

127 FERC ¶ 61,143
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

ALLETE, Inc.

Docket No. ER01-2636-005

ORDER ACCEPTING UPDATED MARKET POWER ANALYSIS

(Issued May 21, 2009)

1. In this order, the Commission accepts an updated market power analysis filed by ALLETE, Inc. (Allete). As discussed below, the Commission concludes that Allete continues to satisfy the Commission's standards for market-based rate authority.
2. The Commission finds that Allete meets the criteria for a Category 2 seller and is so designated. Allete's next updated market power analysis must be filed according to the regional schedule adopted in Order No. 697.¹
3. Additionally, we find that the Midwest Independent Transmission System Operators, Inc.'s (Midwest ISO) revised simultaneous transmission import limit (SIL) study of January 28, 2009, submitted by Allete on December 31, 2008 and amended February 6, 2009 (Revised Midwest ISO SIL Study), for the Midwest ISO market meets the Commission's requirements for a SIL study. The seasonal values in the accepted SIL study for the Midwest ISO market are: Winter 20,899 MW; Spring 17,346 MW; Summer 19,082 MW; and Fall 15,010 MW.

¹ *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, 73 Fed. Reg. 25,832 (May 7, 2008), FERC Stats. & Regs. ¶ 31,268 (2008), *clarified*, 124 FERC ¶ 61,055 (2008), *order on reh'g*, Order No. 697-B, 73 Fed. Reg. 79,610 (Dec. 30, 2008), FERC Stats. & Regs. ¶ 31,285 (2008).

I. Background

4. On December 31, 2008, Allete filed an updated market power analysis in accordance with the regional reporting schedule adopted in Order No. 697.²
5. On February 6, 2009, Allete filed a Supplement Joint Affidavit (supplement) to its updated market power analysis. Allete states that the supplement relies upon revised SIL data provided by the Midwest ISO on January 28, 2009.
6. Allete states that it owns generation, distribution, and transmission facilities located within the Midwest ISO market. Allete was granted market-based rate authorization by the Commission in *Minnesota Power & Light Company*, 76 FERC ¶ 61,033 (1996).³
7. Allete states that it is comprised of two core businesses: energy and real estate. Allete states that its energy operations include Minnesota Power and Superior Water Light and Power Company (Superior).
8. Allete states that Minnesota Power is an operating division of Allete that generates, transmits and distributes electricity in northern Minnesota. Minnesota Power's total generation, including power purchase agreements (PPAs) and Minnesota Power-owned generation, is approximately 2,035 MW in the summer and 2,045 MW in the winter.
9. Minnesota Power's PPAs include a power supply contract with the Square Butte Electric Cooperative (Square Butte) for purchases from the Milton R. Young Unit 2, and PPAs with the Oliver Wind I and II Energy Centers owned by FPL Energy, LLC.
10. Allete states that Minnesota Power owns electric transmission and distribution lines, and operational control of the transmission facilities has been turned over to the Midwest ISO.
11. Allete states that Superior is an electric, natural gas, and water service company whose service territory is located in Northwest Wisconsin. Allete states that Superior does not own or control any generation facilities and makes no sales at market-based rates.

² Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 882-93, app. D; Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 368-71, apps. D, D-1, D-2.

³ Additionally, the Commission accepted Allete's tariff revisions in compliance with Order Nos. 697 and 697-A in *Allete, Inc.*, Docket No. ER01-2636-004 (Dec. 18, 2008) (unpublished letter order).

12. Allete holds a \$70 million equity ownership interest in Wisconsin-based American Transmission Company.

II. Notices

13. Notice of Allete's December 31 filing was published in the *Federal Register*, 74 Fed. Reg. 1676 (2009), with interventions or protests due on or before March 2, 2009. None was filed.

14. Notice of Allete's supplemental filing was published in the *Federal Register*, 74 Fed. Reg. 7882 (2009), with interventions or protests due on or before February 27, 2009. None was filed.

III. Discussion

A. Market-Based Rate Authorization

15. 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.⁴ As discussed below, the Commission concludes that Allete satisfies the Commission's standards for market-based rate authority.

1. Horizontal Market Power

16. The Commission adopted two indicative screens for assessing horizontal market power, the pivotal supplier screen and the wholesale market share screen.⁵ Allete has prepared the pivotal supplier and wholesale market share screens for the Midwest ISO market, consistent with the requirements of Order No. 697.⁶

17. Allete states that it relies on the Revised Midwest ISO SIL Study. The purpose of a SIL study is "to provide a reasonable simulation of historical conditions and is not 'a theoretical maximum import capability or best import case scenario.'" ⁷ The Commission has explained that "[t]o determine the amount of transfer capability under the SIL study, 'historical operating conditions and practices of the applicable transmission provider (e.g., modeling the system in a reliable and economic fashion as it would have been

⁴ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 62, 399, 408, 440.

⁵ *Id.* P 62.

⁶ *Id.* P 235.

⁷ *Id.* P 354 (internal citations omitted).

operated in real time) are reflected.”⁸ In addition, “the ‘analysis should not deviate from’ and ‘must reasonably reflect’ its OASIS operating practices.”⁹ Furthermore, “when actual OASIS practices conflict with the instructions of Appendix E, sellers should follow OASIS practices and must provide adequate support in the form of documentation of these processes.”¹⁰ We find that the Revised Midwest ISO SIL Study meets the Commission’s requirements for a SIL study as discussed in Appendix E of the April 14 Order¹¹ and Order No. 697.

18. The Commission has reviewed Allete’s pivotal supplier screen and wholesale market share screen for the Midwest ISO market and has determined that Allete passes the pivotal supplier screen and the wholesale market share screen in the Midwest ISO market with market shares ranging by season from 0.9 to 1.2 percent.

19. Accordingly, the Commission finds that Allete satisfies the Commission’s requirements for market-based rates regarding horizontal market power in the Midwest ISO market.

2. Vertical Market Power

20. 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 Open Access Transmission Tariff (OATT) on file before granting a seller market-based rate authorization.¹²

21. The Commission also considers a seller’s ability to erect other barriers to entry as part of the vertical market power analysis.¹³ 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 sources of coal supplies and equipment for the transportation of coal supplies such as barges and rail cars (collectively, inputs to electric

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* P 356.

¹¹ *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (April 14 Order), *order on reh’g*, 108 FERC ¶ 61,026 (2004).

¹² Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408.

¹³ *Id.* P 440.

power production).¹⁴ 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.¹⁵

22. Allete states that its transmission assets located in the Midwest ISO are under the functional control of the Midwest ISO, which is a Commission-approved regional transmission organization with an OATT on file with the Commission.¹⁶

23. Allete states that Minnesota Power recently acquired approximately 47,000 acres of land near Center, North Dakota on which Minnesota Power is currently planning to develop wind farms, and that Minnesota Power will use energy and capacity produced by these facilities to satisfy the State of Minnesota's Renewable Portfolio Standards. Allete states that Minnesota Power owns BNI Coal located in Center, North Dakota.¹⁷ Allete states that Superior owns a natural gas distribution system of approximately 291 miles of pipelines.

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.¹⁸

25. Allete affirmatively states that it has not erected barriers to entry and will not erect barriers to entry into the relevant markets.

26. Based on Allete's representations, we find Allete's submittal satisfies the Commission's requirements for market-based rates regarding vertical market power.

¹⁴ *Id.* P 447. In Order No. 697-A, the Commission revised the definition of inputs to electric power production to include "physical coal supply sources and ownership of or control over who may access transportation of coal supplies." Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

¹⁵ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

¹⁶ *Midwest Independent Transmission System Operator, Inc.*, 84 FERC ¶ 61,231 (1998).

¹⁷ BNI Coal mines lignite used to fuel Square Butte's Milton R. Young Units 1 and 2.

¹⁸ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 446.

B. Reporting Requirements

27. 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 longer) market-based power sales during the most recent calendar quarter.¹⁹ Public utilities must file Electric Quarterly Reports no later than 30 days after the end of the reporting quarter.²⁰

28. Allete 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.²¹

29. Additionally, in Order No. 697, the Commission created two categories of sellers.²² 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

¹⁹ *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 Electric Quarterly Reports 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>.

²⁰ The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2008). 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.

²¹ *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 (2008).

²² Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 848.

been granted waiver of the requirements of Order No. 888); 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.²³ Sellers that do not fall into Category 1 are designated as Category 2 and are required to file regularly scheduled updated market power analyses.²⁴

30. Based on Allete's representations, we find that it meets the criteria for a Category 2 seller in the Central Region and is so designated based on its ownership of generation assets totaling greater than 500 MW of capacity and ownership of transmission in the Central Region. Thus, Allete must file an updated market power analysis for the Central region in compliance with the regional reporting schedule adopted in Order No. 697.²⁵ The Commission also reserves the right to require such an analysis at any intervening time.

The Commission orders:

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

(B) Allete is hereby directed to file an updated market power analysis according the regional reporting schedule adopted in Order No. 697.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

²³ 18 C.F.R. § 35.36(a)(2) (2008).

²⁴ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 850.

²⁵ *Id.* P 882.