

135 FERC ¶ 61,281
 UNITED STATES OF AMERICA
 FEDERAL ENERGY REGULATORY COMMISSION

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

Louisville Gas and Electric Company	Docket Nos.	ER11-3009-000
Kentucky Utilities Company		
LG&E Energy Marketing, Inc.		ER11-3008-000
Electric Energy, Inc.		ER10-3247-003
PPL Electric Utilities Corporation		ER11-2982-000
Lower Mount Bethel Energy, LLC		ER11-2978-000
PPL Brunner Island, LLC		ER11-2979-000
PPL Holtwood, LLC		ER11-2985-000
PPL Martins Creek, LLC		ER11-2987-000
PPL Montour, LLC		ER11-2989-000
PPL Susquehanna, LLC		ER11-2993-000
PPL University Park, LLC		ER11-2994-000
PPL EnergyPlus, LLC		ER11-2983-000
PPL Great Works, LLC		ER11-2984-000
PPL Maine, LLC		ER11-2986-000
PPL Wallingford Energy LLC		ER11-2995-000
PPL New Jersey Solar, LLC		ER11-2991-000
PPL New Jersey Biogas, LLC		ER11-2990-000
PPL Renewable Energy, LLC		ER11-2992-000
PPL Montana, LLC		ER11-2988-000
PPL Colstrip I, LLC		ER11-2980-000
PPL Colstrip II, LLC		ER11-2981-000

ORDER ACCEPTING TARIFF REVISIONS

(Issued June 30, 2011)

1. In this order, we accept the PPL Companies’¹ proposed revisions to their market-based rate tariffs, to be effective as discussed below. Also as discussed below, we

¹ The PPL Companies include Louisville Gas and Electric Company (Louisville Gas & Electric); Kentucky Utilities Company (Kentucky Utilities); LG&E Energy Marketing, Inc. (LG&E); Electric Energy Inc. (EEInc); PPL Electric Utilities Corporation (PPL Electric); Lower Mount Bethel Energy, LLC; PPL Brunner Island, LLC; PPL

(continued...)

conclude that the restrictions on the PPL Companies' market-based rate authority regarding the area formerly known as the Big Rivers Electric Corporation (Big Rivers) balancing authority area may be removed from their tariffs. The Big Rivers balancing authority area has been integrated into the Midwest Independent Transmission System Operator, Inc. (MISO).

I. Background

2. On December 1, 2010, Big Rivers became a fully integrated transmission-owning member of MISO. As a result, the Big Rivers balancing authority area ceased to exist as a separate balancing authority area effective on that date.²

3. On March 1, 2011, and March 2, 2011, pursuant to section 205 of the Federal Power Act (FPA),³ the PPL Companies each filed revisions to their market-based rate tariffs to remove restrictions on their market-based rate authority with regard to the former Big Rivers balancing authority area.⁴

Holtwood, LLC; PPL Martins Creek, LLC; PPL Montour, LLC; PPL Susquehanna, LLC; PPL University Park, LLC; PPL EnergyPlus, LLC; PPL Great Works, LLC; PPL Maine, LLC; PPL Wallingford Energy LLC; PPL New Jersey Solar, LLC; PPL New Jersey Biogas, LLC; PPL Renewable Energy, LLC; PPL Montana, LLC; PPL Colstrip I, LLC; and PPL Colstrip II, LLC.

² *Midwest Indep. Transmission Sys. Operator, Inc.*, Docket No. ER11-2165-000 (Jan. 13, 2011) (delegated letter order) (accepting MISO's Notice of Cancellation to terminate the Adjacent Balancing Authority Coordination Agreement between MISO and Big Rivers Electric Corporation; *see also Midwest Indep. Transmission Sys. Operator, Inc. & Big Rivers Elec. Corp.*, 133 FERC ¶ 61,175 (2010) (accepting MISO tariff revisions to facilitate Big Rivers joining MISO as transmission-owning member).

³ 16 U.S.C. § 824d (2006).

⁴ On March 2, 2011, in Docket Nos. ER11-3009-000 and ER11-3008-000, Louisville Gas & Electric, Kentucky Utilities, and LG&E filed their respective tariff revisions. The remaining PPL Companies, including EEInc, filed their respective tariff revisions on March 1, 2011 in Docket Nos. ER11-2978-000 through ER11-2995-000. Subsequently, the Commission rejected without prejudice EEInc's March 1, 2011 filing for procedural matters. *Elec. Energy Inc.*, Docket No. ER11-2976-000 (Apr. 21, 2011) (delegated letter order). On April 27, 2011, in Docket No. ER10-3247-003, EEInc re-submitted its tariff revisions to remove certain restrictions on its market-based rate authority.

4. According to the PPL Companies, their respective market-based rate tariffs provide that they may not make market-based rate sales within the Big Rivers balancing authority area. The limitation on the PPL Companies' ability to sell at market-based rates in the Big Rivers balancing authority area was initially included in their respective tariffs because they previously were unable to rebut the presumption of horizontal market power in the Big Rivers balancing authority area.⁵ However, the PPL Companies state that the MISO market has subsumed the Big Rivers balancing authority area, and Big Rivers is therefore no longer an appropriate balancing authority area for the study of horizontal market power. Because of this integration, the PPL Companies assert that the MISO market is the relevant geographic market for their analysis of horizontal market power. Although the PPL Companies controlled generating capacity in the Big Rivers balancing authority area at the time of the Commission's prior review of their power market studies, the PPL Companies note that, effective July 16, 2009, they no longer control any generating capacity in the former Big Rivers balancing authority area.⁶ Therefore, the PPL Companies propose removing the restrictions from their existing tariffs to permit them to make market-based rate sales of capacity, energy, and ancillary services throughout the MISO market, including the area formerly known as the Big Rivers balancing authority area. The PPL Companies request that the Commission accept the proposed revisions to their respective market-based rate tariffs effective May 1, 2011.

II. Description of the Filings

A. Horizontal Market Power

5. With respect to horizontal market power, the PPL Companies reference a December 1, 2010 Notice of Change in Status they filed regarding some 2010 acquisitions.⁷ The PPL Companies claim that the affidavit and associated exhibits submitted with the Change in Status Filing demonstrated that the PPL Companies passed the Commission's pivotal supplier and market share screens for the MISO market using a November 2008 to December 2009 study period.⁸ The PPL Companies state that the Change in Status

⁵ See *LG&E Energy Mktg. Inc.*, 113 FERC ¶ 61,229 (2005); see also *LG&E Energy Mktg. Inc.*, 122 FERC ¶ 61,175 (2008); *Louisville Gas & Elec. Co.*, Docket No. ER10-1511-001 (Mar. 21, 2011) (delegated letter order).

⁶ PPL Companies' March 1, 2011 Filing at 10. See *W. Ky. Energy Corp.*, 123 FERC ¶ 62,153 (2008) (authorizing transfer of control to Big Rivers and the City of Henderson, Kentucky). See also *W. Ky. Energy Corp.*, Docket No. EC08-54-000 (July 20, 2009) (Notice of Consummation of Transaction).

⁷ *Louisville Gas & Elec. Co.* Dec. 1, 2010 Notice of Change in Status Regarding Market-Based Rate Authority, Docket No. ER10-1511-001 (Change in Status Filing).

⁸ PPL Companies' March 1 Filing at 13.

Filing showed that they have only 1,914 MW of uncommitted capacity in the MISO market compared to 53,008 MW of net uncommitted supply in the MISO market; thus, the PPL Companies state that they are far below the threshold for being a pivotal supplier. In addition, their generation market shares are below three percent in all seasons. The PPL Companies further state that the subsequent integration of the Big Rivers balancing authority area into MISO is likely to have decreased the market presence of the PPL Companies in MISO even further, especially given that the PPL Companies no longer own or control any generating capacity in the area that was formerly the Big River balancing authority area. The PPL Companies state that, based on these facts, they continue to satisfy the Commission's generation market power standards for market-based rate authority in MISO.

B. Vertical Market Power

6. With respect to vertical market power, Louisville Gas & Electric and Kentucky Utilities state that they own approximately 5,360 circuit miles of electric transmission lines, for which they have a single, Commission-approved OATT.⁹ EEInc states that it owns 55 miles of electric transmission lines over which it provides service pursuant to a Commission-approved OATT.¹⁰ PPL Electric states that it owns approximately 5,000 miles of transmission lines over which it provides service pursuant to the PJM Interconnection, L.L.C. OATT.¹¹

7. Louisville Gas & Electric and Kentucky Utilities state that they own and operate certain natural gas transmission lines and storage fields, and that Louisville Gas & Electric owns and operates certain natural gas distribution lines. Further, the PPL Companies represent that their parent company, PPL Corporation, is also the indirect owner of PPL Interstate Energy Company, which owns and operates an intrastate natural gas and oil distribution system. The PPL Companies assert that these facilities are limited in nature and do not provide a basis for disputing the Commission's rebuttable presumption that such ownership does not allow the PPL Companies to raise barriers to entry.

⁹ *E.ON U.S., LLC*, Docket No. ER06-20-006 (November 8, 2006) (delegated letter order). Louisville Gas & Electric and Kentucky Utilities also state that they own a minority interest in Ohio Valley Electric Corp., which is a transmission owning utility that operates its transmission lines pursuant to a Commission-approved OATT. *Ohio Valley Elec. Corp.*, Docket No. OA96-190-001 (Sept. 18, 1998) (delegated letter order).

¹⁰ *Baltimore Gas & Elec. Co.*, Docket No. OA96-156-001, at 3 (Feb. 24, 1999) (delegated letter order).

¹¹ *Pennsylvania-New Jersey-Maryland Interconnection*, 81 FERC ¶ 61,257 (1997).

8. The PPL Companies state that they own or control sites for potential generation capacity and development. However, the PPL Companies state that ownership of these generation sites does not give them the ability to prevent the siting of new generation facilities owned by their competitors and assert that such ownership does not allow them to raise barriers to entry. In addition, the PPL Companies state that while they own and/or lease coal transportation infrastructure, these resources are used exclusively to power plants owned by them. The PPL Companies also state that they have not erected and will not erect barriers to entry into the relevant market.

III. Notices of Filings

9. Notice of the PPL Companies' filings in Docket Nos. ER11-2978-000 through ER11-2995-000 was published in the *Federal Register*, 76 Fed. Reg. 12,952 (2011), with interventions or protests due on or before March 22, 2011. None was filed.

10. Notice of the PPL Companies' filings in Docket Nos. ER11-3008-000 and ER11-3009-000 was published in the *Federal Register*, 76 Fed. Reg. 13,176 (2011), with interventions or protests due on or before March 24, 2011. None was filed.

11. Notice of the PPL Companies' filing in Docket No. ER10-3247-003 was published in the *Federal Register*, 76 Fed. Reg. 25,323 (2011), with interventions or protests due on or before May 18, 2011. None was filed.

IV. Discussion

A. 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, horizontal and vertical market power.¹² As discussed below, we conclude that the PPL Companies satisfy the Commission's standards for market-based rate authority.

¹² *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 P 62, 399, 408, 440, *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).

1. Horizontal Market Power

13. The Commission has adopted two indicative screens for assessing horizontal market power, the pivotal supplier screen and the wholesale market share screen.¹³ The PPL Companies represent that they do not own, operate, or control any generation in the former Big Rivers balancing authority area.¹⁴ Further, the PPL Companies reference the pivotal supplier and wholesale market share screens for MISO that they submitted with the Change in Status Filing, which demonstrate the lack of horizontal market power in that market.¹⁵

14. Consistent with Order No. 697, we find that the relevant geographic market when evaluating horizontal market power for the PPL Companies in these proceedings is the MISO market.¹⁶ Based on the pivotal supplier and wholesale market share screens submitted with the Change in Status Filing, we find that the PPL Companies satisfy the Commission's requirements for market-based rate authority regarding horizontal market power in the MISO market.

2. Vertical Market Power

15. The Commission requires, in cases where a public utility, or any of its affiliates, owns, operates, or controls transmission facilities, that there be a Commission-approved Open Access Transmission Tariff (OATT) on file before granting a seller market-based rate authorization.¹⁷ The PPL Companies state that each of the transmission owners at issue provides transmission service pursuant to an OATT on file with the Commission.¹⁸

16. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.¹⁹ 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

¹³ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 62.

¹⁴ PPL Companies' March 1, 2011 Filing at 5, 6, 10.

¹⁵ We note that the Change in Status filing has been accepted. *See Louisville Gas & Elec. Co.*, Docket No. ER10-1511-001 (Mar. 21, 2011) (delegated letter order).

¹⁶ *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 231-232, 235.

¹⁷ *Id.* P 408.

¹⁸ *See supra* notes 9-11.

¹⁹ 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).²⁰ The PPL Companies state that Louisville Gas & Electric and Kentucky Utilities own and operate certain natural gas transmission lines and storage fields, and Louisville Gas & Electric owns and operates certain natural gas distribution lines. Further, the PPL Companies' parent company, PPL Corporation, is the indirect owner of PPL Interstate Energy Company, which owns and operates an intrastate natural gas and oil distribution system. In Order No. 697, 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.²¹

17. Lastly, the Commission 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.²² The PPL Companies affirmatively state that they have not erected barriers to entry and will not erect barriers to entry in the relevant market.²³

18. Based on the PPL Companies' representations, we find the PPL Companies satisfy the Commission's requirements for market-based authority regarding vertical market power.

B. Tariff Revisions

19. The PPL Companies have demonstrated that, after the integration of the Big Rivers balancing authority area into MISO, the PPL Companies satisfy the Commission's requirements for horizontal and vertical market power in the MISO. As such, we will permit removal of the restrictions on the PPL Companies' market-based rate authority so that they may make market-based rate sales of energy, capacity, and ancillary services throughout the MISO market, including the area formerly known as the Big Rivers balancing authority area.

C. Reporting Requirements

20. Consistent with the procedures the Commission adopted in Order No. 2001, an entity with market-based rates must file electronically with the Commission an Electric

²⁰ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447; Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

²¹ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 446.

²² *Id.* P 447.

²³ PPL Companies' March 1, 2011 Filing at 17.

Quarterly Report 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.²⁴ Public utilities must file Electric Quarterly Reports no later than 30 days after the end of the reporting quarter.²⁵

21. The PPL Companies 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

D. Effective Date

22. We accept the filings for: EEInc; PPL Electric; Lower Mount Bethel Energy, LLC; PPL Brunner Island, LLC; PPL Holtwood, LLC; PPL Martins Creek, LLC; PPL Montour, LLC; PPL Susquehanna, LLC; PPL University Park, LLC; PPL EnergyPlus, LLC; PPL Great Works, LLC; PPL Maine, LLC; PPL Wallingford Energy LLC; PPL New Jersey Solar, LLC; PPL New Jersey Biogas, LLC; PPL Renewable Energy, LLC; PPL Montana, LLC; PPL Colstrip I, LLC; and PPL Colstrip II, LLC, effective

²⁴ *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, 125 FERC ¶ 61,103 (2008). Attachments B and C of Order No. 2001 describe the required data sets for contractual and transaction information. Public utilities must submit Electric Quarterly Reports 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>.

²⁵ The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2010). 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.

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 (2010).

May 1, 2011, as requested. We also accept the filings for Louisville Gas & Electric and Kentucky Utilities, and LG&E, effective May 2, 2011.²⁷ Finally, we accept the filing for EEInc, effective June 27, 2011.²⁸

The Commission orders:

The PPL Companies' tariff revisions are accepted for filing, effective as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

²⁷ In light of Kentucky Utilities, Louisville Gas & Electric, and LG&E filing their respective tariff revisions on March 2, 2011, absent request for waiver of the prior notice requirement, the earliest effective date permitted under section 205(d) of the FPA and section 35.3 of the Commission's regulations is May 2, 2011, rather than the May 1, 2011 requested effective date. *See* 16 U.S.C. § 824d(d); 18 C.F.R. § 35.3 (2010).

²⁸ Similarly, the earliest effective date permitted on EEInc's filing absent request for waiver of the prior notice requirement is June 27, 2011, rather than the May 1, 2011 requested date. *See* 16 U.S.C. § 824d(d); 18 C.F.R. § 35.3 (2010).