

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Alliant Energy Corporate Services, Inc.

Docket Nos. ER99-230-008
ER03-762-008
EL05-5-002

ORDER ON PROPOSED MITIGATION MEASURES

(Issued September 19, 2005)

1. In this order the Commission accepts Alliant Energy Corporate Services, Inc.'s (Alliant) mitigation proposal, and finds that the start of the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) markets obviates the need for further investigation into Alliant's generation market power in the Dairyland control area.

Background

2. On December 18, 2001, Alliant filed an updated market power analysis pursuant to the Commission's order granting Alliant authority to sell electric energy and capacity at market-based rates.¹

3. On August 20, 2004, as amended on November 19, 2004, Alliant filed a revised 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 in the *April 14 Order*, and clarified in the *July 8 Order*. Alliant also submitted revised tariff sheets to its market-based rate tariff to include the Commission's market behavior rules.³

¹ See *Alliant Services Company*, 85 FERC ¶ 61,344 (1998), *reh'g denied*, 99 FERC ¶ 61,004 (2002), *order on clarification*, 100 FERC ¶ 61,002 (2002).

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

³ *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).

4. In its revised market power analysis, Alliant conceded that it failed the wholesale market share screen for its Alliant-East and Alliant-West control areas, as well as the Dairyland control area. In an attempt to rebut the presumption of market power created by these screen failures, Alliant presented evidence demonstrating that it passes both the pivotal supplier and wholesale market share screens when applied using the Midwest ISO market and American Transmission Company (ATCo) footprint as its relevant geographic market.

5. On December 20, 2004, the Commission issued an order⁴ on Alliant's updated market power analysis. Among other things, the *December Order* instituted a proceeding pursuant to section 206 of the Federal Power Act (FPA)⁵ to determine whether Alliant may continue to charge market-based rates and established a refund effective date.

6. This section 206 proceeding was limited to the Alliant-East, Alliant-West and Dairyland control areas. Pursuant to the *April 14 Order*, the Commission directed in the *December Order* that Alliant, for the Alliant-East, Alliant-West and Dairyland control areas, either: (a) file a delivered price test analysis; (b) file a mitigation proposal tailored to its particular circumstances that would eliminate the ability to exercise market power; or (c) inform the Commission that it will adopt the *April 14 Order's* default cost-based rates or propose other cost-based rates and submit cost support for such rates.⁶ In addition, the Commission stated that Alliant may present evidence such as historical sales data to support whether the applicant does or does not possess market power.

7. On February 18, 2005, Alliant submitted a mitigation proposal in response to the Commission's *December Order*, as discussed below.

8. 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."⁷ Because Midwest ISO did not perform functions

⁴ *Alliant Energy Corporate Services, Inc.*, 109 FERC ¶ 61,289 (2004) (*December Order*), *order on reh'g*, 111 FERC ¶ 61,025 (2005).

⁵ 16 U.S.C. § 824e (2000).

⁶ *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (*April 14 Order*), *order on reh'g*, 108 FERC ¶ 61,026 (2004) (*July 8 Order*).

⁷ *December Order* at P 30, *citing April 14 Order* at P 187-88 and *July 8 Order* at P 181.

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 the ATCo footprint was not sufficient evidence to rebut the presumption of market power at that time.⁸

9. 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.⁹ 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*. In response to assertions by intervenors 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, and that consequently the RTO-wide geographic market presumption in the *April 14 Order* should not apply, 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.¹⁰

10. The *December Order* also found that Alliant satisfied the Commission's transmission market power standard for the grant of market-based rate authority and that Alliant and its affiliates cannot erect barriers to entry. With regard to affiliate abuse, the Commission directed Alliant to amend its Tariff MR-2 to prohibit sales under that tariff between Alliant and any affiliate without first receiving Commission acceptance of the proposed transactions pursuant to a section 205 filing, as Alliant offered in its May 23, 2003 answer and its November 19, 2004 response to a Commission data request.¹¹ With this commitment, the Commission found that Alliant satisfies the Commission's standards with regard to affiliate abuse.

⁸ 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.

⁹ *December Order* at P 31, citing *April 14 Order* at P 188 and *July 8 Order* at P 181.

¹⁰ *December Order* at P 35; see also order on reh'g, 111 FERC ¶ 61,025 at P 10-14.

¹¹ *December Order* at P 40-41.

Alliant's February 18 Filing

11. In its filing in response to the *December Order*, Alliant proposes mitigation measures that it states are designed to eliminate any potential it may have to exercise generation market power in the Alliant-East, Alliant-West or Dairyland control areas prior to the commencement of the Midwest ISO energy markets (April 1, 2005). Specifically, Alliant commits in its filing to refrain from making wholesale power sales at market-based rates under its market-based rate tariffs in the Alliant-East, Alliant-West and Dairyland control areas prior to the commencement of the Midwest ISO energy markets. Alliant states that during the interim period prior to the start of the Midwest ISO markets, Alliant affiliates Wisconsin Power and Light Company (WPL) and Interstate Power and Light Company (IPL) will make wholesale power sales in the Alliant-East, Alliant-West and Dairyland control areas under cost-based wholesale power sales tariffs that WPL and IPL currently have on file at the Commission.¹²

12. Alliant states that pursuant to the *December Order*, it will resume making market-based rate wholesale power sales in the Alliant-East, Alliant-West, and Dairyland control areas following the commencement of the Midwest ISO energy markets. Furthermore, Alliant argues that the Commission should terminate the section 206 proceeding established in the *December Order*, because the commencement of the Midwest ISO energy markets on April 1, 2005 has rendered moot the factual predicate upon which the Commission based its 206 proceeding. Specifically, the commencement of the Midwest ISO energy markets resolves the market power concerns in the Alliant-East, Alliant-West and Dairyland control areas that were the subject of the investigation. Additionally, Alliant contends that for the brief period from the refund effective date (March 15, 2005) until the start of Midwest ISO market operations (April 1, 2005), Alliant's commitment to refrain from making wholesale power sales at market-based rates has eliminated any potential for it to exercise market power, and that investigating such a short time period where the possibility to exercise generation market power is remote is not warranted.

Notice of Filing and Responsive Pleadings

13. Notice of Alliant's February 18, 2005 filing was published in the *Federal Register*¹³ with interventions or protests due on or before March 11, 2005. GEN-SYS Energy (Gen-Sys) filed a motion to intervene and protest. Madison Gas & Electric

¹² *Wisconsin Power & Light Company*, Docket No. ER94-1204-000 (July 25, 1994) (unpublished letter order) and *Interstate Power Company*, Docket No. ER97-1601-000 (January 14, 1998) (unpublished letter order).

¹³ 70 Fed. Reg. 11,228 (2005).

Company and Wisconsin Public Power Inc. (Wisconsin TDUs) filed a protest. On March 15, 2005, Western Wisconsin Municipal Power Group filed a motion to intervene out-of-time in support of the motion to intervene and protest of Gen-Sys.

14. In its protest, Gen-Sys states that it does not object to Alliant's proposed mitigation for the Alliant-East and Alliant-West control areas, or to Alliant making market-based rate wholesale power sales in the Alliant-East and Alliant-West control areas after the commencement of the Midwest ISO energy markets. However, Gen-Sys notes that the Dairyland control area is not within the footprint of Midwest ISO, and that as a result, load within that control area will not be in the Midwest ISO energy markets. Therefore, Gen-Sys asserts, the February 18, 2005 filing has failed to propose mitigation measures to address Alliant's market power in the Dairyland control area after the start of the Midwest ISO energy markets, and thus fails to comply with the *December Order*. Gen-Sys contends that the Commission should reject this aspect of Alliant's compliance filing.

15. Wisconsin TDUs contend in their protest that the Commission should expand the scope of the section 206 proceeding established in the *December Order* to include the period after the commencement of the Midwest ISO energy markets. They argue that the presumption of an RTO-wide relevant geographic market set forth in the *April 14 Order* has been rebutted by the evidence offered in this proceeding regarding the Wisconsin-Upper Michigan Systems (WUMS) load pocket. Additionally, they assert that the Commission cannot rely on the Midwest ISO's market mitigation measures to mitigate Alliant's market power in the WUMS region.

Discussion

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹⁴ the timely, unopposed motion to intervene of Gen-Sys serves to make it a party to this proceeding. Additionally, pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, we will grant the motion to intervene out-of-time of Western Wisconsin Municipal Power Group, given its interest in this proceeding and the absence of any undue prejudice or burden.

17. In the *December Order*, the Commission noted that Alliant failed the wholesale market share screen in both of its home control areas (Alliant-East and Alliant-West), as well as the Dairyland control area.¹⁵ The Commission rejected a proposal made by

¹⁴ 18 C.F.R. § 385.214 (2005).

¹⁵ *December Order* at P 28, 30.

Alliant to use the Midwest ISO as its geographic market for purposes of the generation market power analysis, because Midwest ISO was not performing functions such as single central commitment and dispatch at that time.¹⁶ The Commission stated, however, that once Midwest ISO became a single market and began performing such functions (with Commission-approved market monitoring and mitigation), Alliant would pass the generation market power screens for the Midwest ISO market.¹⁷

18. In response to Gen-Sys' protest, the Commission finds that the start of the Midwest ISO markets obviates the need for further investigation into Alliant's generation market power in the Dairyland control area. When a generator is interconnected to a non-affiliate owned transmission system, the Commission has historically considered the relevant geographic market to be only the control area where the generator is located.¹⁸ Given that Alliant is in the Midwest ISO, and the transmission systems to which it is interconnected are controlled by the Midwest ISO, buyers in Dairyland have better assurance of access to competing sources of supply that they did not have before Midwest ISO became operational. Furthermore, had the Midwest ISO been performing functions such as single central commitment and dispatch when Alliant submitted its updated market power analysis, it would not have been required to perform an analysis for the Dairyland control area in the first instance. With the Midwest ISO now performing these functions, we will analyze this case in light of changed circumstances and not require an analysis or mitigation for the Dairyland control area.¹⁹

19. In addition, the Commission concludes that in the unique circumstances of this case, Alliant's proposed mitigation measures for the Alliant-East, Alliant-West and Dairyland control areas for the period between the refund effective date and the April 1, 2005 start of the Midwest ISO markets satisfies our concerns. As noted above, Alliant commits to not make market-based rate sales during this period, and to make sales under its affiliates' cost-based wholesale power sales tariffs, currently on file with the Commission. In the specific circumstances presented here, where mitigation is only required for a very short period from the refund effective date to the start of the Midwest ISO markets (with single central commitment and dispatch and Commission-approved market monitoring and mitigation), the Commission finds that Alliant's proposed

¹⁶ *Id.* at 30.

¹⁷ *Id.* at 31.

¹⁸ *See April 14 Order* at P 73, n. 64.

¹⁹ We also note that Alliant owns no generation in the Dairyland control area.

mitigation measures adequately address the concerns raised by Alliant's failure of the generation market power screens. Accordingly, we will terminate the proceeding initiated under section 206 of the FPA in Docket No. EL05-5-000.

20. Finally, Wisconsin TDUs' arguments have already been addressed by the Commission in this proceeding, and thus we reject them. As we note above, in the *December Order* the Commission rejected these same arguments, finding that the market monitoring and mitigation provisions in the Midwest ISO TEMA and ATCo's cost-based redispatch service will protect firm service and address market power concerns in the WUMS load pocket.²⁰ Furthermore, in our order on rehearing of the *December Order*, the Commission again rejected Wisconsin TDUs' contention and affirmed its finding that the Midwest ISO TEMA will adequately mitigate any potential exercise of market power in the WUMS region.²¹

21. Alliant is directed to file an updated market power analysis within three years of the date of this order. The Commission also reserves the right to require such an analysis at any intervening time.

22. To the extent Alliant made sales at market-based rates during the period between the refund effective date and the start of the Midwest ISO markets, the Commission directs Alliant to apply the mitigation proposal accepted in this order to those sales and make any refunds required. We also direct Alliant to submit a refund report no later than 15 days after the date refunds are made.

The Commission orders:

(A) The Commission accepts Alliant's proposed mitigation measures for the period from the refund effective date to the start of the Midwest ISO markets, as discussed in the body of this order.

(B) The Commission hereby terminates the proceeding initiated in Docket No. EL05-5-000 under section 206 of the FPA, as discussed in the body of this order.

(C) Alliant's next updated market power analysis is due within three years of the date of this order.

²⁰ *December Order* at P 35.

²¹ *See Alliant Energy Corporate Services, Inc.*, 111 FERC ¶ 61,025 at P 10-14.

(D) Alliant is hereby directed to submit a refund report no later than 15 days after the date refunds are made.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.