

140 FERC ¶ 61,144
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

GenOn Florida, LP	Docket Nos. ER12-2137-000
GenOn Midwest, LP	ER12-2138-000
	ER10-1702-002
GenOn Wholesale Generation, LP	ER12-2139-000
	ER10-1726-003
RRI Energy Services, LLC	ER12-2140-000
	ER10-1671-003

ORDER ACCEPTING MARKET-BASED RATE TARIFF REVISIONS AND
REQUEST FOR CATEGORY 1 SELLER STATUS

(Issued August 27, 2012)

1. In this order, the Commission accepts tariff revisions filed on June 28, 2012 by GenOn Florida, LP (GenOn Florida), GenOn Power Midwest, LP (GenOn Midwest), GenOn Wholesale Generation, LP (GenOn Wholesale), and RRI Energy Services, LLC (RRI Energy) (collectively, the GenOn Companies) to be effective July 1, 2012, as discussed below. Specifically, the Commission concludes that certain restrictions on GenOn Florida's and RRI Energy's market-based rate authority may be removed from their market-based rate tariffs. We also find that GenOn Midwest, GenOn Wholesale, and RRI (collectively, GenOn Central MBR Sellers) meet the criteria for Category 1 sellers¹ in certain regions and are so designated, as discussed below.

¹ See *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 PP 848-850, *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), *aff'd sub nom. Mont. Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011), *cert. denied sub nom. Pub. Citizen, Inc. v. FERC*, 2012 U.S. LEXIS 4820 (U.S. June 25, 2012).

I. Background

2. On June 28, 2012, GenOn Florida and RRI Energy filed proposed revisions to remove from their market-based rate tariffs the prohibition on market-based rate sales in the Florida Municipal Power Pool (FMPP) balancing authority area. Furthermore, GenOn Central MBR Sellers filed tariff revisions to update their Category status. Specifically, GenOn Central MBR Sellers request Category 1 seller status in the Central region. In addition to the Central region, GenOn Wholesale requests Category 1 seller status in the Northwest, Southwest, and Southwest Power Pool regions, and GenOn Midwest requests Category 1 seller status in the Northwest, Southwest, Southwest Power Pool, and Southeast regions.

3. The GenOn Companies state that they are wholly-owned, indirect subsidiaries of GenOn Energy, Inc. (GenOn), which is a publicly-traded company that engages in the production and sale of electricity. According to the GenOn Companies, GenOn owns or leases through a number of subsidiary companies approximately 23,700 megawatts (MW) of generation assets throughout the United States.

4. GenOn Florida and RRI Energy state that when the expiration of a long-term power sales agreement involving 566 MW from GenOn Florida's Indian River Generating Station caused failures of the wholesale market power screen for the FMPP balancing authority area, GenOn Florida and RRI Energy included language in their market-based rate tariffs prohibiting market-based rate sales in the FMPP balancing authority area.² GenOn Florida and RRI Energy state that the 566 MW Indian River Generating Station was sold to the Orlando Utilities Commission in January 2012.³ GenOn Florida and RRI Energy submit that because the Indian River Generating Station was the only generating asset in the FMPP balancing authority area owned or controlled by GenOn Florida, RRI or their affiliates, the FMPP balancing authority area is no longer a relevant market.⁴ Accordingly, GenOn Florida and RRI Energy request that the Commission approve their revised market-based rate tariffs removing the prohibition on

² See *RRI Energy Fla., LLC & RRI Energy Servs., Inc.*, 132 FERC ¶ 61,264 (2010).

³ See Amendment to Updated Market Power Analysis, Docket No. ER10-1869 (filed February 10, 2012) (the February 10 Filing). As noted in the February 10 Filing, the value of the jurisdictional facilities sold to the Orlando Utilities Commission did not exceed the filing threshold set forth in section 33.1(a)(i) of the Commission's regulations, 18 C.F.R. § 33.1(a)(i) (2012). See February 10 Filing at 2 n.2.

⁴ *Id.*

sales in the FMPP balancing authority area and the corresponding provision regarding sales at the metered boundary of that balancing authority area.⁵

5. On June 28, 2012, GenOn Central MBR Sellers filed a request for Category 1 seller status in specific regions. GenOn Central MBR Sellers state that GenOn Midwest and GenOn Wholesale own and are affiliated with a number of generating facilities that are interconnected with the transmission system owned by American Transmission Systems, Inc. (ATSI).⁶ On June 1, 2011, control over ATSI's transmission system transferred to PJM Interconnection, L.L.C. (PJM) from Midwest Independent Transmission System Operator, Inc. (MISO).⁷ GenOn Central MBR Sellers state that as a result of this transfer, the GenOn Midwest and GenOn Wholesale facilities interconnected with the ATSI-owned transmission system moved from the MISO balancing authority area in the Central region to the PJM balancing authority area in the Northeast region.⁸ Thus, GenOn Central MBR Sellers represent that the only generating facility in the Central region currently owned or controlled by GenOn Central MBR Sellers, or their affiliates, is the 372 MW Shelby Generating Station. GenOn Central MBR Sellers request that they be designated Category 1 sellers in the Central region and that GenOn Midwest and GenOn Wholesale be designated Category 1 sellers in the Northwest, Southwest, and Southwest Power Pool regions because each of them: (1) owns or controls 500 MW or less of generation in aggregate in those regions; (2) does not own, operate or control transmission facilities in those regions (other than facilities for the interconnection of generation); (3) does not have affiliates that own, operate or control transmission facilities in those regions; (4) does not have any franchised public utility affiliates in those regions; and (5) does not own or control any other assets in those regions that might raise vertical market power concerns.

6. GenOn Central MBR Sellers further represent that GenOn Midwest should be designated as a Category 1 seller in the Southeast region because it: (1) owns or controls 500 MW or less of generation in aggregate in that region; (2) does not own, operate or control transmission facilities (other than facilities for the interconnection of generation) in that region; (3) does not have affiliates that own, operate or control transmission

⁵ See June 28, 2012 GenOn Florida and RRI Energy filings for proposed market-based rate tariff revisions (Docket Nos. ER12-2137-000 and ER12-2140-000).

⁶ See June 28, 2012 filing for Request for Category 1 Seller Status (Docket No. ER10-1702-002) (June 28 GenOn Central MBR Sellers' Filing). According to GenOn Central MBR Sellers, RRI Energy is a power marketer.

⁷ See *American Transmission Systems, Inc.*, 129 FERC ¶ 61,249 (2009).

⁸ *Id.*

facilities in that region; (4) does not have any franchised public utility affiliates in that region; and (5) does not own or control any other assets that might raise vertical market power concerns in that region.

II. Notices

7. Notice of GenOn Florida, GenOn Midwest, GenOn Wholesale, and RRI Energy's June 28, 2012 filings for proposed revisions to their market-based rates tariff was published in the *Federal Register*,⁹ with interventions and comments due on or before July 19, 2012. None was filed.

8. Notice of GenOn Central MBR Sellers' June 28, 2012 filing for Category 1 seller status was published in the *Federal Register*,¹⁰ with interventions and comments due on or before July 19, 2012. None was filed.

III. Discussion

9. The Commission will grant GenOn Florida's and RRI Energy's request to remove from their market-based rate tariffs the prohibition on market-based rates sales in the FMPP balancing authority area. Based on GenOn Florida's and RRI Energy's representation that they and their affiliates no longer own assets in the FMPP balancing authority area, that balancing authority area is not a relevant geographic market for GenOn Florida and RRI Energy for purposes of our market power screens.¹¹ Therefore, the market-based rate tariff restrictions on sales in the FMPP balancing authority area are no longer necessary. Similarly, with the mitigation removed, there is no longer a need for the provision regarding sales at the metered boundary. Thus, we grant GenOn Florida and RRI Energy's requests to remove that provision from their market-based rate tariffs as well.

10. As discussed below, we also will grant GenOn Central MBR Sellers' requests for Category 1 seller designation. In Order No. 697, the Commission created two categories of sellers.¹² 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

⁹ 77 Fed. Reg. 40,874 (2012).

¹⁰ 77 Fed. Reg. 40,351 (2012).

¹¹ See Order No. 697, FERC Stats. & Regs. ¶ 31,252 at n.217.

¹² *Id.* P 848.

(or have been granted waiver of the requirements of Order No. 888¹³); 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.¹⁴ Entities designated as Category 1 sellers are not required to file regularly scheduled updated market power analyses.¹⁵

11. For each region in which a GenOn Central MBR Seller seeks Category 1 seller status, it represents: (1) that it owns or controls 500 MW or less of generation in aggregate; (2) that it, or its affiliates, do not own, operate or control transmission facilities (other than facilities for the interconnection of generation); (3) that it is not affiliated with a franchised public utility; and (4) that it does not own or control any other assets in the region that might raise vertical market power concerns.

12. Based on GenOn Central MBR Sellers' representations,¹⁶ we find that they meet the criteria for a Category 1 seller in the Central region and are so designated. Additionally, we find that GenOn Midwest and GenOn Wholesale meet the criteria for a Category 1 seller in the Northwest, Southwest, and Southwest Power Pool regions, and that GenOn Midwest meets the criteria for a Category 1 seller in the Southeast region,

¹³ *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 Grp. v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. N.Y. v. FERC*, 535 U.S. 1 (2002).

¹⁴ 18 C.F.R. § 35.36(a)(2) (2012).

¹⁵ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 849-850.

¹⁶ *See* June 28 GenOn Central MBR Sellers' Filing. Consistent with Order No. 697, we interpret the representations regarding generation capacity owned by a GenOn Central MBR Seller in aggregate per region to include generation capacity owned or controlled by the seller's affiliates where the affiliates have generation in the same region. *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 859 ("Category 1 sellers include power marketers and power producers with 500 MW or less of generation capacity owned or controlled by the seller and its affiliates in aggregate per region.").

and are so designated.¹⁷ However, the Commission reserves the right to require an updated market power analysis at any time for any region.¹⁸

The Commission orders:

The revised market-based rate tariffs for GenOn Florida, GenOn Midwest, GenOn Wholesale, and RRI Energy are hereby accepted for filing, effective July 1, 2012, as requested, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁷ *Id.*

¹⁸ *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 853.