

150 FERC ¶ 61,119
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
Norman C. Bay, and Colette D. Honorable.

Northern Indiana Public Service Company

Docket No. ER15-694-000

ORDER ACCEPTING MARKET-BASED RATE TARIFF REVISIONS

(Issued February 20, 2015)

1. In this order, the Commission accepts market-based rate tariff revisions filed by Northern Indiana Public Service Company (Northern Indiana), effective December 23, 2014, as discussed below. Additionally, we find that Northern Indiana meets the criteria for a Category 1 seller in the Northeast, Southeast, Southwest Power Pool, Southwest, and Northwest regions, and remains a Category 2 seller in the Central region, and is so designated. Northern Indiana must file updated market power analyses for the Central region in compliance with the regional reporting schedule adopted in Order No. 697.¹

I. Background

2. Northern Indiana is an electric load serving entity and a transmission-owning member of Midcontinent Independent System Operator, Inc. Northern Indiana states that it serves approximately 786,000 natural gas customers and over 456,000 electric customers across the northern portion of Indiana. Northern Indiana further states that it owns and operates approximately 2,300 megawatts (MW) of electric generation capacity and 2,800 miles of electric transmission lines.

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*, 133 S. Ct. 26 (2012).

3. On December 22, 2014, Northern Indiana filed revisions to its market-based rate tariff. These revisions include the following: (1) identifying Northern Indiana as a Category 2 seller in the Central region and a Category 1 seller in all other regions; (2) incorporating the revised tariff language adopted in Order No. 784 regarding third-party ancillary services sales;² (3) removing a *pro forma* service agreement;³ and (4) making other minor ministerial modifications.⁴ Northern Indiana also revised the Limitations and Exemptions section of its tariff.

4. The Limitations and Exemptions section of Northern Indiana's existing market-based rate tariff contains a provision stating that it has been granted certain waivers and blanket authorizations, specifically, (i) waiver of Subparts B and C of Part 35, except for sections 35.12(a), 35.13(b), 35.15, and 35.16; (ii) permission to make abbreviated filings under Part 45; (iii) waiver of accounting and related reporting requirements of Parts 41, 101, and 141, except for sections 141.14 and 141.15; and (iv) blanket approval as to section 204 of the Federal Power Act⁵ and Part 34 of the Commission's regulations for issuances of securities or assumptions of liabilities. Northern Indiana states that in reviewing its tariff, it was unable to find a Commission order granting these specific waiver requests and the inclusion of these waivers in its tariff appears to be erroneous. However, Northern Indiana requests waiver of Subparts B and C of Part 35, except for sections 35.12(a), 35.13(b), 35.15 and 35.16, for its sales at market-based rates.

² See *Third-Party Provision of Ancillary Services; Accounting and Financial Reporting for New Electric Storage Technologies*, Order No. 784, FERC Stats. & Regs. ¶ 31,349 (2013), *order on clarification*, Order No. 784-A, 146 FERC ¶ 61,114 (2014).

³ Northern Indiana states that it proposes to remove the *pro forma* service agreement, as well as references to the service agreement, because the Commission no longer requires market-based rate tariffs to include such *pro forma* terms and conditions. Northern Indiana states that while it is removing the service agreement from the tariff to comply with Commission policy, it may still transact under that agreement when making sales at market-based rates.

⁴ These modifications consist of: (1) the addition of the company name to the title page; (2) the addition of the term "ancillary services" to Section II; (3) the removal of the "transmission service" disclaimer in Section II; (4) the removal of a specific date for the tariff's "Effective Date," and the addition of language relating to the general effective date specified by the Commission in Section V; and (5) updating of the name of the Midcontinent Independent System Operator, Inc.

⁵ 16 U.S.C. § 824c (2012).

II. Notice

5. Notice of Northern Indiana's filing was published in the *Federal Register*,⁶ with interventions and protests due on or before January 12, 2015. None was filed.

III. Discussion

6. The Commission accepts Northern Indiana's revised market-based rate tariff, effective December 23, 2014. Specifically, as discussed below, the Commission accepts the proposed tariff revisions identifying Northern Indiana as a Category 1 or Category 2 seller in specific regions, incorporating the revised tariff language adopted in Order No. 784 regarding third-party ancillary services sales,⁷ removing the *pro forma* service agreement, and other minor ministerial modifications. We also accept Northern Indiana's revisions to the Limitations and Exemptions section of its tariff, as discussed below.

7. In Order No. 697, the Commission created two categories of sellers.⁸ 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. 888⁹); that are not affiliated with anyone that

⁶ 79 Fed. Reg. 78,846 (2014).

⁷ We note that Northern Indiana is not being granted authority to make third-party sales of operating reserves to a public utility that is purchasing ancillary services to satisfy its own open access transmission tariff requirements to offer ancillary services to its own customers. If Northern Indiana seeks such authority, it must make the required showing and receive Commission authorization prior to making such sales. *See* Order No. 784, FERC Stats. & Regs. ¶ 31,349 at PP 200-202.

⁸ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 848.

⁹ *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).

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.¹⁰ Sellers that do not fall into Category 1 are designated as Category 2 sellers and are required to file updated market power analyses.¹¹

8. Northern Indiana states that it satisfies the criteria for Category 1 Seller status in all regions except the Central region. Northern Indiana represents that it owns no generation nor owns, operates or controls transmission facilities in any regions other than the Central region. Northern Indiana represents that none of its affiliates owns, operates or controls transmission facilities in the same region as Northern Indiana's generation assets insofar as all of Northern Indiana's generation is located in the Central region. Northern Indiana further represents it is not affiliated with a franchised public utility in the same region as Northern Indiana's generation assets and that there are no other vertical market power issues.

9. Based on Northern Indiana's representations, we find that Northern Indiana meets the criteria for a Category 1 seller in the Northeast, Southeast, Southwest Power Pool, Southwest, and Northwest regions, and remains a Category 2 seller in the Central region, and is so designated.

10. We will grant Northern Indiana's request for waiver of Subparts B and C of Part 35, with the exception of sections 35.12(a), 35.13(b), 35.15 and 35.16 with respect to its market-based rate sales.¹² Accordingly, we accept Northern Indiana's revisions to the Limitations and Exemptions section of its tariff and direct Northern Indiana to submit a compliance filing revising this section of its market-based rate tariff to include a citation to this order.¹³

¹⁰ 18 C.F.R. § 35.36(a) (2014).

¹¹ Order No. 697, FERC Stats. & Regs. ¶ 31,252, at P 850.

¹² Because any sales under the market-based rate tariff will be market-based, there is no reason to require Northern Indiana to submit cost-of-service data in connection with such sales. *See N. States Power Co. (Minnesota)*, 83 FERC ¶ 61,293 at 62,223 (1998).

¹³ *See id.* at Appendix C; Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 384. This tariff revision may be filed the next time Northern Indiana makes a market-based rate filing with the Commission.

The Commission orders:

(A) Northern Indiana's revised market-based rate tariff is accepted effective December 23, 2014, as discussed in the body of this order.

(B) Northern Indiana's request for waiver of the provisions of Subparts B and C of Part 35 of the Commission's regulations, with the exception of sections 35.12(a), 35.13(b), 35.15 and 35.16, is hereby granted, as discussed in the body of this order.

(C) Northern Indiana is hereby directed to submit a compliance filing, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.