

153 FERC ¶ 61,246
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Wolverine Power Supply Cooperative, Inc.

Docket No. ER15-734-000

ORDER ACCEPTING UPDATED MARKET POWER ANALYSIS, REVISED
MARKET-BASED RATE TARIFF, AND SIMULTANEOUS TRANSMISSION
IMPORT LIMIT VALUES FOR THE CENTRAL REGION

(Issued November 24, 2015)

1. In this order, the Commission accepts an updated market power analysis and market-based rate tariff revisions submitted by Wolverine Power Supply Cooperative, Inc. (Wolverine) effective December 24, 2014, as requested. As discussed below, we find that Wolverine continues to satisfy the Commission's standards for market-based rate authority. Additionally, as discussed below, we accept Simultaneous Transmission Import Limit (SIL) values for the December 2012-November 2013 study period for the Midcontinent Independent System Operator, Inc. (MISO) market.

I. Background

2. On December 23, 2014, Wolverine submitted an updated market power analysis for the Central region in accordance with the reporting schedule adopted in Order No. 697.¹ Wolverine also submitted a revised market-based rate tariff that includes the

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 at PP 882-893, *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).

revised third-party ancillary service language adopted in Order No. 784,² as well as other ministerial changes, such as updating MISO's name from Midwest Independent Transmission System Operator, Inc. to Midcontinent Independent System Operator, Inc.

3. Wolverine is authorized to sell energy, capacity, and ancillary services at market-based rates.³ Wolverine states that it is a Michigan-based non-profit cooperative that provides wholesale electric service to its cooperative members and member-owners. Wolverine states that it owns or controls generation facilities with a total nameplate capacity of approximately 726 megawatts (MW) and a transmission system consisting of approximately 1,200 miles of transmission lines and associated facilities located within the MISO market, in the Central region. Wolverine further states that operational control of its transmission facilities have been turned over to MISO.

II. Notice of Filings

4. Notice of Wolverine's December 23, 2014 filing, was published in the *Federal Register*, 80 Fed. Reg. 216 (2015), with interventions or protests due on or before March 2, 2015.⁴ None was filed.

III. Discussion

A. Market-Based Rate Authorization

5. 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 Wolverine satisfies the Commission's standards for market-based rate authority.

² *Third-Party Provision of Ancillary Services; Accounting and Financial Reporting for New Electric Storage Technologies*, Order No. 784, FERC Stats. & Regs. ¶ 31,349, at PP 200-202 (2013), *order on clarification*, Order No. 784-A, 146 FERC ¶ 61,114 (2014).

³ *See Wolverine Power Supply Cooperative, Inc.*, 81 FERC ¶ 61,369 (1997).

⁴ *See* Errata Notice Extending Comment Date, Docket No. ER15-734-000 (Feb. 18, 2015) (extending comment date to March 2, 2015).

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

1. Horizontal Market Power

6. 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

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

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

9. We note that Wolverine's analysis of the MISO market relies on SIL values prepared by MISO for the December 2012 – November 2013 study period,⁹ which MISO submitted to the Commission in Docket No. AD10-2-004 on December 18, 2014.¹⁰ We find that the MISO SIL study, as amended by MISO on July 31, 2015 and August 14, 2015, meets the Commission's requirements for a SIL study.¹¹ Therefore, we will accept these SIL values for the MISO market for this study period. Specifically, the seasonal

⁶ *Id.* P 62.

⁷ *Id.* PP 33, 62-63.

⁸ *Id.* PP 231-232.

⁹ *See* Wolverine's December 23, 2014 Filing at 7.

¹⁰ MISO, Informational Filing, Docket No. AD10-2-004 (filed Dec. 18, 2014, amended on July 31, 2015 and Aug. 14, 2015). We note that when using the SIL values as amended by MISO, Wolverine continues to pass the screens.

¹¹ *See Public Service Company of New Mexico*, 153 FERC ¶ 61,060 (2015); *Puget Sound Energy, Inc.*, 135 FERC ¶ 61,254 (2011); Order No. 697, FERC Stats. & Regs. ¶ 31,252; *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018, at Appendix E, *order on reh'g*, 108 FERC ¶ 61,026 (2004).

SIL values for the MISO market accepted herein are: Winter 8,862 MW; Spring 8,290 MW; Summer 8,418 MW; and Fall 7,393 MW.

10. The Commission will use these Commission-accepted SIL values when reviewing the pending updated market power analyses submitted by transmission owners in the Central region as well as any updated market power analyses filed by non-transmission owning sellers in the Central region for this study period. Future filers submitting screens for the MISO market for the December 2012 – November 2013 study period are encouraged to use these Commission-accepted SIL values. 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. In the event that the results for one or more of a particular seller's screens differ if the seller-supplied SIL value is used instead of the Commission-accepted SIL value, the order on that particular filing will examine the seller-supplied SIL study and address whether the seller-supplied SIL value is acceptable. However, when the overall results of the screens would be unchanged, i.e., the seller would pass using either set of SIL values or fail using either set of SIL values, the order would be based on the Commission-accepted SIL values and would not address the seller-supplied SIL values.

2. Vertical Market Power

11. 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 or that the seller has received waiver of the OATT requirement before granting a seller market-based rate authorization.¹²

12. Wolverine 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

13. 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

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

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

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

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

14. Regarding other barriers to entry, Wolverine states that neither Wolverine nor its affiliates own or control intrastate natural gas transportation, storage or distribution facilities, physical coal supply sources or control over who may access transportation of coal supplies. Wolverine also states that neither it nor its affiliates own or control sites that could be used to impose barriers to market entry.¹⁸

15. Finally, consistent with Order No. 697, Wolverine affirmatively states that neither it nor its affiliates have erected barriers to the markets into the relevant geographic market and neither it nor its affiliates will erect barriers to entry into the relevant market.

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

B. Tariff Revisions

17. We accept Wolverine's revised market-based rate tariff, which includes the revised third-party ancillary service language adopted in Order No. 784, as well as other ministerial changes effective December 24, 2014, as requested.¹⁹

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 *Id.* P 446.

¹⁸ Wolverine notes that it filed a land acquisition report on October 16, 2014 in Docket No. LA14-3-000. Wolverine December 23, 2014 Filing at 12 n.28.

¹⁹ We note that, in this order, we are not granting Wolverine 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

C. Reporting Requirements

18. An entity with market-based rate authorization must file an Electric Quarterly Report (EQR) with the Commission, consistent with Order Nos. 2001²⁰ and 768,²¹ to fulfill its responsibility under FPA section 205(c)²² to have rates on file in a convenient form and place.²³ Wolverine must file EQRs electronically with the Commission consistent with the procedures set forth in Order No. 770.²⁴ Failure to timely and accurately file an EQR is a violation of the Commission's regulations for which Wolverine may be subject to refund, civil penalties, and/or revocation of market-based rate authority.²⁵

services to its own customers. If Wolverine seeks such authority, Wolverine 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.

²⁰ *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).

²¹ *Electricity Market. Transparency Provisions of Section 220 of the Federal Power Act*, Order No. 768, FERC Stats. & Regs. ¶ 31,336 (2012), *order on reh'g*, Order No. 768-A, 143 FERC ¶ 61,054 (2013).

²² 16 U.S.C. § 824d(c) (2012).

²³ See *Revisions to Electric Quarterly Report Filing Process*, Order No. 770, FERC Stats. & Regs. ¶ 31,338, at P 3 (2012) (citing Order No. 2001, FERC Stats. & Regs. ¶ 31,127 at P 31).

²⁴ Order No. 770, FERC Stats. & Regs. ¶ 31,338.

²⁵ The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2015). Forfeiture of market-based rate authority may require a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

19. Wolverine 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.²⁶

20. Additionally, Wolverine must file updated market power analyses for all regions in which it is designated as a Category 2 seller in compliance with the regional reporting schedule adopted in Order No. 697.²⁷ The Commission also reserves the right to require such an analysis at any intervening time.²⁸

The Commission orders:

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

(B) Wolverine's revised market-based rate tariff is hereby accepted for filing effective December 24, 2014, as discussed in the body of this order.

(C) The specific SIL values identified in this order are hereby accepted for purposes of analyzing updated market power analyses for the Central region, as discussed in the body of this order.

(D) Wolverine is hereby directed to file updated market power analyses according to 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.

²⁶ *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 (2015).

²⁷ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 882-893.

²⁸ *Id.* P 853.