

128 FERC ¶ 61,041  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

LG&E Energy Marketing Inc.	Docket Nos. ER94-1188-045
Louisville Gas & Electric Company	ER99-1623-014
Kentucky Utilities Company	ER98-4540-014
Western Kentucky Energy Corporation	ER98-1279-016

ORDER ACCEPTING UPDATED MARKET POWER ANALYSIS  
AND COMPLIANCE FILING

(Issued July 16, 2009)

1. In this order, the Commission accepts an updated market power analysis filed by LG&E Energy Marketing Inc. (LG&E Marketing), Louisville Gas & Electric Company (Louisville Gas & Electric), Kentucky Utilities Company (Kentucky Utilities), and Western Kentucky Energy Corporation (Western Kentucky Energy) (collectively, E.ON Applicants). As discussed below, the Commission concludes that E.ON Applicants continue to satisfy the Commission's standards for market-based rate authority in the Southeast region, excluding the Louisville Gas & Electric/Kentucky Utilities and Big Rivers Electric Corporation (Big Rivers) balancing authority areas.<sup>1</sup>

2. The Commission also accepts E.ON Applicants' proposed revisions to their market-based rate tariffs that incorporate provisions as adopted in Order No. 697-A,<sup>2</sup> to be effective June 6, 2008, as requested.

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<sup>1</sup> E.ON Applicants are subject to cost-based rates in the Louisville Gas & Electric/Kentucky Utilities and Big Rivers balancing authority areas. *LG&E Energy Marketing Inc.*, 122 FERC ¶ 61,175 (2008).

<sup>2</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 Clarifying Final Rule), *order on reh'g*,

(continued...)

3. Additionally, as discussed below, E.ON Applicants meet the criteria for Category 2 sellers, and are so designated. E.ON Applicants' next updated market power analysis must be filed according to the regional schedule adopted in Order No. 697.<sup>3</sup>

### **I. Background**

4. On September 2, 2008, as amended on November 13, 2008, E.ON Applicants filed an updated market power analysis in accordance with the reporting schedule adopted in Order No. 697.<sup>4</sup>

5. On December 23, 2008, Commission Staff issued a request that E.ON Applicants submit additional information regarding the Simultaneous Transmission Import Limit (SIL) study E.ON Applicants submitted on September 2, 2008. On January 26, 2009, E.ON Applicants submitted a filing in response to Commission Staff's December 23, 2008 request. On April 9, 2009, Commission Staff issued another request to E.ON Applicants notifying them that additional information concerning E.ON Applicants' SIL study was still needed. On May 8, 2009, E.ON Applicants submitted additional information in response to Commission Staff's April 9, 2009 request.

6. E.ON Applicants are all wholly-owned subsidiaries of E.ON U.S. LLC, a Kentucky corporation and public-utility holding company, which in turn is a wholly-owned subsidiary of E.ON AG, a stock corporation formed under the laws of the Federal Republic of Germany. Each of the E.ON Applicants have been granted market-based rate authorization by the Commission, but are prohibited from making market-based rate sales in the Louisville Gas & Electric/Kentucky Utilities and Big Rivers balancing

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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).

<sup>3</sup> 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).

<sup>4</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 882. The Commission stated that "both the Commission and market participants will benefit from greater data consistency that will result from regional examination of updated market power analyses and a methodical study of all sellers in the same region. This will give the Commission a more complete view of market forces in each region and the opportunity to reconcile conflicting submissions, enhancing our ability to ensure that sellers' rates remain just and reasonable." *See also* Order Clarifying Final Rule, 121 FERC ¶ 61,260 at P 13.

authority areas.<sup>5</sup> As noted above, E.ON Applicants are currently subject to cost-based mitigation in the Louisville Gas & Electric/Kentucky Utilities and Big Rivers balancing authority areas and are not seeking market-based rate authority there.

**A. Louisville Gas & Electric and Kentucky Utilities**

7. E.ON Applicants state that Louisville Gas & Electric is a public utility that owns and operates electric generation, transmission, and distribution facilities, as well as natural gas and storage facilities, in Kentucky. Further, Kentucky Utilities is a public utility that owns and operates electric generation, transmission, and distribution facilities in Kentucky, with limited operations in Tennessee and Virginia. E.ON Applicants state that, collectively, Louisville Gas & Electric and Kentucky Utilities directly own and/or control approximately 7,820 MW (summer rating) of generation capacity and hold minority interests in certain entities that own generation.

8. E.ON Applicants state that Louisville Gas & Electric and Kentucky Utilities operate a joint electric balancing authority area and own approximately 4,925 circuit miles of electric transmission lines. As of December 31, 2007, Louisville Gas & Electric and Kentucky Utilities served approximately 937,000 electric customers.

**B. LG&E Marketing and Western Kentucky Energy**

9. E.ON Applicants state that LG&E Marketing is a power marketer that does not own or control any generation facilities. E.ON Applicants state that Western Kentucky Energy operates four generating facilities with a combined rated capacity of 1,469 MW (summer rating) (Big Rivers Facilities). E.ON Applicants assert that Western Kentucky Energy is also entitled to the output of these four facilities beyond that which it uses to serve existing contracts to Big Rivers and Kenergy Corporation, with excess output being sold to LG&E Marketing. E.ON Applicants further state that Western Kentucky Energy is also entitled to the excess output of the 312 MW (summer rating) Station Two facility owned by the city of Henderson, Kentucky (Station Two Facility) beyond contractual

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<sup>5</sup> See, e.g., *Louisville Gas & Electric Company*, 85 FERC ¶ 61,215 (1998); *Louisville Gas & Electric Company*, Docket No. ER02-1077-000 (April 16, 2002) (unpublished letter order); *LG&E Power Marketing Inc.*, 68 FERC ¶ 61,247, *modified on other grounds*, 69 FERC ¶ 61,153 (1994), *LG&E Energy Marketing Inc.*, Docket No. ER97-3418-000 (August 1, 1997) (unpublished letter order); *WKE Station Two Inc.*, 82 FERC ¶ 61,178 (1998). See also *LG&E Energy Marketing Inc.*, 113 FERC ¶ 61,229, at P 28 (2005) (finding that the E.ON Applicants have failed to rebut the presumption of market power in the Big Rivers balancing authority area); *LG&E Energy Marketing, Inc.*, Docket No. ER06-1046-000 (July 6, 2006) (unpublished letter order); *LG&E Energy Marketing Inc.*, 122 FERC ¶ 61,175 (2008).

commitments (i.e., the energy taken by Henderson itself as well as that used by Western Kentucky Energy to serve the Western Kentucky Energy-Big Rivers and Western Kentucky Energy-Kenergy contracts), with excess output again being sold to LG&E Marketing.<sup>6</sup>

**C. Other Holdings**

**1. Central Region Holdings**

10. E.ON Applicants state that Louisville Gas & Electric and Kentucky Utilities hold a combined 8.13 percent interest in Ohio Valley Electric Corporation, which, together with its subsidiary, owns the 986 MW Kyger Creek Generating Facility located in Gallipolis, Ohio, and the 1,196 MW Clifty Creek Generating Facility located in Madison, Indiana. Both of these facilities are located in the Ohio Valley Electric Corporation balancing authority area.

11. In addition, Kentucky Utilities holds a 20 percent interest in Electric Energy, Inc. (Electric Energy). Electric Energy owns and operates a six-unit coal-fired generating facility, with a capacity of approximately 1,002 MW located in Joppa, Illinois, and its wholly-owned subsidiary, Midwest Electric Power, Inc., owns and operates two gas turbines with a total capacity of approximately 74 MW, which is also located in Joppa, Illinois. E.ON Applicants assert that output from these facilities is under the operation and control of subsidiaries of Ameren Corporation, a public utility holding company and the majority owner of Electric Energy. E.ON Applicants further assert that neither Kentucky Utilities nor any affiliate of Kentucky Utilities has any rights to the output of these facilities.<sup>7</sup>

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<sup>6</sup> On March 26, 2007, Western Kentucky Energy, LG&E Marketing, and Big Rivers entered into a Transaction Termination Agreement that provides for the early termination of the agreements under which (1) Western Kentucky Energy has rights to the control and/or output of the Big Rivers Facilities and Station Two Facility; and (2) Western Kentucky Energy is obligated to supply power to serve the loads of Big Rivers, including its member cooperatives. *See Western Kentucky Energy Corporation*, 123 FERC ¶ 62,153 (2008).

<sup>7</sup> E.ON Applicants September 2, 2008 Filing, Ex. 11, Letter of Concurrence.

**2. New York Independent System Operator, Inc. (NYISO) Holdings**

12. E.ON Applicants state that E.ON AG holds certain ownership interests in Airtricity, Inc., the indirect parents of Munnsville Wind Farm, LLC, which is the owner of a 34.5 MW wind farm located in the NYISO market.

**3. E.ON Natural Gas Trading**

13. E.ON U.S. LLC's wholly-owned subsidiary, E.ON U.S. Natural Gas Trading, Inc., engages in the financial and physical trading of natural gas.

**II. Notices and Responsive Pleadings**

14. Notice of the September 2, 2008 filing was published in the *Federal Register*, 73 Fed. Reg. 53,857 (2008), *errata notice*, 73 Fed. Reg. 70,993 (2008), with interventions or protests due on or before December 4, 2008. None was filed.

15. Notice of the November 13, 2008 filing was published in the *Federal Register*, 73 Fed. Reg. 70,993 (2008), with interventions or protests due on or before December 4, 2008. None was filed.

16. Notice of the January 26, 2009 filing was published in the *Federal Register*, 74 Fed. Reg. 6,149 (2009), with interventions or protests due on or before February 17, 2009. None was filed.

17. Notice of the May 8, 2009 filing was published in the *Federal Register*, 74 Fed. Reg. 23,686-7 (2009), with interventions or protests due on or before May 29, 2009. None was filed.

**III. Discussion**

**A. Market-Based Rate Authorization**

18. 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.<sup>8</sup> The Commission concludes that E.ON Applicants satisfy the Commission's standards for market-based rate authority, as discussed below.

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

**B. Horizontal Market Power**

19. The Commission adopted two indicative screens for assessing horizontal market power, the pivotal supplier screen and the wholesale market share screen.<sup>9</sup> E.ON Applicants prepared the pivotal supplier and wholesale market share screens for the PJM Interconnection, L.L.C. (PJM) and Midwest Independent Transmission System Operator, Inc. (Midwest ISO) markets, and the Tennessee Valley Authority (TVA), Eastern Kentucky Power Company (Eastern Kentucky), Ohio Valley Electric Corporation, and Electric Energy balancing authority areas, consistent with the requirements of Order No. 697.<sup>10</sup>

20. The Commission has reviewed E.ON Applicants' pivotal supplier and wholesale market share screens. As noted above, Commission Staff issued data requests on December 23, 2008 and April 9, 2009 requesting that E.ON Applicants provide additional information regarding the SIL study submitted as part of their updated market power analysis. In response to those requests, E.ON Applicants submitted additional information and revised SIL studies. Commission Staff requested the other transmission owners in the Southeast that filed SIL studies with their updated market power analyses (Southeast Transmission Owners)<sup>11</sup> to submit similar information as well. As detailed in an order being issued concurrently with this order, the Commission has made adjustments to the SIL studies submitted by the Southeast Transmission Owners, which the Commission will use in evaluating market power analyses filed in the Southeast region.<sup>12</sup>

21. We find that E.ON Applicants pass the pivotal supplier and wholesale market share screens in the PJM market, and the combined TVA/Electric Energy, Eastern Kentucky, and Ohio Valley Electric Corporation balancing authority areas. Specifically,

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<sup>9</sup> *Id.* P 62.

<sup>10</sup> *Id.* P 231.

<sup>11</sup> There were seven separate updated market power filings submitted on behalf of Southeast Transmission Owners. They include submissions by: (1) Duke Energy Carolinas, LLC; (2) South Carolina Electric & Gas Company; (3) Tampa Electric Company; (4) Carolina Power & Light Co. and Florida Power Corporation; (5) Entergy Services, Inc., Entergy Power Ventures, LP, EWO Marketing, LP, and Entergy Power, Inc.; (6) LG&E Energy Marketing Inc., Louisville Gas & Electric Company, Kentucky Utilities Company, and Western Kentucky Energy Corporation; and (7) Southern Company Services, Inc., Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Southern Power Company.

<sup>12</sup> *Carolina Power & Light Co.*, 128 FERC ¶ 61,039.

using the Commission-adjusted SIL study results, E.ON Applicants' market shares for the relevant balancing authority areas are as follows: PJM market shares range from 0.5 to 0.7 percent; TVA/Electric Energy market shares range from 0.1 to 0.9 percent; Eastern Kentucky market shares range from 0 to 1.7 percent; and Ohio Valley Electric Corporation market shares range from 8.0 to 9.9 percent.

22. With regard to the Midwest ISO, E.ON Applicants submitted screens that do not include competing imports as part of the analysis. Thus, using conservative assumptions, E.ON Applicants pass the pivotal supplier and wholesale market share screens in the Midwest ISO market with market shares ranging from 6.9 to 7.7 percent.

23. Accordingly, we find that E.ON Applicants satisfy the Commission's requirements for market-based rate authority regarding horizontal market power in the PJM and Midwest ISO markets and the TVA/Electric Energy, Eastern Kentucky, and Ohio Valley Electric Corporation balancing authority areas.

### **C. Vertical Market Power**

24. 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 that utility or affiliate market-based rate authorization.<sup>13</sup>

25. E.ON Applicants state that other than limited transmission assets necessary to interconnect generating facilities to the transmission grid, only Louisville Gas & Electric and Kentucky Utilities own or control transmission assets. E.ON Applicants' only affiliate that owns or controls any transmission assets is Electric Energy. E.ON Applicants state that Louisville Gas & Electric, Kentucky Utilities, and Electric Energy each have OATTs on file with the Commission.<sup>14</sup>

26. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.<sup>15</sup> The Commission requires a seller to provide a description of its ownership or control of, or affiliation with an entity that owns or

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<sup>13</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408.

<sup>14</sup> See *E.ON U.S., LLC*, Docket No. ER06-20-006 (November 8, 2006) (unpublished letter order); *E.ON U.S. LLC*, 123 FERC ¶ 61,301 (2008). See also *Baltimore Gas and Electric Company*, Docket No. OA96-156-001 (February 24, 1999) (unpublished letter order); *Electric Energy, Inc.*, 125 FERC ¶ 61,365 (2008).

<sup>15</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 440.

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).<sup>16</sup> 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.<sup>17</sup>

27. With regard to other barriers to entry, E.ON Applicants state that Louisville Gas & Electric owns and operates approximately 374 miles of intrastate natural gas transmission lines and approximately 4,200 miles of natural gas distribution lines. They add that Kentucky Utilities owns approximately 11 miles of natural gas transmission lines, all located within Kentucky. E.ON Applicants further represent that they own five natural gas storage fields, four of which are located in Kentucky and one of which (Doe Run) is located in both Kentucky and Indiana. These five storage fields have a combined working gas capacity of approximately 15.1 billion cubic feet. E.ON Applicants also explain that Louisville Gas & Electric also owns and operates approximately eight miles of natural gas transmission pipeline within Indiana associated with Louisville Gas & Electric's Doe Run storage field.

28. E.ON Applicants add that other than sites at existing generating facilities, they do not own sites for generation capacity development (other than limited sites for distributed generation). However, E.ON Applicants state that Munnsville Wind Farm has leasehold interests in various sites for development of wind generation.

29. E.ON Applicants also explain that Louisville Gas & Electric and Kentucky Utilities are purchasers of coal under various long-term agreements but do not own any coal mines or mineral rights. E.ON Applicants further note that Louisville Gas & Electric, Kentucky Utilities, and Western Kentucky Energy own and lease certain railcars, and that Western Kentucky Energy owns and leases certain barges, all of which are used primarily for coal transportation to power plants owned and/or operated by E.ON Applicants. In addition, Electric Energy is the sole owner of the Joppa and Eastern Railroad Company, the owner of a 3.9-mile rail line and associated railcars that transport coal shipments to the Joppa facility. E.ON Applicants represent that all of these resources are used almost exclusively to supply coal to power plants owned and operated by E.ON Applicants and Electric Energy.

30. 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

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<sup>16</sup> *Id.* P 447; Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

<sup>17</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

does not allow a seller to raise entry barriers but will allow intervenors to demonstrate otherwise.<sup>18</sup>

31. E.ON Applicants affirmatively state that they have not erected barriers to entry into the relevant markets and will not erect barriers to entry into the relevant markets in the future.

32. Based on E.ON Applicants' representations, we find that they satisfy the Commission's requirements for market-based rate authority regarding vertical market power.

#### **D. Compliance Filing**

33. 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>19</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.<sup>20</sup> 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>21</sup>

34. E.ON Applicants state that the Commission has previously accepted for filing tariff changes required by Order No. 697.<sup>22</sup> E.ON Applicants state that they are revising, where applicable, the required language concerning (i) sales of ancillary services, (ii) the mitigated sales provision, and (iii) seller category, all in compliance with Order No. 697-A. E.ON Applicants also include a list of assets as required by Order No. 697.<sup>23</sup> E.ON Applicants' revised market-based rate tariffs therefore satisfy the Commission's requirements set forth in Order No. 697 and Order No. 697-A. Accordingly, we will

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<sup>18</sup> *Id.* P 446.

<sup>19</sup> *Id.* P 914.

<sup>20</sup> *Id.* P 917.

<sup>21</sup> Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 391-393.

<sup>22</sup> *LG&E Energy Marketing, Inc.*, 122 FERC ¶ 61,175 (2008).

<sup>23</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 894-895.

accept E.ON Applicants' revised market-based rate tariffs, effective June 6, 2008, as requested.<sup>24</sup>

### **E. Reporting Requirements**

35. 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.<sup>25</sup> Public utilities must file Electronic Quarterly Reports no later than 30 days after the end of the reporting quarter.<sup>26</sup>

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<sup>24</sup> LG&E Energy Marketing Inc., First Revised Rate Schedule FERC No. 1, First Revised Sheet Nos. 1-2 (superseding Original Sheet Nos. 1-2); Louisville Gas & Electric Company/Kentucky Utilities Company, FERC Electric Tariff, Second Revised Volume No. 2, First Revised Sheet Nos. 6-7 (superseding Original Sheet No. 6, Substitute Original Sheet No. 7); Louisville Gas & Electric Company/Kentucky Utilities Company, FERC Electric Tariff, Second Revised Volume No. 3, First Revised Sheet Nos. 1-2 (superseding Original Sheet No. 1, Substitute Original Sheet No. 2); Western Kentucky Energy Corporation, First Revised Rate Schedule FERC No. 1, First Revised Sheet Nos. 1-2 (superseding Original Sheet Nos. 1-2).

<sup>25</sup> *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 Electronic Quarterly Report Submission System Software, which may be downloaded from the Commission's website at <http://www.ferc.gov/docs-filing/eqr.asp>.

<sup>26</sup> 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.

36. E.ON Applicants 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.<sup>27</sup>

37. Additionally, in Order No. 697, the Commission created two categories of sellers.<sup>28</sup> 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. 888<sup>29</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>30</sup> Sellers that do not fall into Category 1 are designated as Category 2 and are required to file regularly updated market power analyses.<sup>31</sup>

38. Based on E.ON Applicants' representations, we find that they meet the criteria for a Category 2 seller and are so designated. Thus, E.ON Applicants must file an updated market power analysis in compliance with the regional reporting schedule adopted in

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<sup>27</sup> *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) (2008).

<sup>28</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 848.

<sup>29</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>30</sup> 18 C.F.R. § 35.36(a)(2) (2008).

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

Order No. 697.<sup>32</sup> The Commission also reserves the right to require such an analysis at any intervening time.

The Commission orders:

(A) E.ON Applicants' updated market power analysis and Order No. 697 compliance filing are hereby accepted for filing, as discussed in the body of this order.

(B) E.ON Applicants' revisions to their market-based rate tariffs are hereby accepted for filing effective June 6, 2008, as discussed in the body of this order.

(C) E.ON Applicants are hereby directed to file an updated market power analysis according to the regional reporting schedule adopted in Order No. 697.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>32</sup> *Id.* P 882.