

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

LG&E Energy Marketing Inc.	Docket Nos. ER94-1188-036
Louisville Gas and Electric Company	ER98-4540-005
Kentucky Utilities Company	ER99-1623-005
Western Kentucky Energy Corporation	ER98-1279-007
WKE Station Two, Inc.	ER98-1278-011
LG&E Energy Marketing Inc., Louisville Gas and Electric Company, Kentucky Utilities Company, Western Kentucky Energy Corporation, WKE Station Two, Inc.	EL05-99-000

ORDER ON PROPOSED MITIGATION MEASURES AND COMPLIANCE FILINGS

(Issued December 1, 2005)

1. In this order, the Commission accepts the LG&E Parties'¹ updated market power analysis for the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) market and the Southern Company control area. In addition, the Commission conditionally accepts the LG&E Parties' mitigation proposal applicable to sales of electric power at wholesale for transactions sinking in the Big Rivers Electric

¹ The LG&E Parties include LG&E Energy Marketing, Inc. (LG&E Energy Marketing), Louisville Gas & Electric Company (LG&E), Kentucky Utilities Company (Kentucky Utilities), Western Kentucky Energy Corporation (Western Kentucky Energy), and WKE Station Two, Inc. (WKE Station Two).

Corporation (Big Rivers) control area in order to mitigate the presumption of market power in that control area to become effective as of the refund effective date in this proceeding, July 19, 2005, and subject to the compliance filing directed herein.²

Background

2. On May 30, 2002, the LG&E Parties filed their three-year updated market power analysis based on the Supply Margin Assessment method. On November 19, 2004, as amended on March 29, 2005, April 8, 2005, and April 13, 2005, the LG&E Parties filed a revised updated market power analysis pursuant to the Commission's order issued on May 13, 2004.³ The May 13 Order addressed the procedures for implementing the generation market power analysis announced on April 14, 2004, and clarified on July 8, 2004.⁴

3. The LG&E Parties' updated market power analysis indicated that the LG&E Parties failed the market share screen in the LG&E/Kentucky Utilities and Big Rivers control areas. Thus, on May 5, 2005, the Commission issued an order on the LG&E Parties' updated market power analysis which instituted a proceeding under section 206 of the Federal Power Act⁵ (FPA) to determine whether the LG&E Parties may continue to charge market-based rates in the LG&E/Kentucky Utilities control area and the Big Rivers control area, and established a refund effective date.⁶

4. The Commission found that, as noted in the April 14 Order, once the Midwest ISO becomes a single market and performs functions such as a central commitment and dispatch with Commission-approved market monitoring and mitigation, the Midwest ISO presumptively would be considered a single geographic market for purposes of our generation dominance screens.⁷ The Commission noted that LG&E and Kentucky Utilities are members of the Midwest ISO and that the LG&E/Kentucky Utilities control area is in the Midwest ISO geographic footprint. Therefore, with regard to the

² The section 206 proceeding instituted in Docket No. EL05-99-000 with regard to WKE Station Two was terminated on July 25, 2005 since its market-based rate tariff has been cancelled. *WKE Station Two, Inc.*, 112 FERC ¶ 61,108 (2005).

³ *Acadia Power Partners, LLC*, 107 FERC ¶ 61,168 (2004) (May 13 Order).

⁴ *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004) (July 8 Order).

⁵ 16 U.S.C. § 824e (2000).

⁶ *LG&E Energy Marketing, Inc.*, 111 FERC ¶ 61,153 (2005) (*LG&E*).

⁷ The Midwest ISO became a single market and began performing the central commitment and dispatch functions with Commission-approved market monitoring and mitigation on April 1, 2005.

LG&E/Kentucky Utilities control area, the Commission directed the LG&E Parties to file a revised generation market power analysis using the Midwest ISO as the relevant geographic market or, alternatively, explain why the LG&E/Kentucky Utilities control area is the proper relevant market.

5. For the Big Rivers control area, the Commission directed that the LG&E Parties either: (a) file a Delivered Price Test (DPT) analysis; (b) file a mitigation proposal tailored to their particular circumstances that would eliminate the ability to exercise market power; or (c) inform the Commission that they will adopt the April 14 Order's default cost-based rates or propose other cost-based rates and submit cost support for such rates.⁸

6. The Commission further directed the LG&E Parties to revise their generation market power analysis for the Southern Company control area.

7. Finally, the Commission found that the LG&E Parties satisfy the Commission's concerns with regard to transmission market power, other barriers to entry, and affiliate abuse.

8. On June 6, 2005, the LG&E Parties submitted a generation market power analysis for the Midwest ISO market and a revised generation market power analysis for the Southern Company control area. The submittal includes the Commission's change in status reporting requirement pursuant to Order No. 652.⁹ The submittal also includes the Commission's market behavior rules for Western Kentucky Energy.¹⁰

9. On July 5, 2005, as supplemented on July 15, 2005, the LG&E Parties submitted a DPT analysis for the Big Rivers control area. The LG&E Parties concede that they fail the DPT analysis, and have submitted historical evidence to rebut the presumption of market power. The LG&E Parties also submitted a tailored mitigation proposal, to be implemented in the event the Commission finds that the LG&E Parties possess market power in the Big Rivers control area. Under the proposed mitigation, all market-based energy sales by the LG&E Parties with a point of sink in the Big Rivers control area not sold pursuant to the contractual agreements already in existence will be capped at the Midwest ISO's Location Marginal Price (LMP) at the Big Rivers control area interface.

⁸ See *LG&E*, 111 FERC ¶ 61,153 at P 25.

⁹ *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 70 Fed. Reg. 8,253 (Feb. 18, 2005), FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005).

¹⁰ *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218 (2003), *order on reh'g*, 107 FERC ¶ 61,175 (2004) (Market Behavior Rules Rehearing Order).

Notice of Filing and Responsive Pleadings

10. Notice of the LG&E Parties' June 6 filing was published in the *Federal Register*, 70 Fed. Reg. 35,418 (2005), with interventions or protests due on or before June 27, 2005. Notice of the LG&E Parties' July 5 filing was published in the *Federal Register*, 70 Fed. Reg. 41,215 (2005), with interventions or protests due on or before July 26, 2005. Notice of the LG&E Parties' July 15 filing was published in the *Federal Register*, 70 Fed. Reg. 44,092 (2005), with interventions or protests due on or before August 5, 2005. None was filed.

Discussion

Revised Generation Market Power Analyses

11. In the June 6, 2005 filing, the LG&E Parties revised their generation market power analysis for the Southern Company control area. The LG&E Parties have prepared both the pivotal supplier and the wholesale market share screen analyses for the Southern Company control area. The Commission has reviewed the LG&E Parties' generation market power screens for the Southern Company control area and has determined that the LG&E Parties pass both of the indicative screens in that control area. Accordingly, the Commission finds that the LG&E Parties satisfy the Commission's generation market power standard for the grant of market-based rate authority in the Southern Company control area.

12. Also in the June 6, 2005 filing, the LG&E Parties prepared the pivotal supplier and the wholesale market share screen analyses for the Midwest ISO market. The Commission has reviewed the LG&E Parties' generation market power screens for the Midwest ISO market and determined that the LG&E Parties pass the screens in that market. Accordingly, the Commission finds that the LG&E Parties satisfy the Commission's generation market power standard for the grant of market-based rate authority in the Midwest ISO market.

Withdrawal From Midwest ISO

13. We note that on October 7, 2005, the LG&E Parties filed a request to withdraw from the Midwest ISO.¹¹ The LG&E Parties must file, within 60 days of the date of issuance of this order, an updated market power analysis addressing the Commission's four-part market-based rate analysis (generation market power, transmission market power, other barriers to entry, and affiliate abuse) to reflect this change in circumstances.

¹¹ See Docket No. ER06-20-000.

The LG&E Parties' Delivered Price Test

14. In the April 14 Order, we stated that an applicant's failure of one or more of the indicative screens establishes a rebuttable presumption of market power. If such an applicant chooses not to proceed directly to mitigation, it must present a more thorough analysis using the Commission's DPT.¹² The DPT is used to analyze the effect on competition for transfers of jurisdictional facilities in section 203 proceedings,¹³ using the framework described in Appendix A of the Merger Policy Statement and revised in Order No. 642.¹⁴ The DPT is a well established test that has been used routinely to analyze market power in the merger context for many years, and it has been affirmed by the courts.¹⁵

15. For the Big Rivers control area, the LG&E Parties submit that their DPT analysis under the available economic capacity measure indicates that they satisfy the Commission's standards for the pivotal supplier screen, but had market shares in excess of 20 percent in all season/load periods and market concentration statistics in excess of 2,500 in all three winter season/load periods, one summer season load period, and one shoulder period, but below 2,500 in the remaining periods. With respect to the economic capacity measure, the LG&E Parties' DPT indicates that they do not satisfy the Commission's standards for the pivotal supplier screen, had market shares in excess of 20 percent in all season/load periods, and market concentration statistics in excess of 2,500 in all season/load periods. The LG&E Parties concede their failure of the DPT analysis.

The LG&E Parties' Alternative Data

16. In support of the LG&E Parties' argument that, notwithstanding their failure of the DPT, they do not possess generation market power in the Big Rivers control area, the

¹² *Id.* at P 105-12.

¹³ 16 U.S.C. § 824b (2000).

¹⁴ *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, 61 Fed. Reg. 68,595 (1996), FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,044 (1996), *reconsideration denied*, Order No. 592-A, 62 Fed. Reg. 33,341 (1997), 79 FERC ¶ 61,321 (1997) (Merger Policy Statement); *see also Revised Filing Requirements Under Part 33 of the Commission's Regulations*, Order No. 642, 65 Fed. Reg. 70,984 (2000), FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,111 (2000), *order on reh'g*, Order No. 642-A, 66 Fed. Reg. 16,121 (2001), 94 FERC ¶ 61,289 (2001).

¹⁵ *See, e.g., Wabash Valley Power Associates, Inc. v. FERC*, 268 F. 3d 1105 (D.C. Cir. 2001).

LG&E Parties submitted historical sales data which, they claim, demonstrates that there is enough competitive third-party supply to meet contestable load, that customers are protected by long-term contracts and that the volume of “unprotected” sales are small and primarily to third parties.¹⁶ However, the LG&E Parties’ “shopping load” data, which refers to load that is in the market for power, does not provide the historical sales data and analysis as contemplated by the April 14 Order and July 8 Order. Instead, the LG&E Parties’ data are a flawed extension of the pivotal supplier and DPT analyses and fail to present new information that the Commission has not considered.

17. As stated above, the LG&E Parties argue that they do not possess generation market power in the Big Rivers control area because the load that is shopping for supply at market-based rates can be met by energy available from entities other than the LG&E Parties.¹⁷ The LG&E Parties also assert that this competitive supply acts as a disincentive for them to attempt to exercise generation market power.¹⁸ In support of their claim that ample non-LG&E Parties’ generation is available in the Big Rivers control area, the LG&E Parties present data indicating that wholesale customer load, calculated as the difference between control area peak load and customers’ fixed price contractual rights to service from LG&E Parties, is less than 200 MW at peak. In contrast, the LG&E Parties claim that there are 622 MW to 1,132 MW of available supply at peak, implying that there is ample supply to meet this load. This scenario is referred to herein as “Contestable Load Case #1”¹⁹ but the LG&E Parties provide no explanation or workpapers for these calculations, and the results are not reproducible from the data and information that was submitted. Therefore, the Commission cannot rely on these unsupported claims.

18. The LG&E Parties also attempt to make the case that in the Big Rivers control area there is ample economic deliverable competing supply to serve demand from wholesale customers located within the control area in all periods. In support of this argument, the LG&E Parties provide comparisons of market supply to shopping load for each season/market load period.²⁰ These load periods are consistent with those studied in the DPT. This scenario is referred to herein as “Contestable Load Case # 2.” The LG&E Parties claim that their Contestable Load Case #2 analysis indicates that the LG&E Parties control from 0 to 60 percent of the available economic capacity in the Big Rivers control area in the time/load periods examined. This analysis is flawed because the

¹⁶ LG&E Parties’ July 5 Transmittal at 4.

¹⁷ *Id.* at 9.

¹⁸ *Id.* at 4.

¹⁹ LG&E Parties’ July 15 Hieronymus Affidavit, Table 8.

²⁰ LG&E Parties’ July 15 Hieronymus Affidavit, Table 9.

amount of load the LG&E Parties claim is assigned to themselves does not vary by load period and is different, in some seasons significantly, from the levels of the LG&E Parties' load responsibilities stated in the DPT analysis they submitted on July 5. Further, the LG&E Parties do not provide a source for the prices appearing on Table 9 nor an explanation of how these prices were used in the development of the analysis which appears there. In addition, there are also significant differences between Contestable Load Case #2 and the DPT in other key variables, notably the LG&E Parties' level of available economic capacity.²¹ As with Contestable Load Case No. 1, no explanation of the development or workpapers was provided for Table 9.

19. The LG&E Parties further obscure examination of historical sales by not accurately representing the purchasing position of customers in the Big Rivers control area. The LG&E Parties define "shopping load" as the Big Rivers, Kenergy, and Henderson loads that are in excess of the amount the LG&E Parties are contracted to supply (at either fixed prices or 110 percent of purchased power costs).²² Further, the LG&E Parties have assigned to their load obligation the maximum values under the contracts. This definition of "shopping load" fails to include the fact that wholesale customers are not committed to purchasing their entire demand from the LG&E Parties.²³ The LG&E Parties state that, when procuring power in excess of the specified minimums or procuring backup power from a seller other than the LG&E Parties would be economical, the customers are free under the contract to so.²⁴ Electric Quarterly Reports (EQRs) show that approximately eight percent of Kenergy's purchases were from sources other than the LG&E Parties in 2003 and 2004, and five percent have been thus far in 2005.

20. The LG&E Parties' proposed analysis characterizes all load which currently has a fixed price contractual option from the LG&E Parties as "not shopping." However, this is not necessarily a valid assumption because some of this load has the ability to shop for other suppliers. For example, the LG&E Parties characterize as "not shopping" some load that has a "call" option on power but no obligation to purchase. Also, the LG&E

²¹ Like the DPT analysis presented, the LG&E Parties' contestable load analysis indicates the LG&E Parties have a large share of the market in all seasons except the shoulder periods. The results for the shoulder periods may be questioned on the basis that the LG&E Parties' assumed load obligation does not vary in the analysis or decrease as might be expected in shoulder and off-peak periods. As a result, the LG&E Parties' "excess supply" and market share may be understated.

²² LG&E Parties' July 5 Transmittal at 9, n. 29.

²³ That is, under the contracts the customer has a right, but not an obligation, to purchase up to the maximum level.

²⁴ LG&E Parties' July 5 Transmittal, Hieronymus Affidavit at 4.

Parties characterize load that is entitled to a certain amount of power, but with no purchase requirement, as “not shopping” (*i.e.*, it assumes that load will take the maximum allowable amount of power even though that may not be the case). The result of these improper assumptions is to understate the amount of load that may be shopping in the wholesale market which in turn understates the LG&E Parties’ market share.

21. The Commission cannot, from the information presented, determine specific levels that customers purchase from the LG&E Parties. The information provided suggests that some of these load levels have the ability to seek alternative supply. For example, the Commission finds fault with the LG&E Parties’ conclusion that Henderson’s load is not considered to be potentially shopping. The LG&E Parties include Henderson’s 95 MW call option as part of their load obligation. However, although Henderson has a call option, it does not necessarily have to exercise that option if it is not economic to do so.²⁵

22. Similarly, it appears that maximum loads²⁶ and supplemental service for the Kenergy contracts have been included in the LG&E Parties’ load obligation although it appears these customers too are not required to purchase the maximum specified demand and have the option to purchase supplemental and backup energy elsewhere, thus those loads have the ability to seek alternative supply.²⁷ The LG&E Parties’ own data confirm that the Henderson and Kenergy loads have the option to seek out and transact with third parties.²⁸

23. It also appears that the LG&E Parties have incorrectly included an expired contract in its analysis. The LG&E Parties list among their load obligation a contract provision that expired on January 1, 2001, for 53 MW of Tier #3 power. For the

²⁵ Henderson owns the 405 MW Henderson Station 2 and has contracted the operation and marketing functions to LG&E. Henderson has the right to call on the output of the plant to meet its retail load. In 2003, this call option was for 95 MW. In addition, Henderson has a purchased power contract with LG&E for supplemental and excess power at fixed and formulaic prices.

²⁶ The LG&E Parties state that the base contractual loads under the Kenergy contracts total 625 MW. However, this appears to be based on an overstatement of the Century contract which specifies 339 MW maximum demand, whereas Table 2 reflects 393 MW, for a total maximum demand of 572 MW. This transposition appears at several points in the submittal including Tables 2 and 5 of Hieronymus’ Affidavit, and leads to understatement of LG&E Parties’ “excess” capacity and the theoretic peak “shopping” load that are presented in those tables respectively.

²⁷ Specifically, Tier #2 Supplemental and Tier #3 Interruptible and Backup energy are included among LG&E Parties’ load obligations.

²⁸ LG&E Parties’ July 15 Hieronymus Affidavit, Table 4.

aforementioned reasons, the Commission is not convinced that the LG&E Parties have accounted for all uncommitted or shopping load in their analysis of the Big Rivers control area.

24. Had the shopping load been accurately portrayed, the LG&E Parties' analysis is still flawed because they overstated the competitive options available to customers in the Big Rivers control area and is inconsistent with the actual historical sales data reported in its EQR. Therefore, the Commission cannot rely upon this analysis. In short, our review indicates that the LG&E Parties have presented an incomplete picture of actual transactions in the Big Rivers control area. EQRs filed by the LG&E Parties and other sellers confirm that the LG&E Parties have a large market share, making 97 percent of all sales in the control area during 2004 and 95 percent of all market-based rate sales.²⁹ Similarly, EQRs indicate that the LG&E Parties made 73 percent of all sales in the Big Rivers control area in the first nine months of 2005. Further, the LG&E Parties state that there is sufficient supply that is economic and deliverable that could cover the shopping load 73 times at the summer peak. However, EQRs for the summer months indicate that the LG&E Parties have made over 95 percent of all sales during the summer months of the last three years in the Big Rivers control area.

25. The LG&E Parties assert that Big Rivers will often take energy from the LG&E Parties at fixed, contractual prices in excess of its contract minimum in order to resell it at market rates through an arrangement with ACES Power Marketing, Inc.³⁰ However, according to ACES Power Marketing's EQRs, it has not made sales up to this date. Further, according to EQRs for 2003 through the second quarter of 2005, ACES Power Marketing and Big Rivers report no transactions with each other.

26. The LG&E Parties claim that there are other active suppliers, such as Morgan Stanley and Cinergy, in the Big Rivers control area. However, contrary to the LG&E Parties' assertion, Morgan Stanley EQRs report no sales in the Big Rivers control area in 2003 through the second quarter of 2005. Cinergy, another alleged competitive supplier, made approximately two percent of the MWh's sold in the Big Rivers control area during 2003-2005 according to its EQR. Thus, the LG&E Parties' assertion is not consistent with actual transactions reported by sellers in the Big Rivers control area. Although the

²⁹ Cost-based rate sales are approximately 46 percent of the total transactions reported for the period from 2003 to the present, while market-based rate transactions represent 54 percent of total transactions reported in the Big Rivers control area.

³⁰ LG&E Parties' July 5 Transmittal at 6, footnote 19. According to its application for market-based rate authorization, ACES Power Marketing provides energy risk management and energy execution services to its fifteen rural electric cooperative member-owners (including Big Rivers) and other customers on a principal-agent relationship basis.

LG&E Parties' contestable load analysis conceptually suggests that customers should rely on a market where the dominant firm does not participate, the competitive market activity that the LG&E Parties assert is not reflected in actual transactions.

27. Finally, the LG&E Parties argue that only a small amount of their sales are at true market prices because the majority of sales are made under fixed price contracts, and as a result only a small amount of sales are subject to the exercise of market power. However, the Commission's analysis indicated that 54 percent of total transactions reported in the Big Rivers control area are at market-base rates. Of these sales, the LG&E Parties state that 13 percent were to customers with retail load obligations, including all of the LG&E Parties' sales to Henderson, with the remainder sold to competitive third parties.³¹

28. The Commission concludes that the LG&E Parties' additional evidence is not sufficient to rebut the presumption of market power.

Mitigation Proposal for Big Rivers Control Area

29. As mentioned above, and as addressed in an order issued in May, 2005,³² the LG&E Parties earlier presented information showing that they fail the Commission's wholesale market share screen for each of the four seasons considered in the Big Rivers control area. In accordance with the Commission's May order, the LG&E Parties' have now submitted a DPT analysis, which they acknowledge failing.³³ Also in accordance with the May order, and as discussed above,³⁴ the LG&E Parties now present evidence in support of their position that they lack generation market power, which the Commission concludes is not sufficient to rebut the presumption of market power. For the aforementioned reasons, the Commission finds that the LG&E Parties possess market power in the Big Rivers control area.

30. As noted above, the LG&E Parties state that following a Commission finding that the LG&E Parties possess market power in the Big Rivers control area, the LG&E Parties propose that all market-based energy sales by the LG&E Parties with a point of sink in the Big Rivers control area not sold pursuant to the contractual agreements already in

³¹ LG&E Parties' July 5 Transmittal at 10-11.

³² *LG&E*, 111 FERC ¶ 61,153.

³³ *See supra* P 15 (discussing results of DPT).

³⁴ *See supra* P 16-27 (describing the LG&E Parties' alternative data).

existence be capped at Midwest ISO's LMP price at the Big Rivers control area interface. The Commission accepts this means of mitigating market power in the Big Rivers control area.³⁵

31. The LG&E Parties did not address sales of capacity in their proposed mitigation, an omission which the Commission interprets as meaning that the LG&E Parties make no sales of capacity into the Big Rivers control area. To the extent that the LG&E Parties wish to make sales of capacity into the Big Rivers control area, the LG&E Parties are directed to make a filing with the Commission to that effect.

32. The LG&E Parties are directed to file, within thirty days of the date of this order, revised market-based rate tariffs for sales into the Big Rivers control area to provide for the tailored mitigation approved herein, to be effective as of the refund effective date of this proceeding. Finally, to the extent that the LG&E Parties made any sales under their market-based rate tariffs since the refund effective date of this proceeding in the Big Rivers control area that were above the rate accepted herein, the LG&E Parties are directed, within 30 days of the date of issuance of this order, to make refunds, with interest. In addition, we direct the LG&E Parties to file a refund report within 15 days after making such refunds.³⁶

Other

33. As stated above, the June 6, 2005 filing also includes the Commission's market behavior rules for Western Kentucky Energy.³⁷ However, Market Behavior Rule 2(b) as included in the market-based rate tariff language proposed by Western Kentucky Energy fails to comply with the Market Behavior Rules Rehearing Order, where we clarified that the parenthetical clause "scheduling non-firm service *or* products sold as firm" as it appears in Market Behavior Rules 2(b) should be revised to read: "scheduling non-firm

³⁵ See *Brownsville Power I, L.L.C.*, 111 FERC ¶ 61,398 (2005); *Union Light, Heat, and Power Co.*, 110 FERC ¶ 61,212 (2005).

³⁶ As the Commission explained in the July 8 Order, "[i]n the event that the Commission makes a definitive finding of market power, revokes market-based rates and imposes cost-based rate mitigation, sales made on or after the refund effective date will be subject to refund, where the refund floor would be the default cost-based rate or the case-specific cost-based rate approved by the Commission, if any." July 8 Order, 108 FERC ¶ 61,026 at P 158.

³⁷ *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218 (2003), *order on reh'g*, 107 FERC ¶ 61,175 (2004).

service for products sold as firm)...” Accordingly, Western Kentucky Energy is directed, within 30 days of the date of issuance of this order, to revise its market-based rate tariff to include this required clarification.³⁸

34. In Order No. 664, the Commission stated that it intends to no longer grant waivers of the full requirements of Part 45 in its orders granting market-based rate authority. Rather, persons seeking to hold interlocking positions will be required henceforth to comply with the full requirements of Part 45.³⁹ With respect to an individual who currently is authorized to hold interlocking positions, that individual will not need to refile under the full requirements of Part 45 to continue to hold such interlocking positions (unless and until that individual assumes different or additional interlocking positions).⁴⁰ Thus, consistent with Order No. 664, LG&E Energy Marketing and Western Kentucky Energy will be required henceforth to comply with the full requirements of Part 45.

Reporting Requirements

35. The LG&E Parties 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.⁴¹ Order No. 652 requires that the change in status reporting requirement be incorporated in the market-based rate tariff of each entity authorized to make sales at market-based rates. As noted above, the LG&E Parties revised their tariffs to include the change in status reporting requirement.⁴²

³⁸ *Market Behavior Rules Rehearing Order*, 107 FERC ¶ 61,175 at P 73.

³⁹ *Commission Authorization to Hold Interlocking Positions*, Order No. 664, 70 Fed. Reg. 17,219 (Apr. 5, 2005), 112 FERC ¶ 61,298 at P 34 (2005) (discussing Part 45, 18 C.F.R. Part 45 (2005)).

⁴⁰ *Id.* at P 36.

⁴¹ *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 70 Fed. Reg. 8,253 (Feb. 18, 2005); FERC Stats. & Regs. ¶ 31,175, *order on reh’g*, 111 FERC ¶ 61,413 (2005).

⁴² LG&E Energy Marketing, Inc., Rate Schedule FERC No. 1, First Revised Sheet No. 1; Louisville Gas & Electric Company and Kentucky Utilities Company, FERC Electric Tariff, Original Volume No. 2, First Revised Sheet No. 9; Louisville Gas & Electric Company/Kentucky Utilities Company, FERC Electric Tariff, Original Volume No. 3, Second Revised Sheet No. 4; Western Kentucky Energy Corporation, Rate Schedule FERC No. 1, First Revised Sheet Nos. 1 and 1A.

The Commission orders:

(A) The LG&E Parties' tailored mitigation proposal for the Big Rivers control area is conditionally accepted, to be effective as of the refund effective date in this proceeding, July 19, 2005, subject to the compliance filing directed herein, as discussed in the body of this order.

(B) The LG&E Parties are directed, within 30 days of the date of this order, to revise their market-based rate tariffs so that all market-based energy sales by the LG&E Parties with a point of sink in the Big Rivers control area not sold pursuant to existing agreements will be capped at the Midwest ISO's LMP price at the Big Rivers interface.

(C) The LG&E Parties are hereby ordered to make refunds within 30 days of the date of this order, with interest calculated pursuant to 18 C.F.R. § 35.19(a) (2005), and to file a refund report with the Commission within 15 days of the date refunds are made, as discussed in the body of this order.

(D) The LG&E Parties' updated market power analyses for the Midwest ISO and Southern Company control areas are hereby accepted for filing, as discussed in the body of this order.

(E) The LG&E Parties are directed to file, within 60 days of the date of issuance of this order, an updated market power analysis, as discussed in the body of this order.

(F) The LG&E Parties' revised tariff sheets incorporating the change in status reporting requirement are hereby accepted for filing effective March 21, 2005.

(G) Western Kentucky Energy is directed, within 30 days of the date of issuance of this order, to revise its proposed tariff sheets incorporating the Market Behavior Rules, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.