

2. Additionally, the Commission finds that Applicants meet the criteria for a Category 1 seller in all regions except the Central region and are so designated. Applicants meet the criteria for a Category 2 seller in the Central region and are so designated. Applicants will be required to file updated market power analyses according to the regional schedule adopted in Order No. 697.³

I. Background

3. On June 27, 2008, Applicants filed proposed tariff revisions to comply with Order Nos. 697 and 697-A. They also notified the Commission that they are Category 1 sellers in all regions except the Central region.

4. On July 11, 2008, Applicants filed proposed tariff revisions to allow Applicants to sell ancillary services, including sales, into ancillary services markets administered by the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and other regional transmission organizations (RTOs) and independent system operators (ISOs). On August 21, 2008, Applicants supplemented their July 11 filing by including an Asset Appendix in the form set forth in Appendix B of Order No. 697. They also filed additional proposed tariff revisions.⁴

5. Applicants are affiliates and wholly-owned subsidiaries of Ameren Corporation, and are both authorized to make sales at market-based rates.⁵ Ameren Generating owns approximately 4,200 MW of generation capacity that is located within the Midwest ISO and the PJM Interconnection, L.L.C. (PJM) markets. Ameren Generating sells all of the output from the generating facilities it owns to Ameren Marketing under long-term contracts entered into pursuant to Ameren Generating's market-based rate authority.

³ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 882-93, App. D; Order Clarifying Final Rule, 121 FERC ¶ 61,260 at P 9, 10, App. D-1.

⁴ The following additional companies and dockets were included in the August 21, 2008 filing: Union Electric Company, Docket Nos. ER08-1268-001 and ER00-2687-009; AmerenEnergy Resources Generating Company, Docket Nos. ER08-1270-001 and ER04-53-008; AmerenEnergy Medina Valley Cogen, L.L.C., Docket Nos. ER08-1271-001 and ER04-8-006. However, these additional dockets included in the August 21 supplement concern other proceedings and therefore will not be addressed in this order.

⁵ *Ameren Energy Generating Co.*, 93 FERC ¶ 61,024 (2000), *reh'g denied*, 95 FERC ¶ 61,009 (2001); *Madison Gas & Elec. Co.*, 90 FERC ¶ 61,115, at 61,349-50 (2000); *see also Ameren Energy Marketing Co.*, 95 FERC ¶ 61,448 (2001); *Ameren Energy Marketing Co.*, Docket No. ER07-361 (May 31, 2007) (unpublished letter order); *see also Illinois Power Co., d/b/a AmerenIP*, 110 FERC ¶ 61,408 (2005).

Ameren Generating does not sell power or own or control facilities located outside of the Central or Northeast regions.

6. Ameren Marketing is a power marketer and does not own any generation capacity. However, through long-term power sales agreements with its affiliates, Ameren Marketing controls approximately 6,000 MW of capacity that is located within the Central and Northeast regions, and sells energy and capacity in these regions. Ameren Marketing also sells energy and/or capacity in the Southern region and the Southwest Power Pool.

7. Applicants state that both Ameren Generating and Ameren Marketing are Category 2 sellers within the Central region and will make the filings required by Orders No. 697 and 697-A separately.

8. Applicants state that they are Category 1 Sellers with respect to all regions except for the Central region. Applicants state that they each own less than 500 MW in the Northeast region and therefore qualify for Category 1 status there. Additionally, Applicants state that they do not own or control generation in the Southeast, SPP, Southwest and Northwest regions. They also state that they do not own, operate or control any transmission facilities and are not affiliated with any entity that does and is not affiliated with any entity that is a franchised public utility in these regions.

II. Notice of Filings and Responsive Pleadings

9. Notice of Applicants' June 27, 2008 filing was published in the *Federal Register*, 73 Fed. Reg. 58,575 (2008), with interventions and protests due on or before July 18, 2008. On July 16, the Illinois Commerce Commission (Illinois Commission) filed a notice of intervention and motion to extend the comment period. On July 31, the Illinois Commission filed comments. On August 15, 2008, Applicants filed an answer.

10. Notice of Applicants' July 11, 2008 filing was published in the *Federal Register*, 73 Fed. Reg. 43,739 (2008), with interventions and protests due on or before August 1, 2008. The Midwest ISO and Southwestern Electric Cooperative, Inc. filed motions to intervene.

11. Notice of Applicants' August 21, 2008 filing was published in the *Federal Register*, 73 Fed. Reg. 51,460 (2008), with interventions and protests due on or before September 11, 2008. None was filed.

12. The Illinois Commission requests that the Commission clarify that the customers in the territories of the Ameren Illinois Utilities⁶ are still captive for the purposes of Order Nos. 697 and 697-A and that the Ameren affiliates will still need to meet the Federal Power Act (FPA) requirements and make the separate section 205 filings⁷ when seeking to enter into a power contract with the Ameren Illinois Utilities, despite the elimination of certain provisions from the Ameren Generating and Ameren Marketing tariffs.

13. The Illinois Commission states that, even though Illinois has the retail choice option, the retail customers in the service territories of the Ameren Illinois Utilities are effectively captive customers. It states that none of the eight authorized alternative retail suppliers are currently offering service to residential customers in the Ameren Illinois Utilities' service territories. It states that, while it has done much over the years to fine tune Illinois' retail access program to make the choice option real for all retail customers, the reality is that many of the smaller usage retail customers, and almost all residential customers, in the Ameren Illinois Utilities' service territories are still effectively captive to the provider of last resort service that the Ameren Illinois Utilities are required to make available. The Illinois Commission argues that, to the extent these customers are captive to the Ameren Illinois Utilities' service, they cannot reasonably escape the effects of affiliate preference transactions that may possibly be entered into between the Ameren Illinois Utilities and their market-based rate affiliates.

14. The Illinois Commission also raises issues with respect to Applicants' proposed tariff revisions. Specifically, the Illinois Commission states that: (1) Ameren Generating should clarify whether its tariff covers ancillary services; (2) Ameren Marketing's tariff has inconsistent title and page captions; and (3) references to "third party" in Section 2 and Section 8.b are contradictory.

15. Applicants, in their answer, state that the Illinois Commission's concerns regarding captive customers and affiliate issues are pending in Docket No. ER00-3251-015. Additionally, they state that, in this proceeding, Applicants have complied with the Commission's directives in Order Nos. 697 and 697-A. With respect to the Illinois Commission's issues regarding Applicants' tariff, Applicants state that these issues were resolved in the July 11 filing, which included tariff revisions to allow ancillary services in

⁶ Ameren Illinois Utilities include Central Illinois Light Company d/b/a AmerenCILCO, Central Illinois Public Service Company d/b/a AmerenCIPS, and Illinois Power Company d/b/a AmerenIP.

⁷ 16 U.S.C. § 824d (2006).

the Midwest ISO and the markets administered by other RTOs and ISOs. Applicants state that the July 11 filing also corrected inconsistencies.

III. Discussion

A. Procedural Matters

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

17. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept Applicants' answer because it has provided information that assisted us in our decision-making process.

B. Analysis

18. We will accept Applicants' revised tariff, as filed on August 21, 2008, effective September 9, 2008, as requested.⁸ We find that Applicants have complied with Order Nos. 697 and 697-A.

19. In Order No. 697, the Commission adopted two standard required provisions that each seller must include in its market-based rate tariff: a provision requiring compliance with the Commission's regulations and a provision identifying any limitations and exemptions regarding the seller's market-based rate authority.⁹ In addition to the required tariff provisions, the Commission adopted a set of standard provisions that must be included in a seller's market-based rate tariff to the extent that they are applicable.¹⁰ In Order No. 697-A, the Commission also required that each seller include in its market-

⁸ In Order No. 697-A, the Commission explained that sellers filing revised tariffs sheets solely to comply with Order No. 697 should use the effective date of Order No. 697 (i.e., September 18, 2007). However, if there are additional revisions other than those required by Order No. 697, the Commission stated that sellers should propose the date on which they wish the tariff sheets to become effective. "[W]hile the sheets will be made effective on the date that the seller proposes, the provisions relating to and required by Order No. 697 are still effective as of the effective date of Order No. 697." Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 389.

⁹ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 914.

¹⁰ *Id.* P 917.

based rate tariff a provision identifying which category of seller it qualifies as in each region.¹¹

20. Applicants' revised market-based rate tariffs include the Commission's two standard required provisions, indicating that they intend to comply with the Commission's regulations, including the affiliate restrictions. Applicants' revised market-based rate tariffs also include a set of standard provisions with regard to sales of certain ancillary services in the markets administered by PJM, New York Independent System Operator, Inc., ISO New England Inc., California Independent System Operator, Inc., and the Midwest ISO, as well as a provision regarding sales of ancillary services as a third-party provider. Applicants' tariffs also include the required provisions concerning seller categories. We find that Applicants have complied with Order Nos. 697 and 697-A and we will accept Applicants' proposed tariff revisions, effective September 9, 2008, as requested.

21. Although Applicants removed language from their tariffs stating that sales may not be made to an affiliated public utility with a franchised service territory without first receiving authorization pursuant to section 205 of the FPA, Applicants did so due to the codification of affiliate restrictions in section 35.39(b) of the Commission's regulations, pursuant to Order Nos. 697 and 697-A.¹² In Order No. 697-A, the Commission clarified that all provisions that were previously contained in a seller's market-based rate tariff but that are now codified in the Commission's regulations must be removed from each seller's market-based rate tariff at the time the seller modifies its existing tariff to include the required provisions and any applicable provisions set forth in Appendix C of Order No. 697.

22. In response to the concerns raised by the Illinois Commission, we note that Applicants are not seeking a finding that the affiliate restrictions should not apply. Accordingly, the Illinois Commission's concern over whether Ameren's retail customers are captive is not properly before us for the purposes of the compliance filing at issue here.

¹¹ Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 391-93.

¹² Section 35.39(b) provides: "As a condition of obtaining and retaining market-based rate authority, no wholesale sale of electric energy may be made between a franchised public utility with captive customers and a market-regulated power sales affiliate without first receiving Commission authorization for the transaction under section 205 of the [FPA]. All authorizations to engage in affiliate wholesale sales of electric energy must be listed in a Seller's market-based rate tariff." 18 C.F.R. § 35.39(b) (2008).

23. In Order No. 697, the Commission created two categories of sellers.¹³ Category 1 sellers are not required to file regularly scheduled updated market power analyses. Category 1 sellers are wholesale power marketers and wholesale power producers that own or control 500 MW or less of generation in aggregate per region; that do not own, operate or control transmission facilities other than limited equipment necessary to connect individual generation facilities to the transmission grid (or have been granted waiver of the requirements of Order No. 888¹⁴); that are not affiliated with anyone that owns, operates or controls transmission facilities in the same region as the seller's generation assets; that are not affiliated with a franchised public utility in the same region as the seller's generation assets; and that do not raise other vertical market power issues.¹⁵ Sellers that do not fall into Category 1 are designated as Category 2 and are required to file an updated market power analysis.¹⁶

24. Based on Applicants' representations, we find that they meet the criteria for a Category 2 seller in the Central region and are so designated based on their ownership of generation totaling greater than 500 MW of capacity in the Central region. Thus, Applicants must file an updated market power analysis in compliance with the regional reporting schedule adopted in Order No. 697.¹⁷ The Commission also reserves the right to require such an analysis at any intervening time. Additionally, Applicants control less than 500 MW in each of the other five regions (i.e., the Northeast region, Northwest region, Southeast region, Southwest region and Southwest Power Pool region). Applicants do not own, operate or control any transmission facilities in these five regions and are not affiliated with an entity that owns, operates or controls transmission facilities in these regions. Also, Applicants are not affiliated with any entity that is a franchised

¹³ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 848.

¹⁴ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

¹⁵ 18 C.F.R. § 35.36(a)(2).

¹⁶ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 850.

¹⁷ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 882.

public utility in these five regions. Therefore, Applicants meet the criteria for a Category 1 seller in these five regions (i.e., in all regions except the Central region) and are so designated.

The Commission orders:

(A) Applicants' proposed tariff revisions are hereby accepted for filing, effective September 9, 2008, as discussed in the body of this order.

(B) Applicants are hereby directed to file updated market analyses according to the regional reporting schedule adopted in Order No. 697.

By the Commission. Commissioner Kelliher is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.