

132 FERC ¶ 61,181  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
John R. Norris, and Cheryl A. LaFleur.

The United Illuminating Company

Docket No. ER93-3-007

ORDER ACCEPTING NOTICE OF CHANGE IN STATUS AND CONDITIONALLY  
ACCEPTING REVISED TARIFF

(Issued August 27, 2010)

1. In this order, the Commission accepts a notice of change in status filed by The United Illuminating Company (United Illuminating) on June 23, 2010. The Commission also conditionally accepts United Illuminating's proposed revised market-based rate tariff, which incorporates provisions as adopted in Order Nos. 697 and 697-A,<sup>1</sup> to be effective the date of this order, as discussed below. Additionally, because United Illuminating meets the criteria for a Category 2 seller in the Northeast region, it is so designated and directed to revise its tariff accordingly.

**I. Background**

2. United Illuminating, an investor-owned utility organized and operating under the laws of the State of Connecticut, is a wholly-owned subsidiary of UIL Holdings Corporation. United Illuminating is authorized to make sales at market-based rates.<sup>2</sup>

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<sup>1</sup> *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *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), *order on reh'g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010).

<sup>2</sup> See *United Illuminating Co.*, 63 FERC ¶ 61,212, *reh'g denied*, 64 FERC ¶ 61,087 (1993); *United Illuminating Co.*, Docket No. ER00-656-000 (Dec. 27, 1999)

(continued...)

3. United Illuminating represents that it is essentially a transmission and distribution company that owns Pool Transmission Facilities and Non-Pool Transmission Facilities in the ISO New England Inc. (ISO New England) market. United Illuminating states that it also has an approximately 5.4 percent entitlement interest in the HQ Interconnection, the United States portion of the transmission interconnection that connects Hydro-Quebec and ISO New England. United Illuminating explains that ISO New England provides transmission service over all of its transmission facilities, subject to the rates, terms, and conditions of the ISO New England Open Access Transmission Tariff.<sup>3</sup>

4. On August 8, 2007, United Illuminating filed a request for exemption from the requirements applicable to Category 2 sellers. This requested exemption was granted via a delegated letter order that designated United Illuminating a Category 1 seller.<sup>4</sup>

5. On June 23, 2010, United Illuminating filed a notice of change in status that also included a revised market-based rate tariff in compliance with Order Nos. 697 and 697-A.<sup>5</sup> With regard to its notice, United Illuminating explains that it has acquired 50 percent of the equity interest in GCE Holding LLC,<sup>6</sup> which in turn wholly owns GenConn Devon LLC (GenConn Devon) and GenConn Middletown LLC (GenConn Middletown). GenConn Devon and GenConn Middletown are currently developing 200 megawatt (MW) peaking generation facilities in Milford and Middletown, Connecticut, respectively. These facilities are expected to begin commercial operation in June 2010 and 2011, respectively. Both GenConn Devon and GenConn Middletown have market-

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(delegated letter order) (authorizing United Illuminating to make sales of ancillary services); *see also Alcan Power Mktg., Inc.*, 113 FERC ¶ 61,123 (2005) (accepting United Illuminating's most recent updated market power analysis and revisions to United Illuminating's market-based rate tariff filed on August 1, 2005).

<sup>3</sup> *New England Power Pool*, 83 FERC ¶ 61,045 (1998); *ISO New England Inc.*, 106 FERC ¶ 61,280, *order on reh'g and compliance*, 109 FERC ¶ 61,147 (2004), *order on reh'g and compliance*, 110 FERC ¶ 61,111, *order on reh'g and compliance*, 110 FERC ¶ 61,335, *order on reh'g and compliance*, 110 FERC ¶ 61,344 (2005).

<sup>4</sup> *The United Illuminating Company*, Docket No. ER93-3-006 (Oct. 31, 2007) (delegated letter order).

<sup>5</sup> In Order No. 697, the Commission directed entities with market-based rate tariffs on file to amend their tariffs to include certain *pro forma* language. *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 924.

<sup>6</sup> NRG Energy Inc. holds the remaining 50 percent interest.

based rate authorization and are designated as Category 2 sellers in the Northeast region and Category 1 sellers in all other regions.<sup>7</sup>

6. According to United Illuminating, GCE Holding LLC also wholly owns GenConn Energy LLC (GenConn Energy), which also has market-based rate authorization and acts as an agent on behalf of its affiliates GenConn Devon and GenConn Middletown in the ISO New England market.<sup>8</sup> GenConn Energy is a Category 1 seller in the Central, Southwest Power Pool, and Northwest regions, and a Category 2 seller in the Northeast, Southeast, and Southwest regions.

7. On July 22, 2010, United Illuminating supplemented its notice of change in status filed June 23, 2010 to confirm that United Illuminating is a franchised public utility in the Northeast region, as defined in the Commission's regulations.<sup>9</sup>

## **II. Notices**

8. Notice of United Illuminating's filing was published in the *Federal Register*, 75 Fed. Reg. 39,225 (2010), with interventions or protests due on or before July 14, 2010. None was filed. Notice of United Illuminating's supplemental filing was published in the *Federal Register*, 75 Fed. Reg. 45,614 (2010), with interventions or protests due on or before August 12, 2010. None was filed.

## **III. Discussion**

### **A. Category Status**

9. In Order No. 697, the Commission created two categories of sellers.<sup>10</sup> Category 1 sellers are defined as 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 generating facilities to the transmission grid (or have been granted

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<sup>7</sup> See *GenConn Devon LLC*, Docket No. ER09-1300-000 (July 29, 2009) (delegated letter order).

<sup>8</sup> See *GenConn Energy LLC*, Docket No. ER10-1291-000 (July 13, 2010) (delegated letter order).

<sup>9</sup> Franchised public utility is defined as a public utility with a franchised service obligation under state law. 18 C.F.R. § 35.36(a)(5) (2010).

<sup>10</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 848.

waiver of the requirements of Order No. 888<sup>11</sup>); 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.<sup>12</sup> Entities designated as Category 1 sellers are not required to file regularly scheduled updated market power analyses.<sup>13</sup>

10. Sellers that are not Category 1 sellers are Category 2 sellers.<sup>14</sup> Category 2 sellers are required to submit an updated market power analysis every three years according to the schedule adopted in Order No. 697.

11. United Illuminating represents that it operates as a franchised public utility in the Northeast region. Given that the Commission has determined that sellers *affiliated with a franchised public utility* in the same region as the seller's generation assets must be designated a Category 2 seller, franchised public utilities themselves must be designated Category 2 sellers in the region in which they operate as a franchised public utility.<sup>15</sup> Moreover, United Illuminating also owns transmission in the Northeast region (for which it has turned over operational control to ISO New England). For this additional reason, it is not appropriate to exempt United Illuminating from the requirement to file an updated market power analysis for the Northeast region.<sup>16</sup> Therefore, we find that United

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<sup>11</sup> *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).

<sup>12</sup> 18 C.F.R. § 35.36(a)(2) (2010).

<sup>13</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 849-850.

<sup>14</sup> 18 C.F.R. § 35.36(a)(3).

<sup>15</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at n.1000, P 853, 861.

<sup>16</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 862 (finding that exemption from the requirement to file an updated market power analysis is not appropriate where a transmission owner has given operational control of its transmission facilities to a regional transmission organization or independent system operator).

Illuminating is a Category 2 seller in the Northeast region and must file an updated market power analysis for that region in compliance with the regional reporting schedule adopted in Order No. 697.<sup>17</sup> Accordingly, we direct United Illuminating to submit a compliance filing revising its tariff to reflect its designation as a Category 2 seller in the Northeast region, and a Category 1 seller in all other regions, within 30 days of the date of this order.

**B. Order No. 697 Compliance Filing**

12. In Order No. 697, the Commission adopted two standard required provisions that each seller must include in its market-based rate tariff: (1) a provision requiring compliance with the Commission's regulations and (2) a provision identifying any limitations and exemptions regarding the seller's market-based rate authority.<sup>18</sup> 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. 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.<sup>19</sup>

13. United Illuminating's revised market-based rate tariff includes the Commission's two required provisions and a set of standard provisions regarding sales of certain ancillary services in various markets. United Illuminating also includes a list of assets as required by Order No. 697.<sup>20</sup> Additionally, its tariff includes the required provision concerning seller category. We find that United Illuminating's revised market-based rate tariff satisfies the Commission's requirements set forth in Order Nos. 697 and 697-A, and accept its revised market-based rate tariff, effective the date of this order, subject to it making the compliance filing discussed above within 30 days of the date of this order.

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<sup>17</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 882. The Commission also reserves the right to require such an analysis at any intervening time.

<sup>18</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 914.

<sup>19</sup> Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 391-393.

<sup>20</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 894-895.

The Commission orders:

(A) United Illuminating's notice of change in status is hereby accepted for filing, as discussed in the body of this order.

(B) United Illuminating is hereby directed to revise its tariff to reflect its designation as a Category 2 seller in the Northeast region, and a Category 1 seller in all other regions, in a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

(C) United Illuminating's revised market-based rate tariff is hereby conditionally accepted for filing, effective the date of this order, as discussed in the body of this order.

(D) United Illuminating is hereby directed to file an updated market power analysis according to the regional reporting schedule adopted in Order No. 697, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.