

111 FERC ¶ 61,041
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Northern Indiana Public Service Company	Docket Nos. ER00-2173-002, ER00-2173-003 and ER00-2173-004
EnergyUSA-TPC Corp.	ER00-3219-002, ER00-3219-003 and ER00-3219-004
Whiting Clean Energy, Inc.	ER01-1300-003 ER01-1300-004 and ER01-1300-005

ORDER ACCEPTING UPDATED MARKET POWER ANALYSIS

(Issued April 14, 2005)

1. In this order we accept an updated market power analysis filed by Northern Indiana Public Service Company (NIPSCO), Energy USA-TPC Corp. (TPC), and Whiting Clean Energy, Inc. (Whiting) (collectively, NiSource Companies). As discussed below, we conclude that the NiSource Companies satisfy the Commission's standards for market-based rate authority. 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. The NiSource Companies' next updated market power analysis is due three years from the date of this order.

Background

2. On January 15, 2004, the NiSource Companies filed updated market power analyses pursuant to the Commission's orders granting them market-based rate authority.¹

¹ *Northern Indiana Public Service Co.*, Docket No. ER00-2173-000 (May 10, (continued.....))

3. On February 8, 2005, as amended March 28, 2005, the NiSource Companies filed an updated market power analysis pursuant to the Commission's order issued on May 13, 2004.² The May 13 Order addressed the procedures for implementing the generation market power analysis announced on April 14, 2004, and clarified on July 8, 2004.³ The NiSource Companies state that they have previously modified their market-based rate tariffs in compliance with the Commission's market behavior rules order.⁴

4. NIPSCO states that it is an Indiana corporation engaged in the generation, transmission, and distribution of energy at wholesale and retail. NIPSCO states that it distributes electricity to approximately 432,000 retail customers in its service territory located in 30 counties in northern Indiana. NIPSCO states that it owns and operates generation facilities totaling a capacity of 3,600 MW located within the NIPSCO control area. NIPSCO asserts that GridAmerica, LLC (GridAmerica) assumed functional control over NIPSCO's transmission assets, and in turn GridAmerica cedes certain functions related to the provision of transmission service to the Midwest Independent Transmission System Operator (Midwest ISO). Thus, according to NIPSCO, open access transmission service over NIPSCO's facilities is currently provided under the Midwest ISO's open access transmission tariff (OATT).

5. NIPSCO states that TPC is a power marketer that neither owns nor operates generation facilities. NIPSCO also states that Whiting is an exempt wholesale generator that owns and operates a 525 MW generation facility within NIPSCO's service territory. The NiSource Companies assert that none of them, or any of their affiliates, owns an interest in or operates a generation facility outside of NIPSCO's control area.

2000) (unpublished letter order); *EnergyUSA-TPC Corp.*, Docket No. ER00-3219-000 (Aug. 24, 2000) (unpublished letter order); *Whiting Clean Energy, Inc.*, Docket No. ER01-1300-000 (Apr. 12, 2001). On the same date, TPC and Whiting also filed to modify their tariffs to include market behavior rules. *See infra* note 5 and accompanying text.

² *Acadia Power Partners, LLC*, 107 FERC ¶ 61,168 (2004) (May 13 Order).

³ *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004) (July 8 Order).

⁴ *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218 (2003), *order on reh'g*, 107 FERC ¶ 61,175 (2004). The NiSource Companies' market behavior rules were previously accepted by the Commission in *Northern Indiana Public Service Co.*, Docket No. ER00-2173-001 (Mar. 29, 2004) (unpublished letter order); *EnergyUSA-TPC Corp.*, Docket No. ER00-3219-002 (Mar. 29, 2004) (unpublished letter order); and *Whiting Clean Energy, Inc.*, Docket No. ER01-1300-003 (Mar. 29, 2004) (unpublished letter order).

Notice of Filings and Pleadings

6. Notice of the NiSource Companies' January 15, 2004 filing was published in the *Federal Register*, 69 Fed. Reg. 5,140 (2004), with protests and motions to intervene due on or before February 5, 2004. None was filed.

7. Notice of the NiSource Companies' February 8, 2005 filing was published in the *Federal Register*, 70 Fed. Reg. 9064 (2005), with protests and motions to intervene due on or before March 1, 2005. None was filed. Notice of the NiSource Companies' March 28, 2005 filing was published in the *Federal Register*, 70 Fed. Reg. 17,683 (2005), with protests and motions to intervene due on or before April 7, 2005. 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.⁵

9. As discussed below, the Commission concludes that the NiSource Companies satisfy the Commission's standards for market-based rate authority.

Generation Market Power

10. 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.⁶ In its February 8 filing, the NiSource Companies submitted both indicative screens for the NIPSCO control area, as well as both indicative screens using the Midwest ISO market.⁷ The NiSource Companies state that they pass both the indicative screens, when the Midwest ISO is used.

⁵ 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).

⁶ April 14 Order, 107 FERC ¶ 61,018 at P 71-72.

⁷ We note that NIPSCO also submitted both indicative screens for its first-tier
(continued.....)

11. The Commission has reviewed the NiSource Companies' generation market power screens, and has determined that the NiSource Companies pass the screens in the Midwest ISO market. As the Commission noted in the April 14 Order, once the Midwest ISO becomes a single market and performs such functions as central commitment and dispatch with Commission-approved market monitoring and mitigation, the Midwest ISO would be considered to be a single geographic market for purposes of our generation dominance screens.⁸ Based on the analysis provided by the NiSource Companies, we find that the NiSource Companies pass both the pivotal supplier screen and the wholesale market share screen for the Midwest ISO market.

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. NIPSCO indicates that it transferred its transmission facilities to GridAmerica, which cedes certain functions to the Midwest ISO, and which operates those facilities under the Midwest ISO's OATT.⁹ Further, no intervenors have raised transmission market power concerns. Based on the NiSource Companies' representation, the Commission finds that the NiSource Companies satisfy the Commission's transmission market power standard for of the grant of market-based rate authority.

Other Barriers to Entry

13. The NiSource Companies state that they are affiliated with various interstate natural gas companies that provide service under Commission-approved open access tariffs. The NiSource Companies also state that they lack the ability to erect barriers to entry. In addition, no intervenors have raised concerns regarding barrier to entry. Based on these representations, the Commission is satisfied that the NiSource Companies cannot erect barriers to entry. However, should the NiSource Companies deny, delay, or

interconnected control areas in its February 8 filing.

⁸ Because the Midwest ISO became a single market and began performing the 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 the NiSource Companies' generation market power screens.

⁹ See *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,163, order on reh'g, 109 FERC ¶ 61,157 (2004).

require unreasonable rates, terms, or conditions for natural gas service to a potential electric competitor, then the Commission may suspend the NiSource Companies' authority to sell electricity at market-based rates.¹⁰

Affiliate Abuse

14. The NiSource Companies state that they will not engage in prohibited affiliated transactions or reciprocal dealings. Further, the NiSource Companies state that their market-based rate tariffs contain codes of conduct and prohibit market-based transactions between NIPSCO and its affiliates. No intervenors have raised affiliate abuse concerns. Based on the NiSource Companies' representations, we find that the NiSource Companies satisfy the Commission's concerns with regard to affiliate abuse.

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.¹¹ Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.¹²

16. The Nisource Companies must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon

¹⁰ See, e.g., *Louisville Gas & Electric Co.*, 62 FERC ¶ 61,016 (1993).

¹¹ *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>.

¹² 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.

in granting market-based rate authority.¹³ 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, the NiSource Companies are directed, within 30 days of the date of issuance of this order, to revise their market-based rate tariff 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 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. NiSource Companies 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) NiSource Companies' updated market power analysis is hereby accepted for filing, as discussed in the body of this order.

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

¹³ *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) (Order No. 652).

(C) NiSource Companies are directed, within 30 days of the 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)

Magalie R. Salas,
Secretary.