

128 FERC ¶ 61,153
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Ameren Energy Generating Company	Docket Nos. ER00-3412-008
Ameren Energy Marketing Company	ER00-816-006
AmerenEnergy Resources Company	ER04-53-009
AmerenEnergy Medina Valley Cogen, L.L.C.	ER04-8-007
Central Illinois Light Company	ER98-2440-007
Central Illinois Public Service Company	ER98-3285-005
Illinois Power Company	ER05-638-002
Union Electric Company	ER00-2687-010
Electric Energy, Inc.	ER05-1482-003

ORDER ACCEPTING UPDATED MARKET POWER ANALYSIS
AND COMPLIANCE FILING

(Issued August 11, 2009)

1. In this order, the Commission accepts the Ameren Companies'¹ updated market power analysis. As discussed below, the Commission concludes that the Ameren Companies continue to satisfy the Commission's standards for market-based rate authority. The Commission adjusts the Simultaneous Import Limitation (SIL) study in the Louisville Gas & Electric Company (Louisville Gas & Electric)/Kentucky Utilities

¹ The Ameren Companies are: Ameren Energy Generating Company (Ameren Generating), Ameren Energy Marketing Company (Ameren Marketing), AmerenEnergy Resources Company (Ameren Resources), AmerenEnergy Medina Valley Cogen L.L.C. (Ameren Medina), Central Illinois Light Company, Central Illinois Public Service Company, Illinois Power Company, Union Electric Company, and Electric Energy, Inc. (Electric Energy).

Company (Kentucky Utilities) balancing authority area that the Ameren Companies included as part of their updated market power analysis.

2. The Commission also accepts Central Illinois Light Company, Central Illinois Public Service Company, Illinois Power Company (collectively, Ameren Illinois Utilities) and Electric Energy's proposed revisions to their market-based rate tariffs that incorporate provisions as adopted in Order Nos. 697 and 697-A,² and add provisions allowing for the sale of ancillary services,³ to be effective January 6, 2009, as requested.⁴

² *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, at P 882-93, App. D, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, at Apps. D, D-1, and D-2 (2008), *clarified*, 124 FERC ¶ 61,055 (2008), *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009).

³ Ameren Illinois Utilities and Electric Energy request authorization to sell ancillary services in the markets administered by PJM Interconnection, L.L.C. (PJM), New York Independent System Operator, Inc., ISO New England Inc., California Independent System Operator Corporation, and Midwest Independent Transmission System Operator, Inc. (Midwest ISO). Ameren Illinois Utilities and Electric Energy also request authorization to engage in the sale of certain ancillary services as third-party providers in other markets.

⁴ Central Illinois Light Company, First Revised Volume No. 5 (Superseding Original Volume No. 5), Original Sheet Nos. 1-2, Central Illinois Public Service Company, First Revised Volume No. 1 (Superseding Original Volume No. 1), Original Sheet Nos. 1-2, Illinois Power Company, First Revised Volume No. 12 (Superseding Original Volume No. 12), Original Sheet Nos. 1-3, Electric Energy Inc. First Revised Volume No. 1 (Superseding Original Volume No. 1), Original Sheet Nos. 1-3. The Commission previously accepted tariff sheets filed by Ameren Generating, Ameren Marketing, Ameren Resources, Ameren Medina, and Union Electric Company, in compliance with Order Nos. 697 and 697-A, and found that they were Category 1 sellers in all regions, except for the Central region, in *Ameren Energy Generating Co.*, 126 FERC ¶ 61,169 (2009); *AmerenEnergy Resources Co.*, Docket No. ER04-53-008 (Oct. 2, 2008) (unpublished letter order); *AmerenEnergy Medina Valley Cogen, L.L.C.*, Docket No. ER04-8-006 (Oct. 15, 2008) (unpublished letter order); and *Union Electric Co.*, Docket No. ER00-2687-009 (Oct. 9, 2008) (unpublished letter order).

3. Additionally, the Commission finds that Ameren Illinois Utilities and Electric Energy meet the criteria for Category 1 sellers in all regions except for the Central region, where they meet the criteria for Category 2 sellers, and are so designated. The Ameren Companies' next updated market power analysis must be filed according to the regional schedule adopted in Order No. 697.⁵

I. Background

4. Ameren Generating owns approximately 4,232 megawatts (MW) of generation capacity located in Illinois and Missouri. Most of this generation is located within the Midwest ISO market in the Central region. Additionally, Ameren Generating owns approximately 452 MW of capacity at its Elgin Energy Center located near Elgin, Illinois. This latter capacity is located within the PJM market in the Northeast region. Ameren Generating sells 100 percent of its generation output to Ameren Marketing.

5. Ameren Medina owns a 44 MW gas-fired generating facility that is located in the Midwest ISO market.

6. Ameren Illinois Utilities and Union Electric Company own transmission facilities located in the Central region.

7. Electric Energy is an Illinois corporation formed for the purpose of constructing, owning, and operating a coal-fired steam-electric generating plant at Joppa, Illinois (Joppa Plant). Eighty percent of the outstanding voting stock of Electric Energy is held by subsidiaries of the Ameren Companies, with the remaining 20 percent held by Kentucky Utilities, a subsidiary of LG&E Energy LLC.

8. The Joppa Plant is located within the Electric Energy balancing authority area in the Central region and consists of six generating units totaling approximately 1,002 MW of capacity. The entire output from the Joppa Plant is sold to Ameren Marketing under a long-term power sales agreement between Electric Energy and Ameren Marketing.

9. On December 24, 2008, as amended on February 6, 2009, the Ameren Companies filed an updated market power analysis in accordance with the regional schedule adopted

⁵ 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, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at Apps. D, D-1, and D-2. *See also* Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 at P 47-48 (amending in part App. D-2).

in Order No. 697.⁶ Ameren Illinois Utilities and Electric Energy also filed proposed revisions to their market-based rate tariffs to comply with Order Nos. 697 and 697-A.

II. Notices and Responsive Pleadings

10. Notice of the Ameren Companies' December 24, 2008 and February 6, 2009 filings were published in the *Federal Register*,⁷ with interventions or protests due on or before February 27, 2009. None was filed.

III. Discussion

A. Market-Based Rate Authorization

11. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, horizontal and vertical market power.⁸ As discussed below, the Commission concludes that the Ameren Companies satisfy the Commission's standards for market-based rate authority.

1. Horizontal Market Power

12. The Commission adopted two indicative screens for assessing horizontal market power, the pivotal supplier screen and the wholesale market share screen.⁹ The Ameren Companies prepared the pivotal supplier and wholesale market share screens for the Midwest ISO, consistent with the requirements of Order No. 697.¹⁰ The Ameren Companies also prepared the pivotal supplier and wholesale market share screens for the Electric Energy, Tennessee Valley Authority (TVA), and the Louisville Gas & Electric/Kentucky Utilities balancing authority areas, consistent with the requirements of Order No. 697.¹¹

⁶ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 882.

⁷ 74 Fed. Reg. 1675 (2009); 74 Fed. Reg. 7882 (2009).

⁸ Order No. 697, FERC Stats. & Regs. ¶ 31,252, at P 62, 399, 408, 440.

⁹ *Id.* P 62.

¹⁰ *Id.* P 235-36.

¹¹ *Id.* P 231-32.

a. Midwest ISO

13. The Commission has reviewed the Ameren Companies' pivotal supplier and wholesale market share screens for the Midwest ISO market. We find that the Ameren Companies pass the pivotal supplier screen¹² and the wholesale market share screen in the Midwest ISO market with market shares ranging from 15.77 to 18.23 percent across the four seasons.

14. Accordingly, we find that the Ameren Companies satisfy the Commission's requirements for market-based rate authority regarding horizontal market power in the Midwest ISO market.

b. Electric Energy/TVA

15. In a recently issued order, the Commission determined that the Electric Energy balancing authority area and the TVA balancing authority area should be considered a single relevant geographic market when conducting market power analyses (combined Electric Energy/TVA balancing authority area).¹³ In that order, the Commission also made adjustments to the SIL studies submitted by the Southeast transmission owners, including adjustments for the combined Electric Energy/TVA balancing authority area.¹⁴

16. The Commission has reviewed the Ameren Companies' pivotal supplier and wholesale market share screens for the combined Electric Energy/TVA balancing authority area, using the adjusted values from the SIL Study Order. We have determined that the Ameren Companies pass the pivotal supplier screen¹⁵ and the wholesale market share screen in the combined Electric Energy/TVA balancing authority area with market shares ranging from .29 to 2.67 percent across the four seasons.

¹² The Ameren Companies' uncommitted capacity equals 8,245 MW versus Net Uncommitted Supply of 40,821 MW.

¹³ *Carolina Power & Light Co.*, 128 FERC ¶ 61,039, at P 10 (2009) (SIL Study Order).

¹⁴ *Id.* Appendix A. The Commission-adjusted SIL values for the combined Electric Energy/TVA balancing authority area are: Winter – 8,362 MW; Spring – 782 MW; Summer – 1,590 MW; and Fall – 7,214 MW.

¹⁵ The Ameren Companies' uncommitted capacity equals 173 MW versus net uncommitted supply of 7,326 MW.

17. Accordingly, we find that the Ameren Companies satisfy the Commission's requirements for market-based rate authority regarding horizontal market power in the combined Electric Energy/TVA balancing authority area.

c. Louisville Gas & Electric/Kentucky Utilities

18. For the Louisville Gas & Electric/Kentucky Utilities balancing authority area, we find that the Ameren Companies incorrectly applied, by adding rather than subtracting, net area interchange to their SIL study results.¹⁶ As we explained in the SIL Study Order, the Commission adjusted the SIL studies provided by the Southeast transmission owners by correctly applying the net area interchange to determine more accurate SIL values.¹⁷ Consistent with this approach, the Commission has adjusted the SIL study results for the Louisville Gas & Electric/Kentucky Utilities balancing authority area by subtracting net area interchange.¹⁸

19. The Commission has reviewed the Ameren Companies' pivotal supplier and wholesale market share screens for the Louisville Gas & Electric/Kentucky Utilities balancing authority area and determined that the Ameren Companies pass the pivotal supplier screen¹⁹ and the wholesale market share screen, using the Commission-adjusted SIL values, with market shares ranging from 1.98 to 4.08 percent across the four seasons.

20. Accordingly, we find that the Ameren Companies satisfy the Commission's requirements for market-based rate authority regarding horizontal market power in the Louisville Gas & Electric/Kentucky Utilities balancing authority area.

2. Vertical Market Power

21. In cases where a public utility, or any of its affiliates, owns, operates, or controls transmission facilities, the Commission requires that there be a Commission-approved

¹⁶ Net area interchange is the sum of a study area's scheduled energy transactions that is subtracted from the SIL study results to determine the SIL value.

¹⁷ SIL Study Order at P 9.

¹⁸ The Commission's adjustments provide the following SIL values for the LG&E balancing authority area: Winter – 3,649 MW; Spring – 2,424 MW; Summer – 864 MW; and Fall – 1940 MW.

¹⁹ The Ameren Companies' uncommitted capacity equals 71 MW versus net uncommitted supply of 2,152 MW.

open access transmission tariff (OATT) on file before granting that utility or affiliate market-based rate authorization.²⁰

22. The Ameren Companies state that Union Electric Company and Ameren Illinois Utilities have transferred functional control of their transmission facilities to the Midwest ISO, which is a Commission-approved regional transmission operator with an OATT on file with the Commission.²¹ Additionally, the Ameren Companies state that transmission service across the Electric Energy transmission system is provided under Electric Energy's OATT, which is on file with the Commission.²²

23. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.²³ The Commission requires a seller to provide a description of its ownership or control of, or affiliation with an entity that owns or controls, intrastate natural gas transportation, storage or distribution facilities; sites for generation capacity development; and physical coal supply sources and ownership of or control over who may access transportation of coal supplies (collectively, inputs to electric power production).²⁴ The Commission adopted a rebuttable presumption that the ownership or control of, or affiliation with any entity that owns or controls, inputs to electric power production does not allow a seller to raise entry barriers but will allow intervenors to demonstrate otherwise.²⁵

24. With regard to other barriers to entry, the Ameren Companies state that they have included in their Asset Appendix²⁶ a listing of their ownership or control of, or affiliation with an entity that owns or controls, intrastate natural gas transportation, storage or distribution facilities; sites for generation capacity development; and sources of coal

²⁰ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408.

²¹ *Midwest Independent Transmission System Operator, Inc.*, 84 FERC ¶ 61,231 (1998).

²² *Baltimore Gas and Electric Co.*, Docket No. OA96-156-001, at 3 (Feb. 24, 1999) (unpublished letter order).

²³ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 440.

²⁴ *Id.* P 447; Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

²⁵ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 446.

²⁶ The Ameren Companies December 24, 2008 filing, Exhibit III.

supplies and the transportation of coal supplies such as barges and rail cars. In the Asset Appendix, the Ameren Companies list approximately 17,900 miles of intrastate natural gas transmission and distribution mains as well as approximately 25 billion cubic feet of intrastate natural gas storage facilities, all in the Central region.

25. The Commission also requires sellers to make an affirmative statement that they have not erected barriers to entry into the relevant market and will not erect barriers to entry into the relevant market.²⁷ The Ameren Companies affirmatively state that they have not erected barriers to entry in any relevant market and will not erect barriers to entry in any relevant market.

26. Based on the Ameren Companies' representations, we find that they satisfy the Commission's requirements for market-based rate authority regarding vertical market power.

B. Compliance Filings

27. 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.²⁸ 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.²⁹ In Order No. 697-A, the Commission also required that each seller include in its market-based rate tariff a provision identifying which category of seller it qualifies as in each region.³⁰

28. Ameren Illinois Utilities' and Electric Energy's revised market-based rate tariffs include the Commission's two standard required provisions. Electric Energy's tariff includes a limitations and exemptions provision that provides that Electric Energy lacks market-based rate authority in the Louisville Gas & Electric/Kentucky Utilities balancing authority area and the Big Rivers balancing authority area.³¹ Ameren Illinois Utilities'

²⁷ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

²⁸ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 914.

²⁹ *Id.* P 917.

³⁰ Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 391-93.

³¹ Electric Energy added this provision to its market-based rate tariff to incorporate
(continued...)

and Electric Energy's revised market-based rate tariffs also include standard provisions with regard to sales of certain ancillary services in various markets, a provision regarding sales of ancillary services as a third-party provider where applicable, and the required category designation provision. Ameren Illinois Utilities' and Electric Energy's revised market-based rate tariffs also delete certain provisions that are now codified in the Commission's regulations. Accordingly, we find that Ameren Illinois Utilities' and Electric Energy's revised market-based rate tariffs satisfy the Commission's requirements set forth in Order Nos. 697 and 697-A, and will accept their revised market-based rate tariffs, effective January 6, 2009, as requested.

29. The Ameren Companies also include an Asset Appendix as required by Order No. 697.³²

C. Reporting Requirements

30. 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 (EQR) 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 longer) market-based power sales during the most recent calendar quarter.³³ Public utilities must file EQRs no later than 30 days after the end of the reporting quarter.³⁴

the provisions and restrictions accepted in *LG&E Energy Marketing Inc.*, 122 FERC ¶ 61,175 (2008).

³² Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 894-95.

³³ *Revised Public Utility Filing Requirements*, Order No. 2001, FERC Stats. & Regs. ¶ 31,127, *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reh'g denied*, Order No. 2001-B, 100 FERC ¶ 61,342, *order directing filing*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002), *order directing filing*, Order No. 2001-D, 102 FERC ¶ 61,334 (2003). Attachments B and C of Order No. 2001 describe the required data sets for contractual and transaction information. Public utilities must submit EQRs 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>.

³⁴ The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2009). Failure to file an EQR (without an appropriate request for extension), or failure to report an agreement in an EQR, may result in forfeiture of market-based rate authority, (continued...)

31. The Ameren Companies 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.³⁵

32. Additionally, in Order No. 697, the Commission created two categories of sellers.³⁶ 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. 888³⁷); 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.³⁸ Sellers that do not fall into Category 1 are designated as Category 2 and are required to file regularly scheduled updated market power analyses.³⁹ The Commission also reserves the right to require such an analysis at any intervening time.

requiring filing of a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

³⁵ *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005); 18 C.F.R. § 35.42(a) (2009).

³⁶ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 848.

³⁷ *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 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248, *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).

³⁸ 18 C.F.R. § 35.36(a)(2) (2009).

³⁹ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 850.

33. Based on Ameren Illinois Utilities' and Electric Energy's representations, Ameren Illinois Utilities and Electric Energy meet the criteria for Category 2 sellers in the Central region and are so designated, based on their ownership of generation totaling greater than 500 MW of capacity in that region, Ameren Illinois Utilities' ownership of transmission in the Central region, and Electric Energy's affiliation with entities that own transmission in the Central region. We find that they meet the criteria for Category 1 sellers in all other regions and are so designated.⁴⁰

The Commission orders:

(A) The Ameren Companies' updated market power analysis is hereby accepted for filing, as discussed in the body of this order.

(B) Ameren Illinois Utilities' and Electric Energy's revisions to their market-based rate tariffs are hereby accepted for filing, effective January 6, 2009, as requested.

(C) The Ameren Companies are hereby directed to file an updated market analysis for those regions where they are designated as Category 2 sellers according to the regional reporting schedule adopted in Order No. 697.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁴⁰ The Ameren Companies state that, other than Ameren Generating and Ameren Marketing, none of the Ameren Companies owns or controls any generation located outside of the Central region. *See also Ameren Energy Generating Co.*, 126 FERC ¶ 61,169 (2009); *AmerenEnergy Resources Co.*, Docket No. ER04-53-008 (Oct. 2, 2008) (unpublished letter order); *AmerenEnergy Medina Valley Cogen, L.L.C.*, Docket No. ER04-8-006 (Oct. 15, 2008) (unpublished letter order); and *Union Electric Co.*, Docket No. ER00-2687-009 (Oct. 9, 2008) (unpublished letter order).