

139 FERC ¶ 61,147
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

ALLETE, Inc.

Docket No. ER10-2819-001

ORDER ACCEPTING UPDATED MARKET POWER ANALYSIS
AND SIMULTANEOUS TRANSMISSION IMPORT LIMIT VALUES FOR THE
CENTRAL REGION

(Issued May 23, 2012)

1. On December 30, 2011, as amended on February 17, 2012 and March 23, 2012, ALLETE, Inc. (Allete) submitted an updated market power analysis for the Central region in accordance with the reporting schedule adopted in Order No. 697.¹ Allete's filing includes Simultaneous Transmission Import Limit (SIL) values for the December 2009-November 2010 study period for the Midwest Independent Transmission System Operator, Inc. (MISO) market. Allete's filing also includes SIL values based on a sensitivity analysis using the Summer 2011 MISO footprint.
2. In this order, the Commission accepts Allete's updated market power analysis and concludes that Allete continues to satisfy the Commission's standards for market-based rate authority in the Central region. Additionally, the Commission accepts the SIL values submitted by Allete for the MISO market.

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. Montana Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011).

I. Background

3. On December 30, 2011, as amended on February 17, 2012 and March 23, 2012, Allete submitted an updated market power analysis for the Central region. Allete is authorized to sell energy, capacity, and ancillary services at market-based rates.² Allete owns generation, distribution, and transmission facilities located within the MISO market, in the Central region.

4. Allete states that it is comprised of two core businesses: energy and real estate. Allete represents that its energy operations include Minnesota Power, an operating division of Allete that generates, transmits and distributes electricity in northern Minnesota, and Superior Water Light and Power Company (Superior), an electric, natural gas, and water service company whose service territory is located in Wisconsin.³ Allete states that Minnesota Power's total generation, including power purchase agreements, is approximately 2,329 to 2,392 megawatts (MW). Allete states that Superior does not own or control any generation facilities and does not make sales at market-based rates. Allete states that operational control of Minnesota Power and Superior's transmission facilities have been turned over to MISO. Allete also represents that Allete holds a \$99 million equity ownership interest in Wisconsin-based American Transmission Company.⁴

II. Notice of Filings

5. Notice of Allete's December 30, 2011 filing was published in the *Federal Register*, 77 Fed. Reg. 2285 (2012), with interventions or protests due on or before February 28, 2012. None was filed.

6. Notice of Allete's February 17, 2012 filing was published in the *Federal Register*, 77 Fed. Reg. 14,357 (2012), with interventions or protests due on or before March 22, 2012. None was filed.

² See *Minnesota Power & Light Co.*, 76 FERC ¶ 61,033 (1996).

³ Allete notes that on August 1, 2011, Allete incorporated ALLETE Clean Energy, which Allete anticipates will own or develop renewable energy projects throughout North America. Allete states that ALLETE Clean Energy does not own or operate a generation resource portfolio at this time and has not yet applied for market-based rate authority.

⁴ Allete's December 30, 2011 Filing at 3 (citing *Rainy River Energy Corporation-Wisconsin*, 113 FERC ¶ 62,219 (2005) (authorizing the acquisition of approximately 10 percent passive ownership interest in American Transmission Company LLC and ATC Management Inc.)).

7. Notice of Allete's March 23, 2012 filing was published in the *Federal Register*, 77 Fed. Reg. 20,815 (2012), with interventions or protests due on or before April 13, 2012. None was filed.

III. Discussion

A. Market-Based Rate Authorization

8. 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.⁵ As discussed below, we find that Allete satisfies the Commission's standards for market-based rate authority.

1. Horizontal Market Power

9. The Commission has adopted two indicative screens for assessing horizontal market power: the pivotal supplier screen and the wholesale market share screen.⁶ The Commission has stated that passage of both screens establishes a rebuttable presumption that the applicant does not possess horizontal market power, while failure of either screen creates a rebuttable presumption that the applicant has horizontal market power.⁷

10. Allete prepared the pivotal supplier and wholesale market share screens for the MISO market, consistent with the requirements of Order No. 697.⁸ Allete states that the pivotal supplier screen indicates that Allete's uncommitted capacity is less than the total net uncommitted supply in the MISO market. Allete states that the market share screen indicates that Allete's market shares are approximately two percent or less.

11. We have reviewed Allete's pivotal supplier screen and wholesale market share screen and determined that Allete passes both screens in the MISO market. Accordingly, we find that Allete satisfies the Commission's requirements for market-based rates regarding horizontal market power in the Central region.

⁵ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 62, 399, 408, 440.

⁶ *Id.* P 62.

⁷ *Id.* PP 33, 62-63.

⁸ *Id.* PP 231-232.

12. We note that Allete's analysis of the MISO market relies on SIL values prepared by MISO for the December 2009 – November 2010 study period.⁹ We find that the MISO SIL study included in Allete's filing meets the Commission's requirements for a SIL study as discussed in Appendix E of the April 14 Order¹⁰ and Order No. 697. Therefore, we will accept these SIL values for this market for this study period (base case SIL values). Specifically, the seasonal SIL values for the MISO market accepted herein are: Winter 13,879 MW; Spring 13,080 MW; Summer 8,402 MW; and Fall 9,117 MW.

13. Allete also submitted a sensitivity SIL analysis prepared by MISO based on the MISO footprint as of Summer 2011.¹¹ We find that the MISO SIL sensitivity study also meets the Commission's requirements for a SIL study and therefore we will accept these SIL values for this market. Specifically, these seasonal SIL values for the MISO market accepted herein are: Winter 12,488 MW; Spring 11,474 MW; Summer 7,753 MW; and Fall 7,817 MW.

14. Future filers submitting screens for the MISO market for the December 2009 – November 2010 study period are encouraged to use the Commission-accepted base case SIL values for that period. Future filers submitting screens for the MISO market for a study period subsequent to the December 2009 – November 2010 study period are encouraged to use the Commission-accepted SIL values from the MISO SIL sensitivity study until such time as the Commission accepts SIL values for a subsequent study period. In the alternative, a filer may propose different SIL values provided that its accompanying SIL studies comply with Commission directives and that the filer fully supports the values used and explains why the Commission should consider a different SIL value for the MISO market other than the Commission-accepted SIL values approved herein.

2. Vertical Market Power

15. 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

⁹ See Allete's December 30, 2011 Filing, Exhibit A at 13-14.

¹⁰ *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004).

¹¹ See Allete's March 23, 2012 Filing, Attachment A at 17. The sensitivity analysis includes Big Rivers Electric Corporation and Dairyland Power Cooperative in the MISO study area and excludes First Energy from the MISO study area. *Id.*

Open Access Transmission Tariff (OATT) on file or that the seller has received waiver of the OATT requirement before granting a seller market-based rate authorization.¹²

16. Allete states that its transmission assets located in MISO are under the functional control of MISO, which is a Commission-approved regional transmission organization with an OATT on file with the Commission.¹³

17. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.¹⁴ 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 physical coal supply sources and ownership of or control over who may access transportation of coal supplies (collectively, inputs to electric power production).¹⁵ 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.¹⁶ 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.¹⁷

18. Regarding other barriers to entry, Allete states that it owns BNI Coal, which is located in Center, North Dakota. Allete also states that Superior owns a natural gas distribution system consisting of approximately 291 miles of pipelines. Additionally, Allete notes that it has acquired development rights on over 47,000 acres of land near Center, North Dakota, on which it plans to develop wind generation projects.¹⁸

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

¹³ *Midwest Independent Transmission System Operator, Inc.*, 84 FERC ¶ 61,231 (1998).

¹⁴ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 440.

¹⁵ Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

¹⁶ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

¹⁷ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 446.

¹⁸ Allete's December 30, 2011 Filing at 10 and n.33; *see* ALLETE, Inc., Land Acquisition Report, Docket No. LA11-4-000 (filed Dec. 30, 2011).

19. Finally, consistent with Order No. 697, Allete affirmatively states that neither it nor its affiliates have erected barriers to the markets in which they are located. Allete further affirmatively states that neither it nor its affiliates will erect barriers in markets in which they are located.

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

B. Reporting Requirements

21. Consistent with the procedures the Commission adopted in Order No. 2001, an entity with market-based rate authorization must electronically file an Electric Quarterly Report (EQR) with the Commission 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 EQRs no later than 30 days after the end of the reporting quarter.²⁰

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, *order refining filing requirements*, Order No. 2001-E, 105 FERC ¶ 61,352 (2003), *order on clarification*, Order No. 2001-F, 106 FERC ¶ 61,060 (2004), *order revising filing requirements*, Order No. 2001-G, 120 FERC ¶ 61,270, *order on reh'g and clarification*, Order No. 2001-H, 121 FERC ¶ 61,289 (2007), *order revising filing requirements*, Order No. 2001-I, FERC Stats. & Regs. ¶ 31,282 (2008). Attachments B and C of Order No. 2001 describe the required data sets for contractual and transaction information. Public utilities must submit EQRs 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 (2011). 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.

22. 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

23. Additionally, Allete must file updated market power analyses in compliance with the regional reporting schedule adopted in Order No. 697. 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) The specific SIL values identified in this order are hereby accepted, as discussed in the body of this order.

(C) Allete is hereby directed to file updated market power analyses according 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.

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 (2011).