

143 FERC ¶ 61,117
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

J.P. Morgan Ventures Energy Corporation	Docket Nos. ER10-2331-007
J.P. Morgan Commodities Canada Corporation	ER10-2343-007
BE Alabama LLC	ER10-2319-006
BE Allegheny LLC	ER10-2320-006
BE CA LLC	ER10-2317-005
BE Ironwood LLC	ER10-2322-007
BE KJ LLC	ER10-2324-006
BE Louisiana LLC	ER10-2325-005
BE Rayle LLC	ER10-2332-006
Cedar Brakes I, L.L.C.	ER10-2326-007
Cedar Brakes II, L.L.C.	ER10-2327-008
Central Power & Lime LLC	ER10-2328-006
Triton Power Michigan LLC	ER11-4609-005
Utility Contract Funding, L.L.C.	ER10-2330-007

ORDER ACCEPTING UPDATED MARKET POWER ANALYSIS
FOR THE CENTRAL REGION

(Issued May 10, 2013)

1. On June 27, 2012, J.P. Morgan Ventures Energy Corporation (JP Morgan Ventures); J.P. Morgan Commodities Canada Corporation; BE Alabama LLC; BE Allegheny LLC; BE CA LLC; BE Ironwood LLC; BE KJ LLC; BE Louisiana LLC; BE Rayle LLC; Cedar Brakes I, L.L.C.; Cedar Brakes II, L.L.C.; Central Power & Lime LLC; Triton Power Michigan LLC; and Utility Contract Funding, L.L.C. (collectively, JP Morgan Sellers) filed an updated market power analysis for the Central region in compliance with the regional reporting schedule adopted in Order No. 697.¹

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 848-50, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, (continued...)

2. In this order, the Commission accepts the JP Morgan Sellers' updated market power analysis and concludes that the JP Morgan Sellers continue to satisfy the Commission's standards for market-based rate authority in the Central region. Additionally, as discussed below, the Commission directs JP Morgan Ventures to amend its tariff to reflect the suspension of its market-based rate authority, which occurred after the JP Morgan Sellers filed this updated market power analysis for the Central region.²

I. Background

3. On June 27, 2012, JP Morgan Sellers submitted an updated market power analysis for the Central region. JP Morgan Sellers state that they are all authorized to sell energy, capacity, and ancillary services at market-based rates.³

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 sub nom. Pub. Citizen, Inc. v. FERC*, 133 S. Ct. 26 (2012). JP Morgan Sellers must file an updated market power analysis for all regions in which they are designated as Category 2 sellers in compliance with the regional reporting schedule adopted in Order No. 697. Order No. 697, FERC Stats. & Regs. ¶ 31,252.

² See *J.P. Morgan Ventures Energy Co.*, 141 FERC ¶ 61,131 (2012) (Suspension Order); *J.P. Morgan Ventures Energy Co.*, 142 FERC ¶ 61,190 (2013) (Suspension Period Tariffs Order). In an order being issued concurrently with this order, the Commission is granting rehearing of the Suspension Period Tariffs Order and dismissing in part and accepting in part JP Morgan's filing in compliance with that order. *J.P. Morgan Ventures Energy Corporation*, 143 FERC ¶ 61,118 (2013) (Suspension Period Tariffs Rehearing Order).

³ *J.P. Morgan Ventures Energy Co.*, 112 FERC ¶ 61,322 (2005). *J.P. Morgan Commodities Canada Co.*, Docket No. ER09-1141-000 (Aug. 21, 2009) (delegated letter order). *BE Allegheny LLC*, Docket No. ER07-1112-000 (Aug. 9, 2007) (delegated letter order). *Cedar Brakes I, L.L.C.*, Docket No. ER00-2885-000 (July 12, 2000) (delegated letter order). *Cedar Brakes II, L.L.C.*, Docket No. ER01-2765-000 (Sept. 13, 2001) (delegated letter order). *Central Power & Lime, Inc.*, Docket No. ER08-148-000 (Dec. 19, 2007) (delegated letter order). *Triton Power Michigan LLC*, Docket No. ER02-1437-000 (May 14, 2002) (delegated letter order). *Cedar Brakes III, LLC*, Docket No. ER01-3056-000 (Dec. 4, 2001) (delegated letter order).

4. JP Morgan Sellers state that each of the JP Morgan Sellers is a wholly owned non-banking subsidiary of JPMorgan Chase & Co., a financial holding company. JP Morgan Sellers represent that in the Central region they own or control approximately 545 megawatts (MW) of generation, all located in the market operated by the Midwest Independent Transmission System Operator, Inc. (MISO).⁴ Additionally, JP Morgan Sellers state that they do not own or control transmission facilities, and are not affiliated with any entity that owns or controls transmission facilities.

II. Notice of Filing

5. Notice of JP Morgan Sellers' filing was published in the *Federal Register*, 77 Fed. Reg. 40,352 (2012), with interventions or protests due on or before August 27, 2012. None was filed.

III. Discussion

A. Market-Based Rate Authorization

6. 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 JP Morgan Sellers satisfy the Commission's standards for market-based rate authority.

1. Horizontal Market Power

7. 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

⁴ Application at 6 (JP Morgan Sellers control 545 MW of generation through a tolling agreement related to the Kinder Jackson generating facility).

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

⁶ *Id.* P 62.

⁷ *Id.* PP 33, 62-63.

8. JP Morgan Sellers prepared the pivotal supplier and wholesale market share screens for the MISO market, consistent with the requirements of Order No. 697.⁸ JP Morgan Sellers state that the pivotal supplier screen indicates that JP Morgan Sellers' uncommitted capacity is less than the total net uncommitted supply in the MISO market. JP Morgan Sellers state that the market share screen indicates that JP Morgan Sellers' market shares are approximately three percent or less.

9. We have reviewed JP Morgan Sellers' pivotal supplier screen and wholesale market share screen and determined that JP Morgan Sellers pass both screens in the MISO market when the Commission-accepted SIL values for this area are applied.⁹ Accordingly, we find that JP Morgan Sellers satisfy the Commission's requirements for market-based rates regarding horizontal market power in the Central region.

2. Vertical Market Power

10. 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.¹⁰

11. JP Morgan Sellers state that neither they nor their affiliates own, operate, or control transmission facilities.

12. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.¹¹ 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 generation capacity development; and physical coal supply sources and ownership of or control over who may access transportation of coal supplies (collectively, inputs to

⁸ *Id.* PP 231-232.

⁹ *See Allete, Inc.*, 139 FERC ¶ 61,147 (2012) (SIL Study Order) (“[T]he seasonal SIL values for the MISO market accepted herein are: Winter 13,879 MW; Spring 13,080 MW; Summer 8,402 MW; and Fall 9,117 MW.”). In the SIL Study Order, the Commission indicated that it will consider these SIL values when examining updated market power analyses for the Central region.

¹⁰ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408.

¹¹ *Id.* P 440.

electric power production).¹² 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.¹³ 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.¹⁴

13. Regarding other barriers to entry, JP Morgan Sellers state that neither they nor their affiliates own, or control intrastate natural gas transportation, intrastate natural gas storage, or natural gas distribution facilities in the United States. JP Morgan Sellers further state they do not own or control any sites that could be used for generation capacity in the United States. JP Morgan Sellers add that they do not own or control sources for physical coal supplies or facilities related to the transportation of coal supplies in the United States.

14. Finally, consistent with Order No. 697, JP Morgan Sellers affirmatively state that neither they nor their affiliates have erected barriers to entry into the Central region, nor will they erect such barriers.

15. Based on JP Morgan Sellers' representations, we find that JP Morgan Sellers' submittal satisfies the Commission's requirements for market-based rates regarding vertical market power.

B. Suspension of JP Morgan Ventures' Market Based Rate Authority

16. In an order issued on November 14, 2012,¹⁵ the Commission found that various statements made by JP Morgan Ventures violated section 35.41(b) of the Commission's regulations.¹⁶ Consequently, the Commission suspended JP Morgan Venture's market-based rate authority for a period of six months, to become effective on April 1, 2013.¹⁷ As noted previously, we are concurrently issuing an order granting rehearing of the

¹² Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

¹³ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

¹⁴ *Id.* P 446.

¹⁵ Suspension Order, 141 FERC ¶ 61,131.

¹⁶ 18 C.F.R. § 35.41(b) (2012).

¹⁷ Suspension Order, 141 FERC ¶ 61,131.

Suspension Period Tariffs Order,¹⁸ which requires JP Morgan Ventures to make additional revisions to its tariff.

17. We therefore direct JP Morgan Ventures to submit a compliance filing, within 15 days of the date of this order, revising the limitations and exemptions section of its market-based rate tariff to reflect the suspension of its market-based rate authority in accordance with the terms of the Suspension Order, the Suspension Period Tariffs Order, and the Suspension Period Tariffs Rehearing Order, including citations to those orders.¹⁹

C. Reporting Requirements

18. Consistent with the procedures the Commission adopted in Order No. 2001, an entity with market-based rate authorization must electronically file an Electric Quarterly Report (EQR) with the Commission 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.²⁰ Public utilities must file EQRs no later than 30 days after the end of the reporting quarter.²¹

¹⁸ Suspension Period Tariffs Rehearing Order, 143 FERC ¶ 61,118.

¹⁹ Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 384.

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). Attachments B and C of Order No. 2001 describe the required data sets for contractual and transaction information. Public utilities must submit EQRs 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>.

²¹ The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2012). 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-

(continued...)

19. JP Morgan Sellers 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.²²

20. Additionally, JP Morgan Sellers must file updated market power analyses in compliance with the regional reporting schedule adopted in Order No. 697. The Commission also reserves the right to require such an analysis at any intervening time.

The Commission orders:

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

(B) JP Morgan Ventures is hereby directed to submit a compliance filing, within 15 days of the date of this order, as discussed in the body of this order.

(C) JP Morgan Sellers are 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.

based rate authority if the applicant wishes to resume making sales at market-based rates.

²² *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 (2012).