

120 FERC ¶ 61,044
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Trigen-St. Louis Energy Corporation

Docket Nos. ER07-671-000
ER07-671-001

ORDER GRANTING MARKET-BASED RATE AUTHORIZATION, DENYING
REQUEST FOR WAIVER OF PRIOR NOTICE REQUIREMENT, AND ORDERING
REFUNDS

(Issued July 13, 2007)

1. Trigen-St. Louis Energy Corporation (Trigen-St. Louis) filed an application requesting Commission authorization to engage in wholesale sales of electric energy, capacity, and ancillary services at market-based rates.¹ Trigen-St. Louis also requests that the Commission grant such waivers, pre-approvals and blanket authorizations as it has granted to other sellers of wholesale power that do not have a franchised service territory, and that the Commission waive the prior notice requirement and make such authorization effective as of March 17, 2006, the date the Commission eliminated certain exemptions applicable to Trigen-St. Louis.

¹ We note that the Commission has recently revised and codified in the Commission's regulations the standards pertaining to market-based rates. *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 (2007). Given that Trigen-St. Louis filed its application prior to the effective date of Order No. 697, the Commission will examine the application based on the market-based rate analysis in effect at that time. However, Trigen-St. Louis is reminded that it will be subject to any applicable regulations upon their effective date.

Background

2. Trigen-St. Louis states that it owns a 33 MW (nameplate) cogeneration facility in St. Louis, Missouri that has been in operation as a cogenerator since 1999. Trigen-St. Louis is located within the Midwest Independent Transmission System Operator (Midwest ISO) control area. The facility is a qualifying facility (QF) under the Public Utility Regulatory Policies Act of 1978, as amended (PURPA), 16 U.S.C. § 2601 et seq.² Trigen-St. Louis states that, as a QF, this facility had been exempt under prior Commission regulation³ from the rate filing requirements under sections 205 and 206 of the Federal Power Act (FPA).⁴ However, on February 2, 2006, the Commission issued Order No. 671, and eliminated section 205 and 206 exemptions effective March 17, 2006 for certain sales by QFs with over 20 MW of capacity.⁵

3. Trigen-St. Louis states that it was not immediately aware of the elimination of the exemptions and had not sought market-based rate authority or had a rate on file prior to March 28, 2007, when it sought authorization to engage in sales of electric energy, capacity and ancillary services at wholesale at market-based rates. According to Trigen-St. Louis, it has been making sales on a daily basis into the Midwest ISO market since September 1, 2005.

Trigen-St. Louis Application

4. Trigen-St. Louis states that it is 100 percent owned indirectly by Thermal North America, Inc. (Thermal NA), a private holding company with a primary focus on the district heating and cooling industry and related business. Thermal NA is a wholly-owned subsidiary of TNAI Holdings LLC, which is wholly owned by Thermal North American Holding LLC, which is wholly owned by Sowood Commodity Partners Fund II LP, a private equity fund. According to Trigen-St. Louis's application, neither

² *Trigen-St. Louis Energy Corporation*, Docket No. QF99-83, Notice of Self-Recertification (Sept. 10, 2003).

³ 18 C.F.R. § 292.601 (2006).

⁴ 16 U.S.C. §§ 824d, 824e (2000).

⁵ *Revised Regulations Governing Small Power Production and Cogeneration Facilities*, Order No. 671, FERC Stats. & Regs. ¶ 31,203, at P 114 (2006), *order on clarification*, 114 FERC ¶ 61,128 (2006). Trigen-St. Louis states that it is affiliated with other QFs that continue to qualify for exemption due to size or grandfathered agreements.

Thermal NA nor any of its subsidiaries or affiliates is directly or indirectly engaged in the generation or sale of electric power in the United States except electric power generated from qualifying cogeneration or small power production facilities and authorized activities of exempt wholesale generators and foreign utility companies.

5. As detailed below, Trigen-St. Louis states that it does not have generation or transmission market power, does not have the ability to erect barriers to entry, and does not engage in affiliate abuse or reciprocal dealing. In addition, it requests authorization to sell certain ancillary services at wholesale at market-based rates pursuant to its proposed FERC Electric Tariff, as amended on May 14, 2007.

6. As referenced above, Trigen-St. Louis requests waiver of the prior notice requirement, stating that it only recently became aware that its ongoing daily sales into the Midwest ISO had become subject to FPA section 205 as of March 17, 2006. Trigen-St. Louis states that the Commission originally granted waivers for the 60-day prior notice requirement for QFs that filed prior to the March 17, 2006 effective date and indicated that subsequent request for waiver by entities who failed to timely comply with the new rules would be handled on a case-by-case basis.⁶ Trigen-St. Louis notes that in *Lumberton Power LLC*, 117 FERC ¶ 61,050 (2006) (*Lumberton*), the Commission granted a waiver of the prior notice requirement to another QF that filed for market-based rate authority after March 17, 2006. Trigen-St. Louis claims that it is comparable to *Lumberton* because both are small QFs that inadvertently failed to submit their market-based rate application required by the evolving regulation. Trigen-St. Louis asserts that its sales into the Midwest ISO increase competition; therefore no party was prejudiced by Trigen-St. Louis's sales on and after March 17, 2006, and no party would be prejudiced by waiver of the prior notice requirement. Trigen-St. Louis encourages the Commission to grant the waiver because: (1) it is for a limited period back to March 17, 2006; (2) no harm was caused by Trigen-St. Louis's continued market-based sales into the Midwest ISO market; and (3) "granting the instant waiver would encourage cogeneration to accept reasonable requests for waiver by applicants who voluntarily come forward when they become aware of non-compliance."⁷

7. In addition to its request for waiver of the prior notice requirement, Trigen-St. Louis seeks the same pre-approvals and waivers previously granted to other sellers permitted to sell at market-based rates. Trigen-St. Louis makes this request without

⁶ Application at 12 (*citing* Order No. 671; order on clarification, 114 FERC ¶ 61,128 at P 1, and n.7).

⁷ *Id.* at 13.

prejudice to any exemptions from the FPA it enjoys as a QF under 18 C.F.R. § 292.601, including blanket exemptions from FPA section 204 and certain state laws and regulations. Specifically, Trigen-St. Louis requests: (1) waiver of Parts 41, 101 and 141 of the Commission's accounting and periodic reporting regulations; (2) waiver of the filing requirements of subparts B and C of Part 35 of the Commission's regulations; (3) blanket authorization under Part 34 of all future issuances of securities and assumption of liability; and (4) waiver of all regulations that the Commission previously has waived at the request of other entities authorized to sell energy at market-based rates.⁸

8. Trigen-St. Louis also submitted its proposed wholesale market-based rate tariff providing for sales of capacity, energy, and/or ancillary services. On May 14, 2007, Trigen-St. Louis amended its proposed tariff.

9. On June 14, 2007, Trigen-St. Louis filed a notice of a pending transaction regarding its upstream ownership announcing that its owner, Thermal NA is to be sold to Veolia Energy North America Holding, Inc. (Veolia), which owns no electric generating facilities in the United States. Trigen-St. Louis states that the sale will not close until all regulatory approvals, including Commission approval under section 203 of the FPA have been received. Trigen-St. Louis states that it does not believe that its soon-to-be-filed section 203 application will impact the instant proceeding.

Notice of Filing and Responsive Pleadings

10. Notice of Trigen-St. Louis's March 28, 2007 filing was published in the *Federal Register*, 72 Fed. Reg. 16,777 (2007), with comments, protests or interventions due on or before April 18, 2007. Notice of Trigen-St. Louis's May 14, 2007 filing was published in the *Federal Register*, 72 Fed. Reg. 29,790 (2007), with comments, protests or interventions due on or before June 4, 2007. The Midwest ISO filed a motion to intervene on June 4, 2007.

Discussion

A. Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the Midwest ISO's timely, unopposed motion to intervene serves to make it a party to this proceeding.

⁸ *Id.* at 13-14.

B. Market-Based Rate Authorization

12. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, market power in generation and transmission and cannot erect other barriers to entry. The Commission also considers whether there is evidence of affiliate abuse or reciprocal dealing.⁹ As discussed below, we find that Trigen-St. Louis's proposed market-based rate tariff as amended meets these standards. Accordingly, we will accept the proposed tariff for filing, without suspension or hearing, to become effective May 28, 2007.

1. Generation Market Power

13. In its order issued in *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,108 (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004), the Commission adopted two indicative screens for assessing generation market power, the pivotal supplier screen and the wholesale market share screen. Trigen-St. Louis proposes, as a simplifying assumption, to adopt the data used in the market power analysis submitted by Entergy Nuclear Palisades, LLC and Entergy Nuclear Power Marketing LLC (collectively Entergy) in Docket Nos. ER06-1410-000 and ER06-1411-000, which was subsequently accepted by the Commission.¹⁰ Trigen-St. Louis is located within the Midwest ISO.

14. Trigen-St. Louis states that Entergy's analysis of the Midwest ISO's control area found that net uncommitted supply for purposes of the pivotal supplier analysis is 23,807 MW and total seasonal uncommitted supply in the Midwest ISO control area for purposes of the market share analysis is from 52,057 MW to 57,796 MW seasonally. The Trigen-St. Louis facility has only 33 MW (nameplate) of generating capacity and it has no affiliates located in the Midwest ISO control area. Trigen-St. Louis argues that, given that its capacity is less than 2/10 of 1 percent of uncommitted supply, it clearly passes the screens in the Midwest ISO control area and does not possess market power in this market.

15. We accept Trigen-St. Louis's reliance on the data Entergy Nuclear Palisades and Entergy Nuclear Power Marketing used in the recently accepted generation market power

⁹ See, e.g., *Progress Power Marketing, Inc.*, 76 FERC ¶ 61,155, at 61,919 (1996); *Northwest Power Marketing Co., L.L.C.*, 75 FERC ¶ 61,281, at 61,899 (1996); *accord Heartland Energy Services, Inc.*, 68 FERC ¶ 61,223, at 62,062-63 (1994).

¹⁰ *Consumers Energy Company, Energy Nuclear Palisades, LLC*, 118 FERC ¶ 61,143 (2007) (*Consumers Energy*).

analysis. The Commission has found that it is acceptable for an applicant to offer a simplifying assumption as long as it does not affect the underlying methodology utilized by our screens and would not affect the results.¹¹ The data demonstrates that Trigen-St. Louis passes both the pivotal supplier and wholesale market share screens for the Midwest ISO market.¹² Therefore, Trigen-St. Louis satisfies the Commission's generation market power standard for the grant of market-based rate authority.

2. Transmission Market Power

16. Trigen-St. Louis claims that it does not have market power in transmission because neither it nor its affiliates own or control any transmission facilities other than incidental interconnection facilities for its plants to interconnect to the grid. Based on Trigen-St. Louis's representations, the Commission finds that Trigen-St. Louis satisfies the Commission's transmission market power standard for approval of market-based rate authority.

3. Barriers to Entry

17. Trigen-St. Louis also claims that neither it nor any of its affiliates have erected or can erect any barrier into wholesale power supply markets, and that none of them controls raw materials, fuels, or other inputs needed to build or operate electric production, distribution, or transmission facilities in the Midwest ISO control area. However, Trigen-St. Louis notes that one of its affiliates has a long-term coal purchase agreement with a 100 ton per day mine in Kansas. Trigen-St. Louis asserts that neither it nor its affiliates are able to block or deter entry of competing sellers into the wholesale power supply markets. Based on these representations, we are satisfied that Trigen-St. Louis cannot erect barriers to entry.

4. Affiliate Abuse

18. In terms of affiliate abuse, Trigen-St. Louis states that neither it nor any of its affiliates is affiliated with an electric public utility with a franchised service territory. Based on this representation, the Commission is satisfied that Trigen-St. Louis's filing does not raise affiliate abuse concerns.

¹¹ April 14 Order, 107 FERC ¶ 61,018 at P 113-17 and 187(2004). *See also* *Lumberton*, 117 FERC ¶ 61,050 at P 15(2006); *Wisconsin Public Service Corp.*, 110 FERC ¶ 61,353 at P 21 (2005).

¹² *Consumers Energy*, 118 FERC ¶ 61,143 at P 55.

19. Trigen-St. Louis requests waiver of the Commission's code of conduct requirement. Because Trigen-St. Louis is not affiliated with any public utility with a franchised service territory, it need not include a code of conduct in its tariff.

5. Ancillary Services

20. Although it states that it currently has no plans to provide ancillary services, Trigen-St. Louis requests authorization to sell ancillary service products that it is capable of providing consistent with the requirements set forth in *Avista Corp.*, 87 FERC ¶ 61,223, *order on reh'g*, 89 FERC ¶ 61,136 (1999) (*Avista*), which requirements Trigen-St. Louis states have been included in its tariff.¹³ Trigen-St. Louis states it will establish as necessary an Internet-based OASIS-type website prior to selling ancillary services and will file a report within one year after commencing service and every three years after that describing its sales of ancillary services.¹⁴ Such sales and prices will be included in Trigen-St. Louis's Electric Quarterly Reports. Trigen-St. Louis states that it will not sell ancillary services: (1) to an regional transmission organization (RTO) where the RTO has no ability to self supply ancillary services; (2) when the underlying transmission service is on the transmission system of a transmission provider with which Trigen-St. Louis is affiliated; or (3) to a purchaser who will use those services to fulfill its obligation under its OATT to offer ancillary services to its own transmission customers.¹⁵

21. We grant Trigen-St. Louis's request for authority to sell ancillary services consistent with the requirements set forth in *Avista*. However, we will require that Trigen-St. Louis amend paragraph 8.b.ii of its revised proposed Rate Schedule No. 1 to remove certain language that does not comport with *Avista*.¹⁶ Accordingly, we direct

¹³ In its original application, Trigen-St. Louis requested authority to sell ancillary services into the Midwest ISO market, but in its amended filing removed tariff language in paragraph 8.b.i relating to such sales.

¹⁴ We note that in Order No. 697, the Commission has eliminated the requirement that third-party sellers of ancillary services establish and maintain an internet-based OASIS-like site for providing information about ancillary services transactions and the requirement to file reports detailing their activities in the ancillary services market. Order No. 697, FERC Stats. & Regs. 31,252 at P 1058, 1059.

¹⁵ Application at 8 (*citing Avista*, 87 FERC at 61,833, n.12).

¹⁶ Specifically, Trigen-St. Louis should remove the following language: "into the market in the control area of interconnected systems to the extent that (1) the rules and
(continued)

Trigen-St. Louis to make a compliance filing amending that paragraph within 30 days of the date of this order.

6. Other Waivers, Authorizations, and Reporting Requirements

22. Trigen-St. Louis requests the following waivers and authorizations: (1) waiver of Subparts B and C of Part 35 of the Commission's regulations requiring the filing of cost-of-service information, except as to sections 35.12(a), 35.13(b), 35.15, and 35.16; (2) waiver of parts 41, 101, and 141 of the Commission's accounting and periodic reporting requirements; and (3) blanket authorization under Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability.

23. The Commission will grant the requested waivers and authorizations consistent with those granted other entities with market-based rate authorizations.¹⁷ Notwithstanding the waiver of the accounting and reporting requirements here, the Commission expects Trigen-St. Louis to keep its accounting records in accordance with generally accepted accounting principles.

24. Trigen-St. Louis is required to file Electric Quarterly Reports (EQRs) in compliance with Order No. 2001.¹⁸ If the effective date of its market-based rate tariff falls within a quarter of the year that has already expired, its EQRs for the expired quarter are due within 30 days of the date of this order.

regulations of the interconnected systems permit sales of such services; and (2) the Commission has authorized entities with market-based rate authority to make such sales into such pool." Such language seems to relate more to sales of ancillary services in regional transmission organizations and ISOs and is inappropriate in this case because Trigen-St. Louis is not requesting authorization to make such sales.

¹⁷ It should be noted that the Commission has recently examined and approved the continued applicability of the waivers of its accounting and reporting requirements (18 C.F.R. Parts 41, 101, and 141), as well as continued applicability of the blanket authorization for the issuance of securities and the assumption of liabilities (18 C.F.R. Part 34). See Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 984-85 (regarding waiver of Parts 41, 101, and 141), 999-1000 (regarding blanket approval under Part 34).

¹⁸ *Revised Public Utility Filing Requirements*, Order No. 2001, 67 Fed. Reg. 31,043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127 (2002).

25. Trigen-St. Louis also is directed to file an updated market power analysis pursuant to the regional schedule adopted in Order No. 697.¹⁹ The Commission also reserves the right to require such an analysis at any intervening time.

C. Waiver of the Prior Notice Requirement

26. Trigen-St. Louis requests waiver of the Commission's prior notice requirement. Trigen-St. Louis has been making sales on a daily basis into the Midwest ISO marketplace since September 1, 2005. Initially, those sales were exempt from FPA section 205 by virtue of Trigen-St. Louis's QF status; however, Trigen-St. Louis is no longer exempt as of March 17, 2006, the effective date of Order No. 671.

27. In Order No. 671, issued on February 2, 2006, the Commission clarified that it would waive the 60-day prior notice requirement of FPA section 205 for electric energy sales that, upon the elimination under Order No. 671 of certain regulatory exemptions, would become subject to section 205 filing requirements, provided that such section 205 filings were made prior to Order No. 671's effective date of March 17, 2006. The Commission stated that it would address the issue of whether to waive the 60-day prior notice requirement for section 205 filings made on or after the effective date on a case-by-case basis.²⁰

28. Trigen-St. Louis relies on an order in which the Commission waived the 60-day prior notice requirement for an entity that filed its initial application after the effective date of Order No. 671.²¹ In the *Lumberton* decision, the Commission held that waiver of the 60-day prior notice requirement period should be granted, stating that the applicants were small QFs and that waiver would allow them to sell power in distant wholesale markets during the peak summer season, thus increasing competition in those markets.²²

¹⁹ To the extent that Trigen-St. Louis believes it falls within the newly established definition of "Category 1" sellers that will be exempt under Order No. 697 from the requirement to automatically submit updated market power analyses, it must make a filing with the Commission at the time that an updated market power analysis for its relevant market would otherwise be due. *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 849.

²⁰ *See* Order No. 671, FERC Stats. & Regs. ¶ 31,203; *order on clarification*, 114 FERC ¶ 61,128 at P 1 & n.7.

²¹ *Lumberton*, 117 FERC ¶ 61,050 at P 24.

²² *Id.*

Of greater relevance, in *Lumberton*, the sellers did not ask for a retroactive effective date of March 17, 2006; they asked for a prospective effective date of August 18, 2006, one day after the initial application was filed with the Commission. The Commission granted waiver of the 60-day prior notice requirement period to allow the rate to become effective one day after the date of the initial application. In *Lumberton*, the Commission was not addressing a request for a retroactive effective date of March 17, 2006. Trigen-St. Louis is thus asking the Commission to go beyond *Lumberton*.

29. Section 205 of the FPA explicitly requires that rates be timely filed with the Commission.²³ In this regard, the Commission has explained that it cannot “ignore its statutory duty to determine whether rates are just and reasonable by permitting utilities to submit filings whenever convenient,” and that it “must have the opportunity to examine proposed rates, terms, and conditions of jurisdictional service before that service commences.”²⁴ Thus, a regulated entity must timely file its rates to allow the Commission to fulfill its statutory mandate, namely, timely determining whether the rates being charged are just and reasonable. The Commission has further made clear that, for market-based rates in particular, it “does not allow market-based rates to go into effect before a filing has been tendered with the Commission.”²⁵ In *Central Maine Power Co.*²⁶ and *Prior Notice and Filing Requirements under Part II of the Federal Power Act*,²⁷ the Commission explained that it would grant waiver of the 60-day prior notice requirement for proposals to charge market-based rates only in extreme or extraordinary circumstances.

30. Based on the information presented by Trigen-St. Louis, the Commission finds that Trigen-St. Louis has failed to demonstrate extraordinary circumstances warranting waiver of the 60-day prior notice requirement. That Trigen-St. Louis was not immediately aware of the Commission’s elimination of the section 205 exemption is not

²³ See *El Paso Elec. Co.*, 105 FERC ¶ 61,131 at P 9-11 (2003) (*El Paso*).

²⁴ *Id.* at P 14.

²⁵ *El Segundo Power, LLC*, 84 FERC ¶ 61,011, at 61,060, *order on reh’g*, 85 FERC ¶ 61,123 (1998), *order on reh’g*, 87 FERC ¶ 61,208 (1999), *order on reh’g*, 90 FERC ¶ 61,036 (2000).

²⁶ 56 FERC ¶ 61,200, *order on reh’g*, 57 FERC ¶ 61,083 (1991).

²⁷ 64 FERC ¶ 61,139, *clarified*, 65 FERC ¶ 61,081 (1993).

a basis for waiver;²⁸ a lack of awareness does not constitute extraordinary circumstances. Accordingly, the Commission denies Trigen-St. Louis's request for waiver of the 60-day prior notice requirement and an effective date of March 17, 2006. The Commission grants Trigen-St. Louis's request for market-based rate authority to be effective May 28, 2007, 61 days after Trigen-St. Louis filed its market-based rate application.

31. The Commission has noted that if waiver is denied, the Commission will require the utility to refund to its customers the time value of the revenues collected, calculated pursuant to section 35.19a of the Commission's regulations,²⁹ for the entire period that the rate was collected without Commission authorization.³⁰ In addition to returning the time value of the revenues collected for the period the rate was charged without Commission authorization, when dealing with market-based rates that are not timely filed, the Commission also has stated that:

The utility will be required to refund all revenues resulting from the difference, if any, between the market-based rate and the cost-justified rate. . . . The late-filing utility will receive the equivalent of a cost-based rate, less the time value remedy applicable to the unauthorized filing of cost-based rates, until the date of Commission authorization.³¹

32. For a QF like Trigen-St. Louis, the difference between the market-based rate and the cost-justified rate would be the difference between the market-based rate and its avoided cost rate (or, if it has no such avoided cost rate, a reasonable proxy for such rate).³² Trigen- St. Louis should identify its avoided-cost rate in its refund report ordered

²⁸ In fact, Trigen-St. Louis did not file until roughly a year after the elimination of the exemption.

²⁹ 18 C.F.R. § 35.19a (2006).

³⁰ *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC at 61,980, *order on reh'g*, 65 FERC ¶ 61,081 (1993).

³¹ *Id.*; *see also* 16 U.S.C. § 825h (2000), *Southern California Water Co.*, 106 FERC ¶ 61,305, at P 15-16, *reh'g denied*, 108 FERC ¶ 61,168 (2004). *See also Public Service Co. of Colorado*, 85 FERC ¶ 61,146, at 61,588 (1998); *Carolina Power & Light Co.*, 87 FERC ¶ 61,083, at 61,356 (1999) (*Carolina Power*).

³² 18 C.F.R. § 292.304(a) (2006). *See Mendota Hills*, 110 FERC ¶ 61,222 at P 26 (2005).

below (or, if it has no such avoided cost rate, a reasonable proxy for such rate). Whether or not an individual customer actually suffered any harm, we add, is irrelevant to our inquiry here. The injury being remedied by refunds for late filing is not merely redress for that customer but particularly “the Commission’s ability to enforce FPA section 205’s requirement that there be prior notice and that the rates charged be just and reasonable at the time they are being charged.”³³ Therefore, we conclude that refunds, plus interest, are due.

The Commission orders:

(A) Trigen-St. Louis’s market-based rate tariff is hereby accepted for filing, effective May 28, 2007, as discussed in the body of this order.

(B) Trigen-St. Louis is directed to submit, within 30 days of the date of this order, a compliance filing to revise paragraph 8.b.ii of Trigen-St. Louis’s amended proposed Rate Schedule No. 1, as discussed in the body of this order.

(C) 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.

(D) Waiver of Parts 41, 101, and 141 of the Commission’s regulations is hereby granted, with the exception of 18 C.F.R. §§ 141.14, 141.15 (2006).

(E) Within 30 days of the date of the issuance of this order, any person desiring to be heard or to protest the Commission’s blanket approval of issuances of securities or assumptions of liabilities by Trigen-St. Louis should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.211 and 385.214 (2006).

(F) Absent a request to be heard within the period set forth above, Trigen-St. Louis is hereby authorized to issue securities and assume obligations or liabilities as guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Trigen-St. Louis, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

³³ *El Paso*, 105 FERC ¶ 61,131 at P 21 (footnote omitted) (citing *Carolina Power*, 87 FERC at 61,356).

(G) The Commission reserves the right to modify this order to require a further showing that neither the public nor private interests will be adversely affected by continued Commission approval of Trigen-St. Louis's issuances of securities or assumptions of liabilities.

(H) Trigen-St. Louis's request for waiver of the prior notice requirement is denied, as discussed in the body of this order.

(I) Trigen-St. Louis is hereby ordered to make refunds, with interest, within 30 days of the date of this order, as discussed in the body of this order. Such refunds shall include the period that market-based rates were collected without Commission authorization, *i.e.*, from March 17, 2006 until May 28, 2007. Trigen-St. Louis is hereby directed to submit a refund report within 30 days thereafter, regarding the basis for and calculations of the refunds paid.

(J) Trigen-St. Louis is required to file Electric Quarterly Reports (EQRs) in compliance with Order No. 2001. If the effective date of Trigen-St. Louis's market-based rate tariff falls within a quarter of the year that has already expired, Trigen-St. Louis's EQRs for the expired quarter are due within 30 days of the date of this order.

(K) Trigen-St. Louis is hereby directed to file an updated market power analysis in accordance with the regional schedule adopted in Order No. 697, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose
Secretary