

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Allete, Inc. dba
Minnesota Power
Rainy River Energy Corporation

Docket Nos. ER01-2636-001
ER01-2636-002
ER00-2177-001

ORDER ACCEPTING UPDATED MARKET POWER ANALYSIS

(Issued April 14, 2005)

1. In this order we accept an updated market power analysis filed by Allete, Inc. dba Minnesota Power (Minnesota Power)¹ and Rainy River Energy Corporation (Rainy River) (collectively, Applicants). As discussed below, we conclude that Applicants satisfy the Commission's standards for market-based rate authority. Applicants' tariffs incorporating the Commission's market behavior rules were previously accepted by the Commission.² This order benefits customers by reviewing the conditions under which market-based rate authority is granted, thus ensuring that the prices charged for jurisdictional sales are just and reasonable. Applicants' next updated market power analysis is due three years from the date of this order.

Background

2. Applicants state that Minnesota Power is a public utility with its principal place of business in Duluth, Minnesota. Applicants state that Minnesota Power owns generation, transmission and distribution facilities exclusively in the Minnesota Power control area and provides electricity to 150,000 customers in northeastern Minnesota and

¹ The Commission accepted Minnesota Power's name change in *Allete, Inc. dba Minnesota Power*, Docket No. ER01-2636-000 (August 21, 2001) (unpublished letter order) (August 2001 order).

² See *Allete, Inc. dba Minnesota Power*, Docket Nos. ER04-649-000 and ER04-649-001 (unpublished letter order) (June 2, 2004).

northwestern Wisconsin.³ Minnesota Power is also affiliated with Rainy River, a power marketer which owns no generation. The Commission has granted Rainy River market-based rate authority.⁴ Applicants state that Minnesota Power owns approximately 8,100 miles of electric transmission and distribution lines, ranging in voltage from less than 115 kV to 500 kV. Applicants also state that Minnesota Power and SWL&P have turned over operational control of their transmission facilities to the Midwest Independent Transmission System Operator, Inc. (Midwest ISO).

3. On May 28, 2002, Minnesota Power filed an updated market power analysis pursuant to the Commission's order granting Minnesota Power authority to sell electric energy and capacity at market-based rates (May 2002 filing).⁵ Minnesota Power's May 2002 filing provided a triennial update based on the Supply Margin Assessment test.⁶

4. On November 9, 2004, as amended on November 10, 2004, Applicants submitted a revised updated market power analysis, pursuant to the Commission's order issued on May 13, 2004.⁷ The May 13 Order addressed the procedures for implementing the generation market power analysis announced on April 14, 2004 and July 8, 2004.⁸

³ Service in northwestern Wisconsin is provided by Minnesota Power's affiliate Superior, Water, Light & Power Company (SWL&P), a retail provider which has not sought the Commission's approval for market-based rate authority.

⁴ See *Rainy River Energy Corp.*, Docket No. ER00-2177-000 (unpublished letter order) (May 4, 2000).

⁵ *Minnesota Power & Light Company*, 76 FERC ¶ 61,033 (1996).

⁶ See *AEP Power Marketing, Inc.*, 97 FERC ¶ 61,219 (2001) (SMA Order), *order on reh'g*, 107 FERC ¶ 61,018 (2004) (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004) (July 8 Order). In the SMA Order, the Commission announced a new generation market power test, the Supply Margin Assessment (SMA), to be applied to market-based rate applications. In the April 14 Order, the Commission replaced the SMA generation market power test with two indicative screens for assessing generation market power, the pivotal supplier and wholesale market share screens.

⁷ *Acadia Power Partners, LLC*, 107 FERC ¶ 61,168 (2004) (May 13 Order).

⁸ See *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004) (July 8 Order).

5. In its November 9 filing, Applicants stated that the Midwest ISO region should be used as the relevant geographic market for the purpose of the generation dominance screens. However, Applicants submitted the pivotal supplier screen and wholesale market share screen for the Minnesota Power control area and its first-tier markets, as well as for the Midwest ISO market. Applicants noted that once the Midwest ISO performs functions such as central commitment and dispatch with Commission-approved market monitoring and mitigation it will be considered a distinct and appropriate geographic market for the purposes of the generation dominance screens (which is currently scheduled for April 1, 2005). Based on the analysis provided by Applicants, Applicants pass both the pivotal supplier screen and wholesale market share screen for the Midwest ISO market.

Procedural Matters

6. Notice of Minnesota Power's May 2002 filing was published in the *Federal Register*, 67 Fed. Reg. 39,709 (2004), with interventions and protests due on or before June 18, 2002. None was filed.

7. Notice of Applicants' November 9 and November 10, 2004 filings were published in the *Federal Register*, 69 Fed. Reg. 68,895 (2004), with interventions and protests due on or before November 30, 2004. None was filed.

Discussion

Market-Based Rate Authorization

8. 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, the Commission concludes that, with the tariff modification directed herein, Applicants satisfy the Commission's standards for market-based rate authority.

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).

Generation Market Power

9. In the April 14 Order, the Commission adopted two indicative screens for assessing generation market power, the pivotal supplier screen and the wholesale market share screen. In the November 9, 2004 filing, Applicants submitted both indicative screens for the Minnesota Power control area and first-tier markets and the Midwest ISO market. Applicants indicate in this filing that it passes both indicative screens for the Midwest ISO.

10. The Commission has reviewed Applicants' generation market power screens for the Midwest ISO and has determined that Applicants pass both the pivotal supplier and wholesale market share screens in that market. As the Commission noted in the April 14 Order, once Midwest ISO becomes a single market and performs functions such as a central commitment and dispatch with Commission-approved market monitoring and mitigation, Midwest ISO would be considered to have a single geographic market for purposes of our generation dominance screens. Accordingly, we find that Applicants satisfy the Commission's generation market power standard for the grant of market-based rate authority based on the Midwest ISO becoming a single market and performing these functions with Commission-approved market monitoring and mitigation.¹⁰

11. The Commission notes that Applicants submitted supplemental data obtained from commercial sources along with its workpapers and request confidential treatment of that data. In the July 8 Order, the Commission stated that "[w]ith respect to data that is only available from commercial sources, we clarify that commercial sources may be used to the extent the data is made available to intervenors and other interested parties. Applicants utilizing commercial information to perform the screens should include it in their filing."¹¹ The Commission notes that no parties in the instant case have protested Applicants filing such information confidentially. As a result, the Commission will allow the use of such data in this case.¹²

¹⁰ Because the Midwest ISO became a single market and began performing central commitment and dispatch functions with Commission-approved market monitoring and mitigation on April 1, 2005, we have used the Midwest ISO market as the geographic market for purposes of analyzing Applicants' generation market power screens.

¹¹ July 8 Order, 108 FERC ¶ 61,026 at P 121.

¹² See *Oasis Power Partners, LLC*, 109 FERC ¶ 61,180 (2004).

Transmission Market Power

12. When a transmission-owning public utility seeks market-based rate authority, the Commission has required the public utility to have an open access transmission tariff (OATT) on file before granting such authorization. Applicants state that Minnesota Power owns approximately 8,100 miles of electric transmission and distribution lines, ranging in voltage from less than 115 kV to 500 kV. Applicants state that Minnesota Power and SWL&P have turned over operational control of their transmission facilities to the Midwest ISO¹³ and that Rainy River owns no transmission facilities. Further, no intervenors have raised transmission market power concerns. Based on these representations, the Commission finds that Applicants satisfy the Commission's transmission market power standard for the grant of market-based rate authority.

Other Barriers to Entry

13. Applicants state that although Minnesota Power continues to own BNI Coal, which mines lignite used to fuel Milton R. Young Units 1 and 2, and SWL&P owns a natural gas distribution system, the ownership of these facilities does not confer market power on Minnesota Power and SWL&P. SWL&P commits that it has not and will not deny access to competing suppliers. In addition, no intervenors have raised barrier to entry concerns. Based on these representations, the Commission is satisfied that Applicants cannot erect barriers to entry. However, if Minnesota Power, SWL&P, or their affiliates deny, delay, or require unreasonable rates, terms, or conditions for natural gas service to a potential electric competitor in bulk power markets, then that electric competitor may file a complaint with the Commission that could result in the suspension of their authority to sell power at market-based rates.¹⁴

Affiliate Abuse

14. Applicants note that they have on file with the Commission codes of conduct which govern the relationship between the affiliates. No intervenors have raised affiliate abuse concerns. Based on the Applicants' representation, we find that Applicants satisfy the Commission's concerns with regard to affiliate abuse.

¹³ *Midwest Independent System Operator, Inc.*, 84 FERC ¶ 61,231 (1998).

¹⁴ *See, e.g., Louisville Gas & Electric Co.*, 62 FERC ¶ 61,016 (1993).

Reporting Requirements

15. 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 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 greater) market-based power sales during the most recent calendar quarter.¹⁵ Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.¹⁶

16. Applicants 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.¹⁷ Order No. 652 requires that the change in status reporting requirement be incorporated in the market-based rate tariff of each entity authorized to make sales at market-based rates. Accordingly, Minnesota Power and Rainy River are directed, within 30 days of the date of issuance of this order, to revise their market-based rate tariffs to incorporate the following provision:

[Market-based rate seller name] 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. A change in status includes, but is not limited to, each of the following: (i) ownership

¹⁵ *Revised Public Utility Filing Requirements*, Order No. 2001, 67 Fed. Reg. 31,043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127 (2002). Required data sets for contractual and transaction information are described in Attachments B and C of Order No. 2001. The Electric Quarterly Report must be submitted 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>.

¹⁶ The exact dates for these reports are prescribed in 18 C.F.R. § 35.10b (2004). 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.

¹⁷ *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 70 Fed. Reg. 8,253 (Feb. 18, 2005), FERC Stats. & Regs. ¶ 31,175 (2005).

or control of generation or transmission facilities or inputs to electric power production other than fuel supplies, or (ii) affiliation with any entity not disclosed in the application for market-based rate authority that owns or controls generation or transmission facilities or inputs to electric power production, or affiliation with any entity that has a franchised service area. Any change in status must be filed no later than 30 days after the change in status occurs.

17. Applicants are directed to file an updated market power analysis within three years of the date of this order, and every three years thereafter. The Commission also reserves the right to require such an analysis at any intervening time.

The Commission orders:

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

(B) Applicants' next updated market analysis is due within three years of the date of this order.

(C) Applicants are directed, within 30 days of the date of issuance of this order, to revise their market-based rate tariffs to include the change in status reporting requirement adopted in Order No. 652.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.