than its incremental cost of generating the power.

In order to identify transaction partners, AIMS members presently contact other AIMS members, as well as other potential buyers or sellers, by telephone to determine if they are interested in buying or selling. While this may be feasible for transactions involving longer blocks of power, the inherent time constraints make this difficult and inefficient for one-hour blocks. The time available to contact potential partners for a transaction covering the next hour — by definition, a period significantly less than an hour — permits only a few calls to be made before the generation and delivery of the power to be bought or sold must be scheduled and effected, and the cycle started again for the next hour. As a result, in any given hour significant amounts of electric power for which there would be willing buyers and

^{1/} "Non-firm" electric power is power the delivery of which can be interrupted if necessary to deliver power sold on a firm (non-interruptible) basis. Non-firm power transactions of the sort to be carried out through the Matching System are often referred to as "economy energy" transactions, since the power is generally purchased to lower the buyer's overall cost for the electric energy delivered to its customers.

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sellers are likely to go unsold because the buyers and sellers have not been able to identify each other.

The AIMS members have associated in the formation of AIMS in an effort to design and implement a computerized system for identifying and bringing together buyers and sellers of one-hour blocks of energy on an hour-to-hour basis. As described in more detail below, the members anticipate setting up the Matching System, including the necessary hardware, software, and communications facilities, to enable members to post buy or sell quotes during one hour for energy to be generated and delivered in the next hour. In essence, the Matching System computer will match the highest buy quote with the lowest sell quote, net of applicable transmission costs, and so on through the available quotes, and publish the results electronically to the matching members in time for them to schedule and carry out the matched transactions. All transactions pursuant to matches generated by the Matching System will be consummated at the prices and other terms and conditions established in the applicable bilateral contract for the purchase and sale of non-firm energy between the matched members in effect at the time of the match, as well as those members' then-effective arrangements for any necessary transmission service. AIMS will have no role in the negotiation of those bilateral contracts, the pricing terms and other provisions of which will be matters for determination by the contracting parties.

Establishment of the Matching System will not affect the regulatory obligations of the members. Utilities subject to the jurisdiction of the Federal Energy Regulatory Commission ("FERC") will continue to be responsible for complying with any filing (including rate schedule filing), reporting, or other obligations arising under rules or regulations administered by FERC, including obligations relating to the provision of transmission service. Similarly, utilities subject to state or other regulation will continue to be subject to any applicable regulatory requirements. AIMS itself is not subject to regulation by FERC under the holding in *Continental Power Exchange, Inc.*, 68 FERC ¶ 61,235 (1994).

The members believe that participation in the Matching System will further their ability to carry out their regulatory and other obligations to their ratepayers and stockholders. In particular, the matching of buyers and sellers will be determined by a method consistent with maximizing the overall physical efficiency of the mix of generation resources available to the members participating in the Matching System in any hour. By matching the highest buy quote with the lowest sell quote, and so on, the Matching System tends to ensure that in any given hour the highest cost generating units among the members are not being used, while the lowest cost units are being used instead, the output of the higher cost units being replaced by power purchased from the lower cost units. The result should be a close approximation, if not the attainment, of the ideal use of the available generation resources

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among the members as a whole in a given hour — with each matched member individually better off than it would have been had it not engaged in the transaction resulting from a Matching System match.

Members will be free to engage in any form of energy transaction, including the purchase and sale of one-hour blocks of energy, outside the Matching System, including transactions with entities which are not members of AIMS. The members of AIMS anticipate that, as now, substantial volumes of non-firm energy in blocks greater than one hour will continue to be bought and sold without use of the Matching System. Indeed, any such transactions will have to be consummated outside the Matching System, since the Matching System will be limited to one-hour blocks. Moreover, the incentives for transactions longer than an hour — assurance of supply, locking in a price, etc. — will remain. Nonetheless, the experience of the members has been that when every effort to arrange such longer transactions has been made, in any given hour significant generating capacity that could be used in hourly transactions is likely to be available, if buyers and sellers can be brought together.

Operation of the Matching System

AIMS has entered into a contract with ESCA Corporation, of Bellevue, WA, to set up the Matching System, including writing the necessary software and providing the hardware required at the host and client sites. Current plans are for the AIMS computer and related communications and other equipment to be set up in a suitably secure, segregated facility located at the Tennessee Valley Authority's communications center in Chattanooga, TN.^{2/} The AIMS members will each have appropriate dedicated personal computers at their locations, which will be connected to the AIMS computer by suitable high-speed data communications links.

The operating of the Matching System will be governed by the *AIMS Rules for Quoting, Matching, Disclosure, Transmission Paths, and Scheduling*. A copy is attached as Exhibit (5).

Prior to participating in the matching process, each member will provide to the

^{2/} AIMS will reimburse TVA for any out-of-pocket installation, maintenance, or related costs. TVA personnel involved in the marketing of power, including the posting of quotes on the Matching System, will not have access to the AIMS computer or any Matching System data.

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Matching System the information necessary for the Matching System to compile a matrix of the terms, conditions, transmission requirements, etc., applicable to potential transactions between that member and every other member with which it is willing and able to be matched by the Matching System. This information would, among other items, include:

- The existence and relevant terms of the bilateral buy-sell agreements between the member and each other member with which the submitting member intends to have the potential to match;
- transmission, interface or corridor constraints affecting a potential match; and
- transmission charges and losses associated with the contract path for transmission service applicable to each potential match.

With this basic data entered into the matrix, updated from time to time as may be appropriate, a member would be in a position to enter buy or sell quotes into the Matching System for a specific hour. Quotes will be either cost-based, if that is the basis for a seller's sales arrangements, or, if permitted by applicable regulatory requirements, market-based. Because some members may be under regulatory or contractual requirements that vary depending on whether energy is purchased or sold on a cost or market basis, quotes will be flagged to identify in the Matching System whether they are cost-based or market-based. Quotes will be accepted from the beginning of each hour for purchases or sales in the next hour, with the acceptance of quotes closing at 35 minutes before the next hour (the hour for which the quotes are applicable).

Once the quoting period for the coming hour is closed, the Matching System algorithm will determine each possible match of buy and sell quotes, and calculate the difference, net of transmission costs. The differences will be calculated essentially as follows:

$$\text{Difference} = (\text{Buyer's quoted buy price in } \$/\text{MWH, adjusted for losses}) - (\text{Seller's quoted sell price in } \$/\text{MWH}) - (\text{transmission charges})$$

The adjustment for transmission losses to the buyer's quoted buy price will be the sum of the specified transmission losses entered into the Matching System matrix for the contract path for transmission service from the seller to the buyer previously arranged by the matched members. Similarly, transmission charges will be the sum of the transmission charges entered into the Matching System matrix across the contract path for such transmission service.

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On the basis of this calculation, and taking into account any capacity limits specified in the matrix on the electrical interfaces through which the power would flow, as well as any specified limits on the capacity of the transmission facilities that would be used for the match, the Matching System will determine the net difference between the buy and sell quote. Then, by ranking the differences from highest to lowest, the Matching System will determine a series of matches of buyers and sellers beginning with the largest difference and ending when (a) no more matches are feasible, as determined by specified minimum differences set by the practical limits of the matching process, or (b) all available buyers or all available sellers have been matched. Having determined all available matches, not later than 30 minutes before the hour the Matching System will promulgate electronically the following information:

- *To each member, as to each match:*
 - (1) The identity of the buyer and of the control area into which the power will be delivered;^{3/}
 - (2) The identity of the seller and of the control area from which the power will originate;
 - (3) The MW amount of each match; and
 - (4) The identity of any third party or parties providing transmission service.

- *To the buyer and seller in each match, in addition to the foregoing:*
 - (1) The buy quote for the match (flagged as to whether the quote is cost or market based);
 - (2) The sell quote for the match (flagged as to whether the quote is cost or market based);
 - (3) Third-party transmission losses;
 - (4) Applicable third-party transmission costs, and the identity of the party paying for transmission (as determined by the buyer and seller in their

^{3/} See discussion at p. 8 below of the significance of "control areas."

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existing power purchase and transmission contracts); and

- (5) The transaction price as determined by the buyer and the seller in their existing contract.

- *To entities providing transmission service* for a matched transaction:

- (1) The identity of the buyer and of the control area into which the power will be delivered;
- (2) The identity of the seller and of the control area from which the power will originate;
- (3) The MW amount of each match;
- (4) The identity of the party paying for the transmission service (as determined by existing power purchase and transmission contracts);
- (5) Transmission constraints reached;
- (6) Transmission losses; and
- (7) Transmission revenues, as determined by the applicable transmission rate.

The Matching System will also notify members when the available capacity on a resource (*e.g.*, control area interface or transmission facility) used for matched transactions is being exhausted by such use, such that the resource is not available for matched transactions.

The foregoing disclosure provisions are intended to give the members certain minimum information about power flows resulting from transactions arranged by the Matching System, to facilitate management of those flows as necessary to preserve the reliability of the members' interconnected transmission systems. Thus, as described above, the Matching System will promulgate to all members information on the source, destination, and volume of energy flows resulting from the Matching System. Additional details of specific matches, however, will only be disclosed to the matching members. In particular, buy and sell quotes will not be disclosed, except for disclosure to each matched buyer and seller of their quotes for that match. Information necessary to arrange transmission service, which would not include buy or sell quotes, will be disclosed to third parties providing

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transmission service for matched transactions.

Since the purpose of participation in AIMS is facilitation of purchase and sale transactions, the members of AIMS expect that in almost all cases buyers and sellers which have been matched will consummate the transactions for which they have been matched, in accordance with their existing bilateral purchase and sale agreements. AIMS will not be empowered to require completion of matched transactions by the imposition of sanctions or otherwise. An individual member may, however, decline to match with a member which has proved unreliable in completing transactions, or could seek liquidated damages or other penalty provisions in its bilateral contract with such a member.

Other Matching System Features

Reliability. All AIMS transactions are to be carried out in accordance with any applicable reliability standards, guidelines or other requirements of the North American Electric Reliability Council ("NERC").

Control areas. The scheduling and coordination of the generation and delivery of electric power in a given geographic area is generally carried out by the utility operating the "control area" that encompasses that geographic area. For this reason, quotes on the Matching System must be for blocks of energy originating in a specified control area, for delivery to a specified control area. Accordingly, members posting quotes must provide, or have entered into agreements with the appropriate entities to provide, control area services appropriate to scheduling and effecting delivery of the energy sold in matched transactions. AIMS will require that written notification be provided showing that appropriate control area arrangements, authorizations, and notifications are in place before quotes will be accepted for the Matching System.

Matching System capacities. The Matching System will be initially configured to handle all current members, with the ability to be readily expanded up to 62 members. For purposes of the Matching System, an offer to buy or sell a block of energy will be considered a separate quote for each control area interface at which the power can be delivered or received. So defined, the Matching System will be initially designed to accommodate up to 280 quotes for a given hour from each member, which should significantly exceed the maximum number of quotes currently expected to be posted by any one member. AIMS will consider adding capacity to the Matching System for additional members, and for additional quotes by each member, as demand may warrant. As a matter of practicality, quoted blocks must be in integer multiples of one megawatt.

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Individual limitations. Each member will be able to specify interface limits, transmission constraints, or other limits on its ability to consummate any particular match. This can be done by revising the data submitted by the member for the Matching System matrix.

Ramping. When a matched transaction is scheduled to begin, the generation facility from which the power will be delivered cannot immediately start producing the additional purchased power. Likewise, generation cannot be immediately cut back to new lower output levels. Rather, generation facilities must be "ramped up" or "ramped down" over a period of minutes to new output levels. Members will be encouraged, but not required, to ramp up and ramp down the generation used to complete matched transactions over a standard ten minute period, starting at the beginning of each hour. If longer ramp times are needed, members will be encouraged to ramp in multiples of ten minutes.

Billing and collection. All billing and collection for matched transactions will be handled by the buyer and seller in accordance with their bilateral contracts.

Audit procedures. A member that believes its quotes are not being matched properly can at any time request the AIMS Administrator (see below) to review the performance of the Matching System for a particular hour. The AIMS Administrator would report his or her findings to the requesting member, but would not disclose any quote or other proprietary information pertaining to any other member. Each member will also be entitled to request a printout of certain information in order to evaluate whether the Matching System is determining matches properly. Specifically, once a month a member may request a printout of Matching System data for a particular hour. The hour must be one in which the requesting member placed a quote on the Matching System. The hour must also be in a day at least 30 days prior to the date of the request, and could not be for a date earlier than 60 days prior to the request, because Matching System data will only be retained for 60 days. The member making such a request will receive a printout showing the quotes and transmission data for all matches in that hour, but would not receive any data on quotes that did not match. Finally, relevant information from the matrix of contract data (see above), other than price, cost, or other confidential information, would be distributed to all members on a quarterly basis for review.

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Relation of the Matching System to Transmission Service

The Matching System will have no role in determining the availability of, access to, or rates or terms and conditions for, transmission service. Transactions arranged through the Matching System will have no priority as such for transmission service as compared to transactions arranged outside of the Matching System. Members will be required to inform the Matching System that transmission arrangements sufficient to complete any potential match are in place. Entering into such arrangements, however, will be the responsibility of each member. Each member owning or controlling transmission facilities will continue to be responsible for complying with any applicable federal or state regulations governing the provision of transmission service.

Members will be encouraged to discuss with each other, and seek to develop solutions for, parallel flows (sometimes called "loop flows") and other issues that may arise from asserted impacts on interconnected electric systems of transactions resulting from the Matching System. Any member which can demonstrate through a *bona fide* load flow study that its system is significantly impacted by parallel flows caused by AIMS transactions may request review of such parallel flows by the AIMS Transmission Subcommittee. Upon receiving such a request, the Transmission Subcommittee is required by the Operating Agreement to do either or both of the following: (a) review the relevant facts and make a recommendation to the impacted parties as to any appropriate measures; or (b) require the affected members to submit to non-binding mediation, under procedures established by the Transmission Subcommittee, with a view toward reaching agreement on appropriate measures. The Matching System will implement, to the extent technically practical, any jointly agreed and requested arrangement between affected parties as to a split or allocation of a matched transaction among multiple wheeling paths.

Membership and Governance

The AIMS Operating Agreement specifies that:

Membership is open to any electric utility, Federal power marketing administration, or any other entity that: (1) is subject to, or eligible to apply for, an order under Section 211 of the Federal Power Act; and (2) operates a 'control area' as that term is defined by the North American Electric Reliability Council ('NERC') or agrees that it will arrange for control area services to be performed for it by another utility in connection

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with use of the Matching System.

Operating Agreement § 2.

The current membership includes investor-owned, federal (the Tennessee Valley Authority), municipal (including municipal joint action agency), and rural electric cooperative (including generation and transmission cooperative) electric utilities, and power marketers. Membership will be open to any similar entity, as well as independent power producers. AIMS has actively solicited new members, and on several occasions has invited interested parties to attend meetings of its Operating Committee.

The supreme governing body of AIMS is its Operating Committee, which is charged with managing the property, business and affairs of AIMS. The responsibilities of the Operating Committee, as specified in the AIMS By-Laws, include:

- Promulgating written rules, standards and requirements for the Matching System;
- Adopting an annual budget;
- Setting a schedule of fees and assessments for participation in AIMS and use of the Matching System;
- Requiring periodic audits of the books and records of AIMS and the Matching System; and
- Otherwise controlling and directing the Matching System and other activities of AIMS.

Each member is entitled to have one Representative on the Operating Committee. Action by the Operating Committee requires the affirmative votes of 90% or more of the Representatives present and voting at a meeting at which a quorum is present, each Representative having one vote. Two-thirds of the Representatives constitutes a quorum.

AIMS will have four officers: Chair and President; Vice Chair; Secretary; and Treasurer. The officers are elected by the Operating Committee for one-year terms at each Annual Meeting of the Operating Committee.

In order for AIMS to be able to act when the Operating Committee is not in session,

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the Operating Committee has a Steering Subcommittee, composed of the officers of the corporation and the chairs of each other then-existing subcommittee of the Operating Committee. The Steering Subcommittee is delegated power and authority to act on behalf of the Operating Committee whenever the Operating Committee is not in session, subject to the ultimate authority of the Operating Committee.

The Operating Committee may establish such other subcommittees, in addition to the Steering Subcommittee, as it sees fit, with the members appointed by the Steering Subcommittee. At present, the other AIMS subcommittees are:

- Transmission Subcommittee;
- Assessment Subcommittee;
- Membership Subcommittee;
- Nominating Subcommittee; and
- Technical Subcommittee.

AIMS has entered into a contract with Mr. Jerry Saacks, the former Vice President, Transmission for the four operating company subsidiaries of Entergy Corporation, to administer implementation of the Matching System. Once the Matching System is up and running, AIMS may employ a full or part-time employee, to be known as the AIMS Administrator, to supervise and administer the day-to-day operations of the Matching System.

AIMS and the Matching System will be operated on a not-for-profit basis. The costs of the corporation, including establishing, operating and maintaining the Matching System, will be covered by fees and assessments levied on the members by the Operating Committee. For the first year, which should include start-up of the Matching System, these costs are budgeted at approximately \$38-40,000 per member, on the basis of 28 members. Members joining subsequently will share in the start-up costs on a *pro rata* basis. The benefit of the corporation to the members will be realized from participation in transactions arranged via the Matching System, rather than membership in the corporation. It is expected that AIMS will apply for tax-exempt status under § 501(c)(6) of the Internal Revenue Code.

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Conclusion

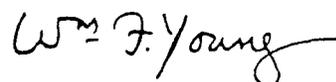
The members of AIMS believe that the Matching System, as described above and in the attached documents, will significantly enhance their ability to engage in competitive purchases and sales of hourly non-firm energy. Precisely because the members of AIMS are actual or potential competitors of some or all of the other members in the sale of bulk power, they have come together in the formation of AIMS and the establishment of the Matching System in order to create additional opportunities to make such purchases and sales. Indeed, to the extent that the members are already engaging in the purchase and sale of hour-long blocks of non-firm bulk power, the Matching System represents little more — but nothing less — than a means of automating and making more effective and efficient what the members are already doing.

In creating the Matching System, the members of AIMS will not restrict their market alternatives, but only add a new one. New members will be welcome, and all members, old and new, will be free to continue to do whatever they have done prior to the formation of AIMS. Moreover, AIMS does not purport to affect the rights and obligations of the members with respect to transmission access. Finally, the operation of the Matching System does not involve the exchange among the members of competitively sensitive information, or otherwise facilitate possible collateral restraints on competition. In short, the Matching System will enhance competition in the purchase and sale of hour-long blocks of energy, and will result in the more efficient production of energy at lower cost by the members of AIMS, to the benefit of the members of AIMS and their customers.

All told, AIMS represents the best sort of innovative response to the new competitive realities facing the electric power industry. AIMS thus requests the Antitrust Division to confirm that it would have no intention of taking enforcement action if the Matching System is implemented as stated in this letter. In this connection, AIMS plans to have the Matching System operational by the beginning of this coming January. Accordingly, we would be most grateful for a response to this request in time to meet that operational date.

Please do not hesitate to contact the undersigned if you require any additional information about AIMS or the Matching System, or have any questions about either.

Yours sincerely,



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cc: AIMS Steering Subcommittee
Mr. Jerry J. Saacks