

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. ER99-230-006
ER99-230-005
ER99-230-004
ER99-230-002
ER03-762-005
ER03-762-001
ER03-762-000
EL05-5-000

ORDER ON UPDATED MARKET POWER ANALYSIS, INSTITUTING SECTION
206 PROCEEDING AND ESTABLISHING REFUND EFFECTIVE DATE

(Issued December 20, 2004)

1. On August 20, 2004, as amended on November 19, 2004, Alliant Energy Corporate Services, Inc. (Alliant), acting as agent for Wisconsin Power and Light Company (Wisconsin Power) and Interstate Power and Light Company (Interstate Power), submitted for filing an updated market power analysis pursuant to the Commission's order issued on May 13, 2004.¹ The May 13 Order addressed the procedures for implementing the generation market power analysis announced on April 14, 2004 and July 8, 2004.²

2. In the updated market power analysis, as amended, Alliant concedes that it fails the wholesale market share screen in both its Alliant-East (Wisconsin and Illinois) and Alliant-West (Iowa and Minnesota) control areas. As a result, Alliant did not include a

¹ *Acadia Power Partners, LLC, et al.*, 107 FERC ¶ 61,168 (2004) (May 13 Order).

² *AEP Power Marketing, Inc., et al.*, 107 FERC ¶ 61,018 (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004) (July 8 Order).

pivotal supplier screen or wholesale market share screen for these control areas. However, as more fully discussed in this order, Alliant has submitted pivotal supplier and wholesale market share screens for eleven directly-interconnected control areas, and for the Midwest Independent Transmission System Operator, Inc. (MISO) market area.³ Alliant states that it passes both generation market power screens in all directly-interconnected control areas except Dairyland Power Cooperative (Dairyland) and in the MISO market. Intervenors have filed protests alleging that Alliant-East has market power and requesting customer protection.

3. As the Commission stated in the April 14 Order, 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 of the Federal Power Act (FPA)⁴ and establishes a rebuttable presumption of market power in the section 206 proceeding.⁵ Accordingly, as discussed below, in this order, the Commission institutes a proceeding pursuant to section 206 to determine whether Alliant may continue to charge market-based rates and establishes a refund effective date pursuant to the provisions of section 206. The instant section 206 proceeding, as well as any resulting mitigation or refunds, will address Alliant's Alliant-East and Alliant-West control area markets, and the Dairyland control area market, because Alliant's filing indicates that these are the geographic markets for which Alliant fails the wholesale market share screen.

4. However, once MISO becomes a single market and performs functions such as single central commitment and dispatch with Commission-approved market monitoring and mitigation (currently scheduled for March 1, 2005), MISO would be considered to have a single geographic market for purposes of the generation dominance screens. As discussed below, Alliant passes both generation market power screens in the MISO market. Therefore the section 206 proceeding initiated here, including the refund protection, applies only until such time as MISO becomes a single market and performs functions such as single central commitment and dispatch with Commission-approved market monitoring and mitigation.

³ Alliant has also included a separate screen analysis for the portion of MISO's market located in its Alliant-East control area comprised of the Wisconsin-Upper Michigan Systems (WUMS) region in which the American Transmission Company LLC (ATCo) owns and operates the transmission system (the ATCo "footprint").

⁴ 16 U.S.C. § 824e (2000).

⁵ April 14 Order, 107 FERC ¶ 61,018 at P 201.

5. This order, including the refund effective date, will protect customers from excessive rates and charges that may result from the exercise of market power.

Background

6. 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.⁶ 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, 2004.⁷ Alliant also submitted revised tariff sheets⁸ to its market-based rate tariff to include the Commission's market behavior rules.⁹

7. In the April 14 Order, as clarified by the July 8 Order, the Commission adopted two indicative screens for assessing generation market power: a pivotal supplier screen and a wholesale market share screen. The Commission stated that passage of both screens establishes a rebuttable presumption that the applicant does not possess generation market power, while failure of either screen creates a rebuttable presumption that the applicant has generation market power. The Commission further stated that applicants and intervenors may, however, rebut the presumption established by the results of the initial screens by submitting a Delivered Price Test. Alternatively, an applicant may accept the presumption of market power or forego the generation market power

⁶ 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).

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

⁸ FERC Electric Rate Schedule No. 1, Revised Sheet No. 1 and Original Sheet Nos. 2-3.

⁹ *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).

analysis altogether and go directly to mitigation.¹⁰ The May 13 Order directed Alliant to file within thirty days of the issuance of that order generation market power analyses pursuant to these two indicative screens.¹¹

8. On October 29, 2004, the Director, Division of Tariffs and Market Development – South, acting pursuant to delegated authority, issued a data request seeking additional information relating to Alliant’s submittal. On November 19, 2004, Alliant filed a response to the data request.

Description of Alliant’s Filing

9. Alliant-East and Alliant-West are located in MISO’s geographic market area. Alliant explains that Wisconsin Power and an affiliate, South Beloit Water, Gas and Electric Company (South Beloit), have turned operation and control of their transmission facilities, which are primarily located in the Alliant-East control area, to ATCo¹² which is part of MISO. Interstate Power, whose transmission facilities are located in the Alliant-West control area, owns and operates its transmission facilities under the operational control of MISO.¹³ Interstate Power jointly operates its control area with the Central Iowa Power Cooperative.

10. In its updated market power analysis, Alliant concedes that it fails the wholesale market share screen prior to MISO becoming a single market and performing functions such as single central commitment and dispatch with Commission-approved market monitoring and mitigation and thus has not supplied an analysis for either the pivotal supplier screen or market share screen for the Alliant-East or Alliant-West control areas. However, Alliant states that it passes the pivotal supplier screen when it is applied to each

¹⁰ In addition, as the Commission stated in the April 14 Order, 107 FERC ¶ 61,018 at P 37, the applicant or intervenors may present evidence such as historical sales data to support whether the applicant does or does not possess market power.

¹¹ May 13 Order, 107 FERC ¶ 61,168 at Appendix A.

¹² See *Wisconsin Power and Light Company*, 90 FERC ¶ 61,347 (2000), and *South Beloit Water, Gas and Electric Company*, 92 FERC ¶ 62,266 (2000).

¹³ See *Alliant Energy Corporate Services, Inc.*, 90 FERC ¶ 61,344 (2000).

of its eleven directly-interconnected control areas.¹⁴ Alliant further states that it passes the wholesale market share screen in ten of these eleven markets with market shares between 1.3 percent and 15.8 percent in each of the four seasons considered, but fails the wholesale market share screen when it is applied to the Dairyland control area market in the summer season.¹⁵

11. In an effort to rebut the presumption of market power as indicated by the failure of the wholesale market share screen, Alliant has performed what it describes as an abbreviated and highly conservative analysis to demonstrate that Alliant passes both the pivotal supplier screen and the wholesale market share screen using the MISO market and the ATCo footprint as its relevant geographic markets.

12. Alliant states that it included only a subset of MISO's suppliers and ignored import capability other than from Alliant. Alliant states that it passes both the pivotal supplier screen and the wholesale market share screen (with market shares less than 11.7 percent in each of the four seasons considered) using MISO as the relevant geographic market. According to Alliant, it can be presumed that since it passes both indicative screens using such conservative assumptions, it would pass both screens with even greater margins if all MISO participants and import capabilities were included in the analysis.

13. In addition, Alliant states that it passes both screens when applied to the transmission-congested ATCo footprint with wholesale market share screen shares less than 15.2 percent in each of the four seasons considered. Alliant also contends that its passage of the indicative screens in the MISO and ATCo markets proves that it lacks generation market power and rebuts any presumption of generation market power raised

¹⁴ Alliant has prepared an indicative screen analysis for the following directly-interconnected, first tier, control areas: Associated Electric Cooperative, Inc; Ameren Corporation; Commonwealth Edison Company; Dairyland; MidAmerican Energy Company; Madison Gas and Electric Company (Madison); Muscatine Power and Water; Northern States Power d/b/a Excel Energy; Western Area Power Administration; Wisconsin Electric Power Company; and Wisconsin Public Service Corporation (Wisconsin Public Service).

¹⁵ Alliant's share of uncommitted capacity in the Dairyland control area in the summer season is 21.2 percent and between 10.9 percent and 16.2 percent in the other three seasons considered.

by its failure of the indicative screens in the Alliant-East, Alliant-West, and Dairyland control area markets. Accordingly, Alliant proposes to adopt the MISO footprint as its relevant geographic market.

14. Notwithstanding Alliant's assertion that it passes both indicative screens in the MISO and ATCo footprints, Alliant argues that the Commission's wholesale market share screen is flawed because: (a) it fails to take market size into account; (b) the 20 percent threshold is very low for supporting market power inferences; (c) there is an insufficient accounting for native load obligations in the development of applicants' uncommitted capacities; (d) there is a mismatch between the native load development process and the generating capacity that is likely to be economic in the dispatch at the assumed low native load levels; and (e) there is an unnecessary and diverting focus on off-peak periods. Alliant submits that traditional vertically-integrated utilities that operate their own generation in their control areas to serve their native load obligations will inevitably fail the wholesale market share screen even in situations where there is no reasonable prospect that they will be able to exercise market power in wholesale electricity markets.

15. Alliant asks the Commission to find that it passes the indicative screens and requests that the Commission not implement mitigation during the interim period before MISO's single market is operational on March 1, 2005.¹⁶ If the Commission does find a screen failure, Alliant states that it reserves the right to file a delivered price test analysis, or other supplemental information and analysis that demonstrates that it cannot exercise market power in the affected control areas, or take such other action as permitted in the April 14 Order.

16. In its response to the Commission's data request, Alliant provided additional information regarding the pivotal supplier and wholesale market share screens for its first-tier control areas, the transmission market power, barriers to entry and affiliate abuse/reciprocal dealing prongs of the Commission's four-part test for granting market-based rate authority, and a revision to its Tariff MR-2 market-based rate tariff adding the market behavior rules.¹⁷

¹⁶ See *Midwest Independent Transmission System Operator, Inc.*, 107 FERC ¶ 61,191 (2004).

¹⁷ *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218 at Ordering Paragraph (A) (2003) (Market Behavior Rules Order).

Notice of Filing and Responsive Pleadings

17. Notice of Alliant's December 2001 market power analysis in Docket No. ER99-230-002 was published in the *Federal Register*, 67 Fed. Reg. 67 (2002), with interventions or protests due on or before January 8, 2002. Madison Gas and Electric Company and Wisconsin Public Power Inc. (Wisconsin TDUs) jointly filed a protest arguing that the Commission should not permit Alliant to exercise market-based rate authority because Alliant-East has generation and transmission market power. In this regard, Wisconsin TDUs alleged that Alliant's SMA analysis is flawed with regard to its analysis of the WUMS area. The Municipal Wholesale Power Group (Municipal Group) filed a late motion to intervene in support of the protest filed by Wisconsin TDUs.

18. Notice of the August 20, 2004 updated market power analysis in Docket No. ER99-230-005 was published in the *Federal Register*, 69 Fed. Reg. 53,430 (2004), with interventions or protests due on or before September 10, 2004. Wisconsin TDUs filed a timely motion to intervene and protest.¹⁸ On September 22, 2004, Municipal Group filed an untimely motion to intervene in support of Wisconsin TDUs' motion to intervene and protest. On September 28, 2004, Alliant filed an answer to the protests. On October 8, 2004, Wisconsin TDUs filed an answer objecting to Alliant's answer. On October 18, 2004, WPS Corporation, on behalf of Wisconsin Public Service Corporation, Upper Peninsula Power Company, WPS Power Development, Inc. and WPS Energy Services Inc. (collectively WPS Corporation) filed an untimely motion to intervene in Docket No. ER99-230-005.

19. Notice of the November 19, 2004 filing in Docket Nos. ER99-230-006 and ER03-762-005 was published in the *Federal Register*, 69 Fed. Reg. 69,596 (2004), with interventions or protests due on or before December 7, 2004. None was filed.

20. Wisconsin TDUs request that the Commission find that Alliant has failed to rebut the presumption that it has market power associated with its screen failures. Wisconsin TDUs request that the Commission promptly initiate a section 206 proceeding, require Alliant to submit a delivered price test, and establish the earliest possible refund effective date for Alliant-East sales to Wisconsin TDUs.

21. Wisconsin TDUs argue that Alliant's submission and purported passage of a MISO-wide and ATCo-wide indicative screen analysis does not excuse its failure to submit its control area market screens and does not rebut the presumption of market

¹⁸ On September 13, 2004, Wisconsin TDUs also filed a letter correcting an inadvertent error to its September 10, 2004 protest.

power because, as Alliant concedes, MISO will not become the default geographic market until March 1, 2005. Wisconsin TDUs proffer that a MISO-wide analysis will not be relevant even after commencement of MISO's markets because the Commission expressly recognized in the July 8 Order that even in an RTO with Commission-approved market monitoring, an RTO-wide geographic market is rebuttable on a case specific basis, especially in the case of load pockets.¹⁹

22. In this regard, Wisconsin TDUs argue that the highly-constrained WUMS load pocket cannot be considered to be part of the same geographic market as the remainder of MISO because there is no uncommitted long-term firm transfer capability into eastern Wisconsin from any direction and, within WUMS, there is no uncommitted long-term transfer capability between any of its five control areas. In support of this position, Wisconsin TDUs point to the Public Service Commission of Wisconsin's description of the WUMS as an "electric island system, a limited market in which a large electric generating firm can obtain leverage over the prices paid for electricity."²⁰ In addition, Wisconsin TDUs submit that studies performed by other parties support the need for mitigation in the Alliant-East control area. As an example, Wisconsin TDUs point to the MISO Independent Market Monitor's 2003 State of the Market Report²¹ which concludes that the Hirschman-Herfindahl Index (HHI) in WUMS is a highly concentrated 2,656, and WUMS and North WUMS are Narrow Constrained Areas (NCAs).²²

23. Wisconsin TDUs state that historical data shows circumstances under which Alliant-East exercises market power in that it is the only supplier for MG&E. Wisconsin TDUs submit supporting data which purportedly shows that MG&E can only purchase power from Alliant-East when the Paddock Transformer of the Paddock Rockdale transmission line is constrained. According to Wisconsin TDUs, when this flowgate

¹⁹ July 8 Order, 108 FERC ¶ 61,026 at P 177.

²⁰ See Approval of Affiliated Interest Transactions Between W.E. Power, LLC, Wisconsin Power Co., and Wisconsin Energy Company, PSCW Docket No. 05-AE-109, Final Decision, December 20, 2002 at 23-24.

²¹ Independent Market Monitor, MISO, Highlights of the MISO 2003 State of the Market Report, at 7.

²² Article 63.4.1(b) of MISO's Open Access Transmission and Energy Markets Tariff defines NCA as constrained areas "within which one (1) or more suppliers are pivotal."

(No. 3012) is the limiting factor, the only permissible transactions for MG&E are from Alliant, and it is Alliant generation that is most capable of relieving this constraint to permit MG&E to import energy for economic or reliability reasons.²³

24. In its answer, Alliant states that MG&E has firm transmission service from the Commonwealth Edison control area that can be used to import energy when non-firm service is being curtailed due to flowgate 3012. In addition, Alliant notes that the members of ATCo have developed a cost-based redispatch provision to preserve all firm network service on its system and prevent curtailment, including firm service on the Paddock-Rockdale line. Alliant states in its answer that if its Alliant-East generators are the most effective redispatch to preserve firm network service on flowgate 3012, they will be redispatched at cost to preserve reliability. Alliant submits that cost-based redispatch eliminates market power concerns to protect firm service.

Procedural Matters

25. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Given their interests in this proceeding, the early stage of this proceeding and the absence of any undue delay or prejudice, the Commission finds good cause to grant the untimely, unopposed motions to intervene of the Municipal Group, and the untimely motion to intervene of WPS Resources Corporation in Docket No. ER99-230-005.

26. Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a protest or to an answer unless otherwise ordered by the decisional authority. The Commission will accept Alliant's and Wisconsin TDUs answers because they have provided information that assisted us in our decision-making process.

²³ See Exhibits 1- 3 of Wisconsin TDUs protest.

Discussion

Market-Based Rate Authorization

27. 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.²⁴

Generation Market Power

28. Alliant concedes that it fails the wholesale market share screen in both its Alliant-East and Alliant-West control areas. Also, Alliant's analysis indicates that it fails the wholesale market share screen in the Dairyland market.

29. Alliant presents alternative evidence (adoption of the MISO or ATCo footprint as its relevant geographic market) to rebut the presumption of market power. Alliant argues that this alternative evidence demonstrates that Alliant does not have generation market power in its Alliant-West and Alliant-East control areas during both peak and non-peak times.

30. With regard to Alliant's proposal to use MISO as its geographic market, the Commission stated in the April 14 and July 8 Orders that this market delineation is not appropriate because applicants must be based in ISO/RTOs with sufficient market structure and a single energy market.²⁵ MISO currently does not perform functions such as a single central commitment and dispatch. Accordingly, Alliant's assertion that it

²⁴ See, e.g., *Progress Power Marketing, Inc.*, 76 FERC ¶ 61,155 at 61,921-22 (1996); *Northwest Power Marketing Co., L.L.C.*, 75 FERC ¶ 61,281 at 61,899-900 (1996); *accord Heartland Energy Services, Inc., et al.*, 68 FERC ¶ 61,223 at 62,062-63 (1994).

²⁵ April 14 Order, 107 FERC ¶ 61,018 at P 187-88 and July 8 Order, 108 FERC ¶ 61,026 at P 181.

passes both screens in the MISO or ATCo geographic markets is not sufficient evidence to rebut a presumption of market power at this time.²⁶ Accordingly, Alliant fails the wholesale market share screen in the Alliant-East, Alliant-West and Dairyland control areas.²⁷

31. Nevertheless, as the Commission noted in the April 14 Order, once MISO becomes a single market and performs functions such as a single central commitment and dispatch with Commission-approved market monitoring and mitigation (which is currently scheduled for March 1, 2005), MISO would be considered to have a single geographic market for purposes of our generation dominance screens.²⁸ Based on the analysis provided by Alliant, Alliant passes both the pivotal supplier screen and the wholesale market share screen for the MISO market once MISO becomes a single market and performs these functions with Commission-approved market monitoring and mitigation (which is currently scheduled for March 1, 2005). The Commission also finds that Alliant satisfies the Commission's generation market power standard for the grant of market-based rate authority in the first-tier control areas of Alliant excluding Dairyland.

32. As outlined in the April 14 Order, Alliant's failure of the wholesale market share screen provides the basis for the Commission to institute the instant section 206 proceeding, which is limited to the Dairyland, Alliant-East and Alliant-West control areas, to determine whether Alliant may continue to charge market-based rates, and establishes a rebuttable presumption of market power. This order establishes a refund effective date in order to put in place the necessary procedural framework to promptly impose an effective remedy, in case the Commission determines that such a remedy is required. Our decision to establish a refund effective date does not constitute a determination that refunds will be ordered.

²⁶ Similarly, the Commission will 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.

²⁷ The Commission finds no merit to Alliant's argument that the screens are flawed. Our July 8 Order considered and rejected arguments regarding potential flaws in the Commission's pivotal supplier and market share screens.

²⁸ April 14 Order, 107 FERC ¶ 61,018 at P 188 and July 8 Order, 108 FERC ¶ 61,026 at P 181.

33. Our decision to institute the instant section 206 proceeding does not constitute a definitive finding by the Commission that Alliant has market power in the Alliant-West, Alliant-East and Dairyland control areas. As discussed in the April 14 and July 8 Orders, the screens are conservatively designed to identify the subset of applicants who require closer scrutiny. Accordingly, for the Dairyland, Alliant-West and Alliant-East control areas, Alliant will have 60 days from the date of issuance of this order finding a screen failure to: (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.²⁹ In addition, as the Commission stated in the April 14 Order,³⁰ the applicant or intervenors may present evidence such as historical sales data to support whether the applicant does or does not possess market power.

34. In cases where, as here, the Commission institutes a section 206 proceeding on its own motion, section 206(b) requires that the Commission establish a refund effective date that is no earlier than 60 days after publication of notice of the initiation of the Commission's proceeding in the *Federal Register*, and no later than five months subsequent to the expiration of the 60-day period. In order to give maximum protection to customers, and consistent with our precedent,³¹ the Commission will establish a refund effective date at the earliest date allowed. This date will be 60 days from the date on which notice of the initiation of the proceeding in Docket No. EL05-5-000 is published in the *Federal Register*. In addition, section 206 requires that, if no final decision has been rendered by that date, the Commission must provide its estimate as to when it reasonably expects to make such a decision. Given the times for filing identified in this order, and the nature and complexity of the matters to be resolved, the Commission estimates that it will be able to reach a final decision by April 29, 2005.

²⁹ April 14 Order, 107 FERC ¶ 61,018 at P 201, 207-209.

³⁰ *Id.* at P 37.

³¹ *See, e.g., Canal Electric Company*, 46 FERC ¶ 61,153, *reh'g denied*, 47 FERC ¶ 61,275 (1989).

35. Further, as noted above, Wisconsin TDUs and Municipal Group argue that Alliant has transmission market power that results in Alliant having generation market power. However, in our August 6, 2004 order in *Midwest Independent System Operator, Inc.*,³² the Commission accepted for filing MISO's Open Access Transmission and Energy Markets Tariff (TEMT), which contains provisions that address the Wisconsin TDUs' concerns regarding MISO's mitigation of transmission constraints and load pockets in WUMS. The TEMT establishes threshold levels for offers, with mitigation of bids that exceed such thresholds. In highly constrained areas such as the WUMS and North WUMS NCAs, the conduct and impact thresholds are set more tightly than in less constrained areas, providing for more frequent mitigation because market power is more likely to be exercised on a recurring basis in these areas.³³ Until MISO's 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. In this regard, we find that Wisconsin TDUs and Municipal Group's concerns are being adequately addressed.

Transmission Market Power

36. 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. In its November 19, 2004 response to the Commission's data request, Alliant states that open access transmission service over its transmission facilities is available from MISO, a Commission-approved regional transmission organization, under MISO's OATT on file with the Commission. As noted above, MISO's TEMT was recently approved by the Commission.³⁴ Accordingly, because operation and control of the Wisconsin Power transmission facilities have been turned over to ATCo, which is part of MISO, and Interstate Power's transmission facilities are under the operational control of MISO, and MISO has its TEMT on file with the Commission, the Commission finds that Alliant satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

³² *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,163 (2004), *reh'g pending*.

³³ *Id.*, 108 FERC ¶ 61,163 at P 307-312. We note that issues regarding the mitigation provisions in MISO's TEMT tariff are currently pending on rehearing. Thus, concerns regarding the adequacy of the mitigation provisions are appropriately addressed in that proceeding.

³⁴ *See Id.*

Barriers to Entry

37. In its November 19, 2004 response to the Commission's data request, Alliant explains that neither it nor any of its affiliates owns or controls natural gas transmission systems, sites for potential construction of new generation, or any other key inputs into the domestic power supply industry that may be used to create barriers to entry for competing power suppliers. While Interstate Power, Wisconsin Power and South Beloit own and operate natural gas distribution systems in their utility service areas, Alliant states that none control access to fuel supplies sufficient to foreclose entry to the electric generating market by potential competitors. Alliant notes that in the event Alliant or any of its affiliates should deny, or require unreasonable terms, conditions, or rates for fuel or other services to a potential electric generation competitor in bulk power markets, that electric competitor may file a complaint with the Commission that could result in Alliant's authority to sell power at market-based rates being suspended.³⁵ No intervenor has raised concerns regarding barriers to entry. Based on Alliant's representations, the Commission is satisfied that Alliant and its affiliates cannot erect barriers to entry.

Affiliate Abuse

38. Alliant has two market-based rate tariffs on file with the Commission. Alliant states that Tariff MR-1 is designed for customers that have specific long-term, market-based rate contracts and that Tariff MR-2 is a short-form market-based rate tariff that provides it with greater flexibility to enter into transactions with customers in which the specific rates, terms and conditions of the transaction will be memorialized in transaction agreements between the parties. The Commission accepted Tariff MR-2 for filing, subject to a technical conference on the SMA screen³⁶ and stated that it would address concerns raised by MG&E, Wisconsin TDUs and Municipal Group³⁷ (which concerned allegations of affiliate abuse) when it acted on Alliant's updated market power analysis.

³⁵ See, e.g., *Exelon Generation Company, LLC, et al.*, 93 FERC ¶ 61,140 (2000), and *Louisville Gas & Electric Company*, 62 FERC ¶ 61,016 (1993).

³⁶ See *Alliant Energy Corporate Services, Inc.*, 105 FERC ¶ 61,061 (2003) (MR-2 Order). Further, a technical conference was held on January 13-14, 2004.

³⁷ Municipal Group is comprised of the following cities and villages that are wholesale customers of Wisconsin Power: Belmont, Benton, Black Earth, Elkhorn, Evansville, Gresham, Hazel Green, Juneau, Kiel, Mazomanie, Mount Horeb, New Glarus, Princeton, Sauk City, Sheboygan Falls, Shullsburg, Wisconsin Dells and Wisconsin Rapids.

39. In the Tariff MR-2 proceeding, Wisconsin TDUs and Municipal Group argued that Tariff MR-2 did not include adequate provisions to protect customers from inter-affiliate dealings in a manner consistent with Tariff MR-1. They contended that Tariff MR-2 only prohibits sales between Alliant and an affiliate with a franchised service territory rather than sales between Alliant and a power marketing affiliate.

40. In an answer filed on May 28, 2003 in the Tariff MR-2 proceeding, and again in its November 19, 2004 response to the Commission's data request, Alliant states that both of its market-based wholesale power sales tariffs provide appropriate protections against affiliate abuse and reciprocal dealing. Alliant states in its answer that Tariff MR-2 prohibits Alliant from making any sales under the tariff to any affiliate with a franchised service territory without first receiving Commission acceptance of the proposed transaction pursuant to a separate filing under section 205 of the FPA. Alliant explains that it included this language in Tariff MR-2, instead of the provisions from Tariff MR-1,³⁸ because when Alliant filed the Tariff MR-2, its power marketing affiliates had been either divested or were no longer engaged in power marketing activities. Finally, Alliant states that "to dispose of the Protesters' objections, Alliant Energy would be willing to broaden the application of the provision to prohibit sales under the MR-2 Tariff between Alliant and any affiliate, not just any affiliate with a franchised service territory, except pursuant to a separate section 205 filing," including power marketing affiliates.

41. The Commission will accept Alliant's offer to amend its Tariff MR-2 to prohibit sales under the MR-2 Tariff between Alliant and any affiliate, not just any affiliate with a franchised service territory, except pursuant to a separate section 205 filing. We direct Alliant to file a revised Tariff MR-2 within 15 days of the date of this order. Alliant is

³⁸ Alliant states that Tariff MR-1 permits Alliant to make market-based rate sales of capacity and energy to affiliated power marketers (marketing affiliates) subject to the following conditions: (a) Alliant may sell power and energy to marketing affiliates at a price no lower than the rate it charges non-affiliates; (b) Alliant will simultaneously offer over its electronic bulletin board to sell power and energy to similarly situated non-affiliates at the same price and terms it has offered to its marketing affiliate; and (c) Alliant will simultaneously post on its electronic bulletin board the actual price it charges its marketing affiliate for all transactions. Alliant explains that these provisions satisfy the Commission's requirements intended to guard against affiliate abuse. In addition, Alliant points out that the Tariff MR-1 includes a code of conduct that governs Alliant's relationship with its marketing affiliates which satisfies the Commission's information sharing and interaffiliate transaction pricing and brokering rules that protect against affiliate abuse.

reminded that pursuant to *Aquila, Inc.*, 101 FERC ¶ 61,331 at P 12 (2002), Alliant must first receive Commission authorization under either of these tariffs prior to transacting with an affiliate. Based on these representations, Alliant satisfies the Commission's standards with regard to affiliate abuse.

Market Behavior Rules

42. In the Market Behavior Rules Order, the Commission directed market-based rate sellers to include the market behavior rules as an amendment to their market-based rate tariffs at such time as they seek continued authorization to sell at market-based rates. Alliant has attached the market behavior rules to its Tariff MR-2. Therefore, Alliant has complied with this directive.³⁹

Filing and Reporting Requirements

43. 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.⁴⁰ Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.⁴¹

³⁹ Original Sheet Nos. 3 and 4, FERC Electric Tariff, Original Volume No. 2.

⁴⁰ *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/Electric/eqr/eqr.htm>.

⁴¹ 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.

44. With regard to reporting changes in status that would reflect a departure from the characteristics the Commission has relied upon in approving market-based pricing, in a Notice of Proposed Rulemaking in Docket No. RM04-14-000, the Commission is proposing to amend its regulations and to modify the market-based rate authority of current market-based rate sellers to establish a reporting obligation for changes in status that apply to public utilities authorized to make wholesale power sales in interstate commerce at market-based rates.⁴² Accordingly, the change in status reporting obligation for Alliant is subject to the outcome of the rulemaking.

The Commission orders:

(A) Alliant's updated market power analysis for all relevant markets not subject to the section 206 proceeding is hereby accepted for filing, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), the Commission hereby institutes a proceeding in Docket No. EL05-5-000, *et al.*, concerning the justness and reasonableness of Alliant's market-based rates, as discussed in the body of this order.

(C) The Secretary shall promptly publish in the *Federal Register* a notice of the Commission's initiation of the proceeding under section 206 of the FPA in Docket Nos. EL05-5-000.

(D) The refund effective date established pursuant to section 206(b) of the FPA shall be 60 days following publication in the *Federal Register* of the notice discussed in Ordering Paragraph (B) above.

(E) For the Dairyland, Alliant-West and Alliant-East control areas, Alliant is directed, within 60 days from the date of issuance of this order, to: (1) file a delivered price test analysis; (2) file a mitigation proposal tailored to its particular circumstances

⁴² *Reporting Requirement for Changes in Status for Public Utilities With Market-Based Rate Authority*, 69 Fed. Reg. 61,180 (Oct. 15, 2004), FERC Stats. & Regs. ¶ 32,576 (2004).

that would eliminate the ability to exercise market power; or (3) 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.

(F) Alliant's proposed market behavior rules in its Tariff MR-2 are accepted for filing effective December 17, 2003, as discussed in the body of this order, and, as discussed in this order, Alliant is directed to file an amended Tariff MR-2 with revised affiliate sales language within 15 days of the date of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.