

121 FERC ¶ 61,227
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.

Unitil Energy Systems, Inc.	Docket Nos. ER05-320-004
Unitil Power Corp.	ER02-999-006
Fitchburg Gas & Electric Light Co.	ER97-2460-009
	ER97-2463-006

ORDER DENYING REQUEST FOR WAIVER

(Issued December 3, 2007)

1. This order denies the request of Unitil Energy Systems, Inc. (UES), Unitil Power Corp. (UPC) and Fitchburg Gas and Electric Light Company (FGE) (collectively, Unitil Companies) for waiver of the requirement to file a request for exemption from the filing requirements applicable to Category 2 sellers under Order No. 697¹ no later than 120 days prior to the date that Unitil Companies' next updated market power analysis is due. As discussed below, we will defer judgment on the merits of Unitil Companies' requested exemption until we consider their updated market power analysis, which is due to be filed with the Commission in December 2007.

Background

2. On October 10, 2007, Unitil Companies filed a request for a determination by the Commission that the Unitil Companies are exempt from the filing requirements applicable to Category 2 Sellers. The Unitil Companies acknowledge that their exemption request was not submitted at least 120 days before the filing deadline for their updated market power analysis, as required by Order No. 697. They request that the Commission grant any necessary waivers to permit the acceptance of their exemption request. The Unitil Companies request an order on their exemption request by November 30, 2007, in order to permit sufficient time to prepare an updated market power analysis in the event the Commission requires submission of such an analysis.

¹ *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, 72 Fed. Reg. 39,904 (July 20, 2007), FERC Stats. & Regs. ¶ 31,252 (2007).

Notice of Filing and Responsive Pleadings

3. Unutil Companies' filing was published in the *Federal Register*,² with interventions or protests due on or before October 31, 2007. None was filed.

Discussion

4. In Order No. 697, the Commission established two categories of sellers.³ Category 1 Sellers includes 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 generating facilities to the transmission grid (or have been granted waiver of the requirements of Order No. 888); that are not affiliated with anyone that 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. Category 2 sellers means any seller not in Category 1.⁴ Category 1 Sellers are exempt from the requirement to submit regularly scheduled updated market power analysis.

5. Order No. 697 states that the Commission will consider on a case-by-case basis the category status of each seller with market-based rate authorization. The Commission explained that, in its attempt to keep the Category 1 criteria as simple and straightforward as possible, the Commission may have swept under Category 2 certain sellers whose particular circumstances make it unlikely that they could exercise market power. Therefore, the Commission stated that it would evaluate individual requests for exemption from Category 2 Seller status. The Commission further explained that, if a seller wishes to request exemption from Category 2 Seller status, it must make a filing seeking such exemption no later than 120 days before its next updated market power analysis is due.⁵

6. Unutil Companies' updated market power analysis is due by December 30, 2007. The latest date that Unutil Companies could have submitted their request for exemption

² 72 Fed. Reg. 60,010 (2007).

³ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 848.

⁴ 18 C.F.R. § 35.36(a)(2)-(3).

⁵ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 868.

from Category 2 Seller status was September 4, 2007. Unitil Companies filed their request for exemption from Category 2 Seller status on October 10, 2007, over a month late.⁶

7. While Unitil Companies have requested waiver of the 120 day deadline for submitting a request for exemption from Category 2 Seller status, Unitil Companies have failed to demonstrate good cause for granting the requested waiver of the 120 day requirement. Therefore, Unitil Companies' request for waiver of the 120 day prior notice requirement is denied and Commission action on their request for exemption from Category 2 Seller status is deferred until such time as the Commission acts on Unitil Companies' updated market power analysis that is due in December 2007.

The Commission orders:

Unitil Companies' request for waiver of the requirement to file a request for exemption from Category 2 no later than 120 days prior to the date of Unitil Companies' next updated market power analysis is denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁶ While we recognize that the 120 day deadline in the instant case fell before the effective date of Order No. 697, we note that Unitil Companies had adequate notice of the timeline for requesting exemption from Category 2 Seller status. Order No. 697 was published in the *Federal Register* at 72 Fed. Reg. 39,904 on July 20, 2007.