

112 FERC ¶ 61,238  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Nora Mead Brownell, and Suedeen G. Kelly.

PPL Brunner Island, L.L.C.	Docket Nos. ER00-744-004
PPL Holtwood, L.L.C.	ER00-744-002
PPL Martins Creek, L.L.C.	ER00-744-001
PPL Montour, L.L.C.	
PPL Susquehanna, L.L.C.	
PPL Electric Utilities Corp.	ER00-1712-006
	ER00-1712-004
	ER00-1712-003
PPL EnergyPlus, L.L.C.	ER00-1703-001
	ER98-4608-007
	ER98-4608-006
	ER98-4608-005
PPL University Park, L.L.C.	ER02-1327-003

ORDER CONDITIONALLY ACCEPTING UPDATED MARKET POWER  
ANALYSIS AND TARIFF SHEETS

(Issued September 1, 2005)

1. In this order the Commission conditionally accepts an updated market power analysis filed by PPL Brunner Island, L.L.C., PPL Holtwood, L.L.C., PPL Martins Creek, L.L.C., PPL Montour, L.L.C., PPL Susquehanna, L.L.C. (PPL Generating Companies), PPL Electric Utilities Corp. (PPL Electric), and PPL EnergyPlus, L.L.C. (PPL EnergyPlus) (collectively, PPL Pennsylvania Companies) and PPL University Park, L.L.C. (PPL University Park) (when all are referred to as one unit, PPL East Companies). The Commission also accepts certain revised tariff sheets filed by the PPL East Companies. As discussed below, the Commission concludes that, subject to the Commission's acceptance of the compliance filing directed herein, the PPL East Companies satisfy the Commission's standards for market-based rate authority. The PPL East Companies' next updated market power analysis is due three years from the date of this order.

## **Background**

2. In their last market power updates,<sup>1</sup> PPL Pennsylvania Companies separately filed updated market power analyses pursuant to the Commission's orders granting PPL Pennsylvania Companies authority to sell electric energy and capacity at market-based rates.<sup>2</sup> PPL Pennsylvania Companies stated in their updated analyses that the SMA Order<sup>3</sup> exempts them from performing supply margin assessment (SMA) of generation located in the PJM Interconnection (PJM), an ISO with Commission approved market monitoring and mitigation. In those filings, PPL Pennsylvania Companies stated that they satisfy the Commission's standards for generation market power, transmission market power, barriers to entry, and affiliate abuse or reciprocal dealing.

3. On November 9, 2004, PPL Pennsylvania Companies submitted for filing a revised updated market power analysis (November 9 filing), which also included affiliate PPL University Park, pursuant to the Commission's order issued on May 13, 2004.<sup>4</sup> The May 13 Order addressed the procedures for implementing the generation market power analysis announced on April 14, 2004, and clarified on July 8, 2004.<sup>5</sup> PPL Pennsylvania Companies also filed tariff revisions that incorporated the Market Behavior Rules.<sup>6</sup> In

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<sup>1</sup> PPL Generating Companies filed their last triennial market update on January 27, 2003, in Docket No. ER00-744-001. PPL Electric filed its last updated market power analysis on July 17, 2003, in Docket No. ER00-1712-003. PPL EnergyPlus filed its last updated market power analysis on December 17, 2001, in Docket No. ER98-4608-005.

<sup>2</sup> See *Southaven Power*, 91 FERC ¶ 61,063 (2000); *Pennsylvania Power & Light Co.*, 80 FERC ¶61,053 (1997); *PP&L Energy Plus Co.* 85 FERC ¶ 61,377 (1998).

<sup>3</sup> *AEP Power Marketing, Inc.*, 97 FERC ¶ 61,219 (2001) (SMA Order).

<sup>4</sup> *Acadia Power Partners, LLC*, 107 FERC ¶ 61,168 (2004) (May 13 Order).

<sup>5</sup> *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004) (July 8 Order).

<sup>6</sup> 105 FERC ¶ 61,218 (2003), 107 FERC ¶ 61,175 (2004) (Market Based Rules Rehearing Order).

addition, pursuant to Order No. 614,<sup>7</sup> PPL Generating Companies and PPL Electric have filed ministerial changes to their respective market-based rate codes of conduct to reflect the current corporate names.

4. On May 9, 2005, PPL University Park submitted for filing a revised updated market power analysis, which was identical to the market power analysis in the November 9 filing and tariff sheets that incorporated the Order No. 652 language in its tariff.

5. In the April 14 Order, the Commission adopted two new indicative screens for assessing generation market power: the pivotal supplier screen and the wholesale market share screen. The May 13 Order directed applicants with three-year market-based reviews pending before the Commission to file a revised generation market power analysis in accordance with the schedule contained in Appendix A of the May 13 Order.

### **Notice and Responsive Pleadings**

#### **PPL EnergyPlus**

6. Notice of PPL EnergyPlus's filing was published in the *Federal Register*, 66 Fed. Reg. 67,241 (2001), with protests or interventions due on or before January 7, 2002.

7. On January 7, 2002, the Maryland Office of People's Counsel (Maryland People's Counsel) filed a protest; also on January 7, 2002, the PPL Industrial Customer Alliance and the PJM Industrial Customer Coalition (Industrial Customers) and the Pennsylvania Office of the Consumer Advocate (PA Consumer Advocate) filed motions to intervene and comments. All three parties contended that PPL EnergyPlus did not make a showing that it lacked market power in its market-based rate application. All three requested that PPL EnergyPlus file an SMA analysis. Moreover, they note the PJM Market Monitoring Unit's report of market abuse in the first quarter of 2001, which stated that PPL EnergyPlus was a pivotal supplier in the capacity credit market and was able to exert market power.

8. On January 22, 2002, PPL EnergyPlus filed an answer. It stated that the Commission does not require them to file an SMA analysis in PJM because it is a Commission approved market.

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<sup>7</sup> *Designation of Electric Rate Schedule Sheets*, Order No. 614, 65 Fed. Reg. 18,221 (FERC Statutes and Regulations, Regulations Preambles July 1996-December 2000, P 31,096 (2000)).

9. On February 6, 2002, the Maryland People's Counsel filed an answer asking the Commission to reject PPL Energy's answer as nonresponsive.

10. On February 7, 2002, Jersey Central Power and Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (FirstEnergy Companies) intervened out of time requesting that the Commission reject PPL EnergyPlus's market-based rate application until the market power issues identified in the PJM MMU's report were addressed.

11. On February 20, 2002, PPL EnergyPlus filed a second answer recommending denial of FirstEnergy Companies' intervention because it was out of time. In response to the Industrial Customers and the Maryland People's Counsel, PPL EnergyPlus also argued that allegations of past anticompetitive conduct alone are not sufficient to warrant the denial of market-based rate authority.

### **PPL Electric**

12. Notice of PPL Electric's filing, as amended, was published in the *Federal Register*, 68 Fed. Reg. 44,937 (2003), with interventions or protests due on or before August 7, 2003.

13. On August 7, 2003, the Montana Consumer Counsel (MCC) filed a protest against PPL Electric's filing. On August 22, 2003, PPL Electric filed an answer to MMC's protest.

14. MCC protested the portion of PPL Electric's filing that concerned its affiliate PPL Montana. MCC contended that PPL Montana possesses market power in the NorthWestern control area.

15. PPL Electric's answer stated that the SMA was performed correctly, and that MCC's protest was a collateral attack on Commission precedent. PPL Electric stated that MCC's claim that PPL Montana had market power was unsupported, and there was no basis for MCC's request that the Commission delay ruling on PPL Electric's filing until the Commission acted on the SMA proceeding.

### **PPL Pennsylvania Companies**

16. Notice of the PPL Pennsylvania Companies' filing, as amended, was published in the *Federal Register*, 69 Fed. Reg. 68,140 (2004), with interventions or protests due on or before November 30, 2004.

17. On November 30, 2004, the PP&L Industrial Customer Coalition and the PP&L Industrial Customer Alliance (Industrial Customers) filed a motion to intervene and protest and the Pennsylvania Office of Consumer Advocate and the Maryland Office of People's Counsel (Joint Consumer Advocates) filed a motion to intervene and comments. On December 9, 2004, the Pennsylvania Public Utility Commission (Pennsylvania PUC) filed a motion to intervene out of time. On December 16, 2004, PPL Pennsylvania Companies filed an answer to the Industrial Customers' protest.

18. Industrial Customers request that the Commission direct PPL Pennsylvania Companies to run the interim screens for the PJM capacity market, examine the Commission's and PJM MMU's ability to detect and remedy any exercise of market power, and take reasonable steps to begin reversing the impact that wholesale market experiments are having on retail customers. They contend that PJM's market power monitoring regime is inherently flawed and may be incapable of adequately protecting consumers against market power. Additionally, Industrial Customers state that the Commission should consider the wholesale market's effect on retail customers. In particular, they contend that the "Commission should defer to any state requirements that obligate public utilities with provider of last resort (POLR) or standard offer supply (SOS) responsibilities, so long as such requirements produce pricing results either based on traditional cost-of-service ratemaking or market proxy pricing."<sup>8</sup>

19. Joint Consumer Advocates request that the Commission require PPL Pennsylvania Companies to submit additional market power analyses that assess PPL Pennsylvania Companies' market power in PJM's capacity and ancillary services markets, and further require that those studies be undertaken using the original PJM Mid-Atlantic footprint as the relevant geographic market. They further comment that PPL Pennsylvania Companies have not provided sufficient analysis for the Commission to assess whether PPL Pennsylvania Companies have the potential to exercise generation market power in PJM. Joint Consumer Advocates claim that it is incorrect for PPL Pennsylvania Companies to consider the expanded PJM<sup>9</sup> for their analysis considering that PJM currently operates capacity and ancillary service markets in the expansion region that are distinct and separate from those they operate in the PJM Mid-Atlantic market. For example, Joint Consumer Advocates state that the PJM Market Monitor has recently detected the potential for the exercise of market power in ancillary services within the

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<sup>8</sup> PJM Industrial Customer Coalition and the PP&L Industrial Customer Alliance at p. 15.

<sup>9</sup> Expanded PJM includes service territories outside of the combined PJM Mid-Atlantic and PJM West regions that have joined PJM since January 1, 2004.

Northern Illinois Control Area (NICA), the expansion region comprising the Commonwealth Edison service territory. Joint Consumer Advocates do not contend that the PJM Companies fail the market power screens as prescribed by the April 14<sup>th</sup> Order or that they were incorrectly performed.

20. PPL Pennsylvania Companies, in their answer to the protest of Industrial Customers and comments of Joint Consumer Advocates, claim that neither party has disputed PPL Pennsylvania Companies' application of the generation market power screens. PPL Pennsylvania Companies state that they conducted an analysis that applies the Commission's generation screens to the relevant PJM capacity market, which is the combined PJM Mid-Atlantic region and PJM West, and contend it passes both screens as applied to the capacity market.

### **Other PPL East Companies**

21. Notice of the January 29, 2003 filing of PPL Brunner Island's updated market power analysis was published in the *Federal Register*, 68 Fed. Reg. 6138 (2003), with protests or interventions due on or before February 18, 2003. None was filed.

22. Notice of the May 9, 2005 filing of PPL University Park's updated market power analysis was published in the *Federal Register*, 70 Fed. Reg. 29,299 (2005), with protests or interventions due on or before May 31, 2005. None was filed.

### **Procedural Matters**

23. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Given the early stage of this proceeding and the absence of undue delay or prejudice, we find good cause to grant the motion to intervene out-of-time of Pennsylvania PUC.

24. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept the answers filed in this proceeding because they provided information that assisted us in our decision-making process.

### **Discussion**

25. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, market power in generation and

transmission and cannot erect other barriers to entry. The Commission also considers whether there is evidence of affiliate abuse or reciprocal dealing.<sup>10</sup>

### **Generation Market Power**

26. In the April 14 Order, the Commission adopted two indicative screens for assessing generation market power. PPL East Companies have prepared both the pivotal supplier and the wholesale market share screens for the PJM Interconnection (PJM) market, as it existed at the time the market power analysis was performed. These areas include PJM Mid-Atlantic, PJM West, and the service territories of American Electric Power-East, Dayton Power and Light, and Commonwealth Edison, but excluding the service territories of Virginia Electric and Power Co. and Duquesne Light, which had not been integrated at the time the market power analysis was completed.

27. The Commission has reviewed the PPL East Companies' generation market power screens and has determined that the PPL East Companies pass the screens in the PJM market. Accordingly, the Commission finds that the PPL East Companies satisfy the Commission's generation market power standard for the grant of market-based rate authority.

28. We will reject the protest of the Industrial Customers and the comments of Joint Consumer Advocates (jointly, Protester and Commenter). First, Protester and Commenter do not provide sufficient support for the existence of PPL Pennsylvania Companies' market power. Although Protester and Commenter cite a 2001 incident where capacity was withheld in PJM Mid-Atlantic, the PJM MMU notes, in a report to the Pennsylvania PUC,<sup>11</sup> that this incident was a result of a market rule that PJM has since changed and the Commission has approved.

29. In addition, this proceeding is not the correct forum to address Protester and Commenter's suggestion that the Commission modify its generation market power analysis (*i.e.*, apply the interim screens for the PJM capacity market and examine the Commission and PJM MMU's ability to detect and remedy any exercise of market

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<sup>10</sup> See, e.g., *Progress Power Marketing, Inc.*, 76 FERC ¶ 61,155, at 61,919 (1996); *Northwest Power Marketing Co., L.L.C.*, 75 FERC ¶ 61,281, at 61,899-900 (1996); *accord Heartland Energy Services, Inc.*, 68 FERC ¶ 61,223, at 62,062-63 (1994).

<sup>11</sup> Market Monitoring Unit, PJM Interconnection L.L.C. "Report to the Pennsylvania Public Utility Commission: Capacity Market Questions," November 2001 (PJM MMU Capacity Report). Website address: <http://www.pjm.com/markets/market-monitor/downloads/mmu-reports/20011121-rpt-pa-utility.pdf>.

power). Protester and Commenter's request in this regard is outside the scope of this proceeding. The Commission may consider such argument in Docket No. RM04-7.<sup>12</sup> In addition, Protester and Commenter's request that the Commission require that the generation market power analysis is performed on the PJM Mid-Atlantic capacity market rather than the entire PJM footprint is unsupported. The April 14 Order stated that "applicants located in ISO/RTOs with sufficient market structure and a single energy market may consider the geographic region under the control of the ISO/RTO as the default relevant geographic market for purposes of completing their analysis (*e.g.*, PJM, ISO-NE, NYISO, and CAISO)."<sup>13</sup> The April 14 Order also allows applicants and interveners to present evidence on a case-by-case basis to show that some other geographic market should be considered as the relevant market in a particular case. However, Protester and Commenter have failed to provide sufficient evidence in that regard in this proceeding.

30. As noted above, MCC asserts in its protest that PPL Electric's affiliate, PPL Montana, possesses market power in the NorthWestern control area. However, because this issue has also been raised by MCC in PPL Montana's updated market power analysis filing, in Docket No. ER99-3491-002, *et al.*, and is being addressed by the Commission in an order issued concurrently in that proceeding, we need not address it here.<sup>14</sup>

31. We will also reject the protest of the Maryland People's Counsel in Docket No. ER98-4608-005, and disagree with the comments of Industrial Customers, the PA Consumer Advocate, and FirstEnergy Companies because the issues raised are no longer relevant to this proceeding. The SMA analysis that concerns the protestors and intervenors has been replaced by the indicative screens of the April 14 and July 8 Orders.

32. The Commission has previously stated that uncommitted capacity is determined by adding the total nameplate capacity of generation owned or controlled through contract and firm purchases, less operating reserves, native load commitments and long-

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<sup>12</sup> Market-Based Rates rulemaking, *Market-Based Rates for Public Utilities*, Docket No. RM04-7 (2004). We note that Industrial Customers and the PA Consumer Advocate have, separately, chosen to participate in the Market-Based Rates rulemaking. *See* Market-Based Rates rulemaking, Motion to Intervene of the PJM Industrial Customer Coalition *et. al.* June 10, 2004 and Market-Based Rates rulemaking, Technical Conference Transcript, January 27, 2005, pp 33-41.

<sup>13</sup> April 14 Order at P 187.

<sup>14</sup> *See PPL Montana, LLC*, 112 FERC ¶ 61,237 (2005).



term firm non-requirement sales.<sup>15</sup> PPL Pennsylvania Companies prepared the screens using summer and winter capacity ratings resources owned and controlled by the PPL Pennsylvania Companies. PPL Pennsylvania Companies claimed that “the use of seasonal capacity ratings is more accurate.”<sup>16</sup> In the Commission’s April 14 Order, the Commission stated that appropriate simplifying assumptions are those assumptions that do not affect the underlying methodology utilized by these screens. PPL Pennsylvania Companies are now fully integrated within PJM, which determines the net capability of capacity resources based on current operating performance (seasonal ratings). Therefore, the Commission accepts PPL Pennsylvania Companies’ assumption.<sup>17</sup>

### **Transmission Market Power**

33. When a transmission-owning public utility seeks market-based rate authority, the Commission has required the public utility to have an open access transmission tariff (OATT) on file before granting such authorization. The PPL East Companies state that the only transmission facilities owned other than interconnection facilities are the transmission facilities owned by PPL Electric, which are operated by PJM, and transmission service over these facilities is provided under the PJM OATT on file with the Commission.<sup>18</sup> No intervenors have raised transmission market power concerns. Based on the PPL East Companies’ representation, the Commission finds that the PPL East Companies satisfy the Commission’s transmission market power standard for the grant of market-based rate authority.

### **Other Barriers to Entry**

34. The PPL East Companies state there have been no changes to the factual circumstances described in their most recent market power analysis regarding their inability to erect barriers to entry. We find this to be an insufficient showing that there are no other barriers to entry in the PJM market area, and order the PPL East Companies to file a compliance filing within 30 days of the date of the issuance of this order demonstrating that there are no other barriers to entry.

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<sup>15</sup> April 14 Order, 107 FERC ¶ 61,018 at P 95.

<sup>16</sup> November 9 filing, Attachment B, at n 13.

<sup>17</sup> *Dayton Power & Light Co.*, 109 FERC ¶ 61,268 at (2004).

<sup>18</sup> *See Puget Sound Energy, Inc.*, 97 FERC ¶ 61,309 (2001).

### **Affiliate Abuse**

35. The PPL East Companies state that their market-based rate tariffs restrict sales of electricity to, or purchases of electricity from, any of their affiliates without first receiving Commission approval under section 205 of the Federal Power Act. The PPL East Companies further state that they have on file with the Commission codes of conduct that govern the sharing of non-public market information with their affiliates, and the pricing of non-power goods and services in transactions between affiliates. In addition, no intervenors have raised affiliate abuse concerns. Based on the PPL East Companies' representations, the Commission finds that the PPL East Companies satisfy the Commission's concerns with regard to affiliate abuse.

### **Reporting Requirements**

36. Consistent with the procedures the Commission adopted in Order No. 2001, an entity with market-based rates must file electronically with the Commission an Electric Quarterly Report containing: (1) a summary of the contractual terms and conditions in every effective service agreement for market-based power sales; and (2) transaction information for effective short-term (less than one year) and long-term (one year or greater) market-based power sales during the most recent calendar quarter.<sup>19</sup> Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.<sup>20</sup>

37. Applicants must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.<sup>21</sup> Order No. 652 requires that the change in status reporting

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<sup>19</sup> *Revised Public Utility Filing Requirements*, Order No. 2001, 67 Fed. Reg. 31,043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127 (2002). Required data sets for contractual and transaction information are described in Attachments B and C of Order No. 2001. The Electric Quarterly Report must be submitted to the Commission using the EQR Submission System Software, which may be downloaded from the Commission's website at <http://www.ferc.gov/docs-filing/eqr.asp>.

<sup>20</sup> The exact dates for these reports are prescribed in 18 C.F.R. § 35.10b (2004). Failure to file an Electric Quarterly Report (without an appropriate request for extension), or failure to report an agreement in an Electric Quarterly Report, may result in forfeiture of market-based rate authority, requiring filing of a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

<sup>21</sup> *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 70 Fed. Reg. 8,253 (Feb. 18, 2005), FERC Stats. & (continued)

requirement be incorporated in the market-based rate tariff of each entity authorized to make sales at market-based rates. Accordingly, Applicants are directed, within 30 days of the date of issuance of this order, to revise their market-based rate tariffs to incorporate the following provision:

[Insert market-based rate seller name] must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority. A change in status includes, but is not limited to, each of the following: (i) ownership or control of generation or transmission facilities or inputs to electric power production other than fuel supplies, or (ii) affiliation with any entity not disclosed in the application for market-based rate authority that owns or controls generation or transmission facilities or inputs to electric power production, or affiliation with any entity that has a franchised service area. Any change in status must be filed no later than 30 days after the change in status occurs.

38. Applicants are directed to file an updated market analysis within three years of the date of this order, and every three years thereafter. The Commission also reserves the right to require such an analysis at any intervening time.

### **Market Behavior Rules**

39. Applicants state that their submittals incorporate the Commission's Market Behavior Rules, as required by the Commission.<sup>22</sup> However, we find that Market Behavior Rule 2(b), as included in Applicants' submittals, fails to comply with the Market Behavior Rules Rehearing Order, where we clarified that the parenthetical clause "scheduling non-firm service *or* products as firm" as it appears in Market Behavior Rules 2(b) should be revised to read: "scheduling non-firm service *for* products as firm" (emphasis added).<sup>23</sup> Accordingly, Applicants are directed, within 30 days of the date of issuance of this order, to revise their market-based rate tariffs to include this required clarification.

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Regs. ¶ 31,175 *order on reh'g*, 111 FERC ¶ 61,413 (2005).

<sup>22</sup> *See supra* P 3.

<sup>23</sup> Market Behavior Rules Rehearing Order, 107 FERC ¶ 61,175 at P 73.

The Commission orders:

(A) The PPL East Companies' updated market power analysis is hereby accepted for filing, subject to Commission acceptance of the compliance filing directed in Ordering Paragraph (D), as discussed in the body of this order.

(B) The PPL East Companies' revised tariff sheets are accepted for filing, as discussed in the body of this order

(C) An updated market power analysis is due from PPL East Companies within three years of the date of this order.

(D) PPL East Companies are directed, within 30 days of the date of issuance of this order, to submit a compliance filing demonstrating that there are no other barriers to entry to the PJM market area.

(E) PPL East Companies are directed to revise their proposed tariff sheets incorporating the Market Behavior Rules within 30 days of the issuance of this order, as discussed in the body of this order.

(F) PPL Pennsylvania Companies are directed, within 30 days of the date of issuance of this order, to revise their market-based rate tariffs to include the change in status reporting requirements.

By the Commission.

( S E A L )

Linda Mitry,  
Deputy Secretary.