

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Alliant Energy Corporate Services, Inc.

Docket Nos. ER99-230-007
ER03-762-007
EL05-5-001

ORDER ON REHEARING

(Issued April 14, 2005)

1. On January 19, 2005, Madison Gas and Electric Company and Wisconsin Public Power Inc. (collectively, Wisconsin TDUs) filed a timely request for rehearing of the Commission's December 20, 2004 order in these proceedings.¹ In the *December 20 Order*, the Commission instituted a proceeding under section 206 of the Federal Power Act (FPA)² based on Alliant Energy Corporate Services, Inc.'s (Alliant) failure of the generation market power screens in its Alliant-East and Alliant-West control areas, as well as the directly interconnected control area of Dairyland Power Cooperative (Dairyland). Additionally, the *December 20 Order* concluded that once the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) (where Alliant passes the generation dominance screens) becomes a single market, it would be considered the relevant geographic market for purposes of analyzing Alliant's market power. As discussed further below, in this order, the Commission will deny Wisconsin TDUs' request for rehearing. This order will further protect customers from excessive rates and charges that may result from the exercise of market power.

¹ *Alliant Energy Corporate Services*, 109 FERC ¶ 61,289 (2004) (*December 20 Order*).

² 16 U.S.C. § 824e (2000).

Background

2. On August 20, 2004, as amended on November 19, 2004, Alliant submitted for filing an updated market power analysis, including generation market power screens, in compliance with the Commission's May 13, 2004 order.³ In its filings, Alliant conceded that it failed the wholesale market share screen in its Alliant-East and Alliant-West control areas, and the Dairyland control area, prior to Midwest ISO becoming a single geographic market. As a result, Alliant did not submit an analysis for either the pivotal supplier screen or wholesale market share screen for its Alliant-East or Alliant-West control areas. Instead, Alliant attempted to rebut the presumption of market power created by its screen failures by submitting an analysis to demonstrate that it passes both the pivotal supplier screen and market share screen using either Midwest ISO or the transmission-congested American Transmission Company (ATCo) footprint as its relevant geographic market.

3. As the Commission stated in its April 14, 2004 order,⁴ where an applicant is found to have failed either generation market power screen, such failure provides the basis for instituting a proceeding under section 206 and establishes a rebuttable presumption of market power in the section 206 proceeding. Accordingly, because of Alliant's conceded failure of the wholesale market share screen, in the *December 20 Order*, the Commission instituted a section 206 proceeding to investigate generation market power issues in the Alliant-East, Alliant-West, and Dairyland control areas.

4. In instituting the section 206 proceeding, the Commission rejected Alliant's proposal to use the Midwest ISO as its relevant geographic market. The Commission noted its statement in the *April 14 Order* and *July 8 Order* that "this market delineation is not appropriate because applicants must be based in ISO/RTOs with sufficient market structure and a single energy market."⁵ Because Midwest ISO did not perform functions such as a single central commitment and dispatch, the Commission concluded that Alliant's assertion that it passes the generation market power screens in Midwest ISO and

³ *Acadia Power Partners, LLC*, 107 FERC ¶ 61,168 (2004).

⁴ *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (2004) (*April 14 Order*), *order on reh'g*, 108 FERC ¶ 61,026 (2004) (*July 8 Order*).

⁵ *December 20 Order* at P 30, *citing April 14 Order* at P 187-88 and *July 8 Order* at P 181.

the ATCo footprint was not sufficient evidence to rebut the presumption of market power at that time.⁶

5. Nevertheless, the Commission found that, as noted in the *April 14 Order*, once Midwest ISO becomes a single market and performs functions such as a single central commitment and dispatch with Commission-approved market monitoring and mitigation (then-scheduled for March 1, 2005), Midwest ISO would be considered to have a single geographic market for purposes of the generation market power screens.⁷ Based on the evidence provided by Alliant, the Commission concluded that Alliant passed the pivotal supplier screen and wholesale market share screen in the Midwest ISO market, once Midwest ISO became a single geographic market pursuant to the *April 14 Order*. Accordingly, the section 206 proceeding initiated by the Commission in the *December 20 Order* applied only until such time as Midwest ISO became a single geographic market. In response to Wisconsin TDUs' assertion in its protest that Alliant possesses market power in the Midwest ISO and the Wisconsin-Upper Michigan Systems (WUMS) area even after the implementation of a single Midwest ISO market, the Commission stated that the mitigation provisions in the Midwest ISO Transmission and Energy Markets Tariff (TEMT), and the cost-based redispatch service provided by ATCo, should address such concerns.⁸

Request for Rehearing

6. Wisconsin TDUs assert on rehearing that the Commission should not have limited the section 206 investigation to the period from the refund effective date to the date the Midwest ISO became a single geographic market. They argue that the Commission erred in failing to investigate Alliant's market power in the Wisconsin-Upper Michigan Systems (WUMS) area after Midwest ISO becomes a single geographic market. Specifically, Wisconsin TDUs contend that the Commission ignored facts that rebut the presumption that Midwest ISO (after becoming a single geographic market) is the relevant geographic market for assessing Alliant's market-based rate authority, and erred

⁶ Similarly, the Commission did not accept Alliant's proposed ATCo footprint analysis because ATCo does not perform functions such as single central commitment and dispatch as a single market.

⁷ *December 20 Order* at P 31, citing *April 14 Order* at P 188 and *July 8 Order* at P 181.

⁸ *December 20 Order* at P 35.

in concluding that Midwest ISO's market mitigation measures will specifically mitigate any market power that could be exercised by Alliant in the WUMS region.

7. Wisconsin TDUs argue that the Commission failed to meaningfully consider substantial evidence showing that transmission constraints separate WUMS from the remainder of Midwest ISO, contrary to its own policy. Wisconsin TDUs note that in the *July 8 Order*, the Commission stated that the presumption of an RTO-wide geographic market may be rebutted where transmission constraints give rise to smaller relevant geographic areas.⁹ Additionally, they point to an earlier Commission order, *Wisvest Connecticut, LLC*,¹⁰ where the Commission determined that an area smaller than the entire ISO New England, Inc. footprint should be the relevant geographic market for purposes of evaluating the competitive effects of a proposed divestiture transaction due to transmission constraints. Furthermore, Wisconsin TDUs assert that ignoring the effect of transmission constraints is inconsistent with the Commission's locational pricing policy in RTO markets, because such constraints have a direct effect on price separation between areas.

8. Wisconsin TDUs also reiterate the evidence included in their September 10, 2004 Protest that they assert rebuts the presumption that Midwest ISO is the relevant geographic market. They note that WUMS has been identified by the Midwest ISO Independent Market Monitor as a Narrow Constrained Area (NCA), due to the frequency of binding transmission constraints that result in one or more suppliers being pivotal.¹¹ Wisconsin TDUs argue that the factual significance of the NCA designation is that "WUMS is a separate geographic market when constraints bind."¹² Further, Wisconsin TDUs report what they say are other documented findings that WUMS is a separate geographic market, including: (1) the conclusion of Wisconsin state regulators that WUMS is an electric island; (2) the lack of uncommitted long-term firm transmission into or within Eastern Wisconsin; (3) the lack of monthly firm available transmission capacity between WUMS control areas during any month between November 2004 and December 2006; and (4) the single interface between WUMS and Midwest ISO is oversubscribed. Wisconsin TDUs contend that in the face of this evidence, the

⁹ Request for Rehearing of Wisconsin TDUs at 4, *citing July 8 Order* at P 177.

¹⁰ 96 FERC ¶ 61,101 (2001).

¹¹ *See* Request for Rehearing of Wisconsin TDUs at 5, *citing* section 63.4.1(b) of the Midwest ISO TEMT (defining NCA).

¹² Request for Rehearing of Wisconsin TDUs at 5.

Commission erred in assuming that Midwest ISO is the relevant geographic market, and has transformed the rebuttable presumption of an RTO-wide geographic market into an irrebutable presumption. Finally, they assert that the Commission failed to engage in the fact-based inquiry required by the FPA when they did not consider the specific effect of this evidence on Alliant's market power, and that to fulfill its FPA obligation, it should have at least set the question of the appropriate geographic region for hearing.

9. Wisconsin TDUs additionally argue that the Commission had no factual basis to conclude that the mitigation provisions in the Midwest ISO TEMT will address Alliant's ability to exercise market power in WUMS, and that in the context of assessing Alliant's market power for purposes of granting market-based rate authority, it must make a showing that the TEMT provisions will specifically mitigate Alliant's market power. Wisconsin TDUs state that the Commission's reliance in the *December 20 Order* on the tighter conduct and impact thresholds set by the TEMT in constrained areas such as WUMS is misplaced, because the reference levels and thresholds applicable to Alliant are not yet known, and under the terms of the TEMT, only the Independent Market Monitor and Alliant will know the reference levels. Further, Wisconsin TDUs assert that the Commission cannot rely on the TEMT mitigation provisions because neither the Commission nor the Independent Market Monitor specifically considered Alliant's market power when developing the mitigation measures. They argue that these mitigation measures cannot be considered sufficient in the market-based rate context because the thresholds included in them were not set as tightly as possible, to "balance market power concerns with investment incentives."¹³ Wisconsin TDUs state that this "market power tolerance" is inconsistent with the Commission's conclusion in its market-based rate orders that it may not authorize market-based rates where a seller has, or has not adequately mitigated, its market power, and the Commission's own statement that the TEMT mitigation measures and its market-based rate assessments are two different approaches that should not be used as precedent for one another.¹⁴ Finally, Wisconsin TDUs assert that the TEMT mitigation provisions are insufficient because they address market power only in the short-term markets.

¹³ *Id.* at 10, citing *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,163 (2004) and *Midwest Independent Transmission System Operator, Inc.*, 109 FERC ¶ 61,157 (2004) (regarding the Midwest ISO TEMT mitigation provisions).

¹⁴ Request for Rehearing of Wisconsin TDUs at 10, citing *April 14 Order* at P 40 and *Midwest Independent Transmission System Operator, Inc.*, 109 FERC ¶ 61,157 at P 242.

Discussion

10. The Commission will deny Wisconsin TDUs' request for rehearing. First, the Commission did not ignore the evidence presented by Wisconsin TDUs in its protest regarding the transmission constraints in the WUMS region. As Wisconsin TDUs state in their request for rehearing, the Commission has acknowledged on several occasions that transmission constraints are a problem in the WUMS region.¹⁵ Furthermore, in relying on the Midwest ISO TEMT provisions, the Commission noted that the tariff "contains provisions that address the Wisconsin TDUs concerns regarding [Midwest ISO's] *mitigation of transmission constraints and load pockets in WUMS.*"¹⁶ The Commission further noted that the tariff includes tighter thresholds of mitigation and bids in "highly constrained areas such as the WUMS and North WUMS NCAs," and that until the TEMT market monitoring and mitigation procedures are implemented, "ATCo's cost-based redispatch service will be in place to protect firm service and mitigate market power concerns in the load pockets of WUMS."¹⁷ In short, the Commission took account of the evidence provided by Wisconsin TDUs that transmission constraints exist in WUMS that could affect Alliant's ability to exercise market power, and found that the Midwest ISO TEMT provisions, as well ATCo's procedures, will address such concerns. Having proceeded on the basis that transmission constraints do exist that could have an impact on Alliant's market power and reaching a conclusion from that basis, there was no need to set the matter for hearing.

11. Wisconsin TDUs' assertion that the Commission's decision in the *December 20 Order* is contrary to Commission policy and renders the RTO-wide geographic market presumption irrebutable is similarly unpersuasive. In the *July 8 Order*, the Commission stated that "the ISO/RTO footprint or control area will not always be the appropriate geographic area to consider, and [we] have afforded the opportunity for the default relevant geographic market to be rebutted on a case-specific basis."¹⁸ The Commission further stated, however, that "all ISOs and RTOs have forms of local market power

¹⁵ See, e.g., *Wisconsin Public Service Corp.*, 109 FERC ¶ 61,319, n. 3 (2004) and citations therein.

¹⁶ *December 20 Order* at P 35 (emphasis added).

¹⁷ *Id.*

¹⁸ *July 8 Order* at P 177.

mitigation in place, and this mitigation can be taken into account in the analysis.”¹⁹ The tighter thresholds in NCAs such as WUMS in the Midwest ISO, and the resulting tighter mitigation of bids, are local market power mitigation measures. As noted above, the Commission took these forms of local market power mitigation, and their application to the WUMS area that Wisconsin TDUs are concerned is subject to the exercise of market power by Alliant, into account in its analysis, as the *July 8 Order* permits.

12. Additionally, Alliant stated in its August 20, 2004 updated market power analysis that it passes the generation market power screens within the ATCo footprint, with market share screen shares of less than 15.2 percent in each of the four seasons considered.²⁰ The ATCo footprint comprises the entirety of WUMS, and as a result, Alliant passes the generation market power screens within WUMS.

13. Wisconsin TDUs’ assertions that the mitigation provisions in the Midwest ISO TEMT are insufficient to specifically address Alliant’s ability to exercise market power in WUMS are without merit. The TEMT, by setting individual thresholds for Alliant, and specifically tightening such thresholds and mitigating bids in the WUMS NCA, specifically addresses the possibility that Alliant could exercise market power in WUMS. Furthermore, as the Commission noted in the *April 14 Order*, markets with Commission-approved market monitoring and mitigation “undertake daily and hourly oversight of seller’s pricing behavior to ensure, consistent with clearly established Commission approved rules, that prices do not exceed competitive levels.”²¹ Moreover, “[a]ll seller’s interactions with the market are required to comply with pre-determined bidding restrictions and Commission-approved rules and mitigation protocols,” and “[h]igh locational prices or binding transmission constraints can trigger the market monitor into further examining the market outcome.”²² The market monitoring and mitigation, now implemented in the Midwest ISO, should adequately address specific concerns regarding the possibility that Alliant can exercise market power in the WUMS region.

¹⁹ *Id.*

²⁰ *December 20 Order* at P 13.

²¹ *April 14 Order* at P 190.

²² *Id.*

14. Many of the arguments in Wisconsin TDUs' request for rehearing represent a collateral attack on the TEMT provisions that were considered and accepted by the Commission in another proceeding, and as a result we reject them.²³ Wisconsin TDUs' assertion that the TEMT mitigation thresholds "were not set as tightly as possible" is not only a collateral attack on the outcome of the TEMT proceeding, but also misconstrues the Commission's action in the TEMT proceeding. There, the Commission did not build "market power tolerance" into the mitigation provisions as Wisconsin TDUs claim, but instead sought to set thresholds that would not result in over-mitigation of market participants where "higher offers reflect higher costs, not manipulation."²⁴ Further, as noted above, the Commission has independently determined that the TEMT mitigation measures will address the potential for Alliant to exercise market power in WUMS, and has not "automatically" substituted the TEMT mitigation approach as precedent, as Wisconsin TDUs suggest.²⁵

The Commission orders:

Wisconsin TDUs' request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.

²³ See, e.g., *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator and the California Power Exchange*, 110 FERC ¶ 61,293 at P 25-26 (2005).

²⁴ *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,163 at P 316.

²⁵ See *Midwest Independent Transmission System Operator, Inc.*, 109 FERC ¶ 61,157 at P 242 (noting the differences between the analysis of market power mitigation in the Midwest ISO and the market-based rates assessment, and stating that "pieces of one should not automatically be used as precedent for the other.")