UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Electric Energy, Inc. Docket Nos. ER05-1482-000
ER05-1482-001

ORDER GRANTING MARKET-BASED RATE AUTHORIZATION

(Issued December 8, 2005)

1. In this order, we accept Electric Energy, Inc.'s (EEInc) application for market-based rate authorization. As discussed below, we conclude that EEInc satisfies the Commission's standards for market-based rate authority. EEInc's next updated market power analysis is due three years from the date of this order.

Background

2. On September 15, 2005, as amended on November 3, 2005, EEInc filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sale of capacity and energy at market-based rates, the reassignment of transmission capacity, and the resale of firm transmission rights or their equivalents (FTRs). EEInc includes the Commission's market behavior rules[1] and also the Commission's change in status reporting requirement pursuant to Order No. 652.[2] EEInc's submittal is accepted for filing, effective November 14, 2005, as requested.[3]

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[1] *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).

[2] *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, *order on reh'g*, 111 FERC ¶ 61,413 (2005).

[3] FERC Electric Tariff, Original Volume No. 2, Original Sheet Nos. 1-5.

3. On October 26, 2005, the Director, Division of Tariffs and Market Development – South, acting pursuant to delegated authority, issued a letter seeking additional information related to EEInc's application. On November 3, 2005, EEInc filed a response.

4. EEInc is an Illinois corporation that owns and operates six generating units totaling approximately 1,100 MW in Joppa, Illinois (Joppa Plant) and is an exempt wholesale generator.[4] EEInc states that since its startup in 1954, the Joppa Plant has provided power and energy pursuant to long-term contracts only to the Department of Energy uranium enrichment facility at Paducah, Kentucky and to the EEInc owners and their respective affiliates. EEInc states that these contracts expire at the end of 2005. EEInc further states that it owns six 161 kV transmission lines.

5. EEInc states it is 80 percent owned by Union Electric Company d/b/a AmerenUE (AmerenUE) (40 percent) and AmerenEnergy Resources Company (AmerenEnergy Resources) (40 percent), both of which are wholly-owned subsidiaries of Ameren Corporation (Ameren). In addition to its 40 percent interest in EEInc, EEInc states that AmerenUE owns approximately 9,439 MW of generating capacity in Illinois and Missouri and AmerenUE is a transmission-owning member of the Midwest Independent Transmission System Operator, Inc. (Midwest ISO). EEInc states that AmerenEnergy Resources, in addition to EEInc, has subsidiaries that own approximately 4,500 MW of capacity in Missouri and Illinois.[5] EEInc further states that the Commission recently accepted the Ameren companies' updated market power analysis.[6]

6. EEInc states that the remaining 20 percent is owned by Kentucky Utilities, a subsidiary of LG&E Energy LLC (LG&E Energy). EEInc states that Kentucky Utilities and its affiliate Louisville Gas & Electric Company have combined control of approximately 8,110 MW of generation primarily in Kentucky and are transmission-owning members of the Midwest ISO. EEInc further states that the Commission recently accepted Kentucky Utilities', and its affiliates', updated market power analysis for the EEInc control area.[7]

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[4] *Electric Energy, Inc.*, 92 FERC ¶ 62,079 (2000).

[5] These subsidiaries include Ameren Energy Generating Company, Ameren Energy Marketing Company, Ameren Energy Development Company, and AmerenEnergy Medina Valley Cogen, LLC.

[6] *Illinois Power Company d/b/a AmerenIP*, 110 FERC ¶ 61,408 (2005).

[7] *LG&E Energy Marketing, Inc.*, 111 FERC ¶ 61,153 (2005).

7. EEInc filed a generation market analysis pursuant to the Commission's orders issued on April 14, 2004, and clarified on July 8, 2004,[8] in which EEInc states that it passes the generation market power screens in the EEInc control area and its first-tier market (Midwest ISO). However, EEInc also asserts that the EEInc control area is not the appropriate relevant geographic market due to the fact that, aside from the Department of Energy uranium enrichment facility at Paducah, Kentucky, there are no potential customers within the control area. EEInc asserts that the EEInc control area is small and does not possess the scope and configuration necessary to be considered a relevant geographic market. EEInc further states that all of EEInc's customers have alternative supply arrangements and are not captive to EEInc.

Notice of Filing and Responsive Pleadings

8. Notice of EEInc's October 26, 2005 filing was published in the *Federal Register*, 70 Fed. Reg. 56,678 (2005), with protests and interventions due on or before October 6, 2005. The Missouri Public Service Commission (Missouri Commission) and the Missouri Industrial Energy Consumers filed notices of intervention. The Missouri Office of the Public Counsel (Missouri Office) filed a motion to intervene and protest. EEInc filed an answer to the Missouri Office's protest. LG&E Energy filed a late motion to intervene and comments on November 3, 2005.

9. Notice of EEInc's November 3, 2005 filing was published in the *Federal Register*, 70 Fed. Reg. 69,748 (2005), with protests and interventions due on or before November 14, 2005. The Missouri Office filed a motion to intervene and protest. EEInc filed an answer to the Missouri Office's protest.

Discussion

Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the notice of intervention of the Missouri Commission and the timely, unopposed motions to intervene of the Missouri Office and the Missouri Industrial Energy Consumers serve to make those entities parties to this proceeding. We will also grant LG&E Energy's untimely motion to intervene, given its interest in this proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay.

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

11. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385(a)(2) (2005), prohibits an answer to a protest unless otherwise ordered by the decisional authority. The Commission will accept EEInc's answers because they have provided information that assisted us in our decision-making process.

Market-Based Rate Authorization

12. 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]

13. As discussed below, the Commission concludes that EEInc satisfies the Commission's standards for market-based rate authority.

Generation Market Power

14. In the April 14 and July 8, 2004 Orders, the Commission adopted two indicative screens for assessing generation market power, the pivotal supplier screen and the wholesale market share screen. EEInc has prepared both the pivotal supplier and the wholesale market share screen analyses for its home control area and first-tier market. EEInc submitted a generation market power analysis that reflects Ameren's share of generation in the EEInc control area and relies on the study previously submitted and accepted by the Commission for Kentucky Utilities' share of generation in the EEInc control area.[10] For its first-tier market, Midwest ISO, EEInc relies on the study of the Midwest ISO market previously submitted by Ameren and accepted by the Commission.[11] In addition, EEInc states that its generation is committed under long-term contracts with the Department of Energy uranium enrichment facility at Paducah, Kentucky and to the EEInc owners and their respective affiliates. The Commission has

[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).

[10] The Commission found that Kentucky Utilities and its affiliates satisfied the generation market power screens in the EEInc control area. *LG&E Energy Marketing, Inc.*, 111 FERC ¶ 61,153 (2005).

[11] The Commission found that Ameren and its affiliates pass the generation market power screens in the Midwest ISO market. *Illinois Power Company d/b/a AmerenIP*, 110 FERC ¶ 61,408 (2005).

reviewed EEInc's generation market power screens for the relevant markets and has determined that EEInc passes both the pivotal supplier and wholesale market share screens in those markets.

15. While EEInc did perform the analysis for its home control area, as stated above, EEInc asserts that the EEInc control area is not the appropriate control area because it is small and does not possess the scope and configuration necessary to be considered a geographic market. EEInc further states that all of EEInc's customers have alternative supply arrangements and are not captive to EEInc. Since EEInc's analysis indicates that it passes the indicative screens in its home control area, which is the default geographic market as defined in the April 14 Order, the Commission makes no finding in this order on EEInc's claim that the Midwest ISO is the proper relevant market.

16. In its protests, the Missouri Office challenges EEInc's assertion that the Commission's recent finding that the Ameren Parties lack generation market power in the EEInc control area can be relied on for a similar finding in this case. The Missouri Office states that the facts regarding the commitment of the output from the EEInc Joppa Plant have changed drastically since the time of the Commission's acceptance of the Ameren companies' updated market power analysis. In particular, the Missouri Office asserts that EEInc's analysis is based on circumstances that exist today (power from EEInc generating facilities flows to the service territories of the EEInc owners pursuant to a Power Supply Agreement (PSA) that terminates on December 31, 2005) but will no longer exist if the application is approved.

17. In addition, the Missouri Office asserts that both AmerenUE and Kentucky Utilities included output from the Joppa Plant in their future resource plans. In this regard, it submits that Kentucky Utilities has made a commitment to its regulators at the Kentucky Public Service Commission to continue using about 200 MW or 20 percent of the capacity from the Joppa Plant to serve its native load customers in Kentucky long after the Power Supply Agreement (PSA) expires at the end of 2005.

18. In response to the Missouri Office's arguments, EEInc asserts that the Missouri Office fails to show any changed circumstances that would require the Commission to revisit its findings that Ameren and its affiliates lack generation market power. EEInc states that the Commission requires applicants for market-based rate authority to assess generation ownership based on a "snap shot" in time and further states that this is what it did by considering its capacity to be committed under long-term contracts at the time of filing. EEInc commits to filing a notice of change in status in the event that capacity from the Joppa Plan does not remain committed.

19. LG&E Energy states that the Missouri Office incorrectly asserts that Kentucky Utilities will rely on the 200 MW of capacity from the Joppa Plant beyond December 31, 2005. LG&E Energy states that Kentucky Utilities cannot and has not committed to using the capacity presently available pursuant to the PSA between EEInc and Kentucky Utilities beyond the existing term of the agreement (*i.e.*, December 31, 2005).

20. The Missouri Office asserts that it is uncertain to whom the output will be sold once EEInc is authorized to transact at market-based rates. The Missouri Office asserts that only one of the possible outcomes was analyzed which is that the power will continue to flow in the same manner after EEInc obtains market-based rate authority as it did prior to EEInc having any such authority. The underlying assumption on which EEInc's analysis relies is that the power from the Joppa plant will leave EEInc's control area and then be imported back into the control area to serve any loads. The Missouri Office asserts that such an assumption flies in the face of the basic reality that if EEInc is going to serve a load (and sink) within its control area, the source and the sink will be in the same control area and no imports will occur. Due to its generation market power concerns, the Missouri Office asserts that EEInc could pursue a market power mitigation solution by simply committing to join and participate in the Midwest ISO. The Missouri Office requests a hearing if the facts concerning Missouri ratepayers' historic cost support for the EEInc capacity and output are controverted.

Commission Determination

21. The April 14 Order states that, in performing all screens, applicants are required to prepare them as designed,[12] and must use the most recent unadjusted 12 months' historical data as a snapshot in time. The Commission noted that historical data have been proven to be more objective, readily available, and less subject to manipulation than future projections. Therefore, as an initial matter, the Commission will not permit applicants to make any adjustments to such data.[13]

22. We agree with the Missouri Office that it is uncertain to whom the output will be sold once EEInc is authorized to transact at market-based rates. This uncertainty is not associated with EEInc's application for market-based rate authority but rather is a result of expiring contracts. The April 14 Order recognizes the difficulty in projecting what events may occur in the future and translating those projections into an analysis that is intended, by using the two screens together, to give a reasonable indication of whether an

[12] Applicants presenting evidence that the relevant market is larger or smaller than the default relevant market (*i.e.*, control area) must first complete the screens based on the control area as discussed above.

[13] *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 at P 118.

applicant has market power.[14] As a result, the Commission adopted a "snap-shot" in time approach and has otherwise provided that if a change in circumstances occurs, the applicant, in this case EEInc, must make a filing with the Commission wherein the Commission will at that time evaluate the current circumstances and take any appropriate action.

23. We find that EEInc's study is consistent with our April 14 Order. In addition, EEInc commits to abide by the Commission's change in status reporting requirement and will notify the Commission if and when EEInc's capacity becomes uncommitted.[15] We will accept this commitment.

24. Accordingly, as discussed above, the Commission finds that EEInc satisfies the Commission's generation market power standard for the grant of market-based rate authority.

Transmission Market Power

25. 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. EEInc states that it has an OATT on file with the Commission.[16] Further, no intervenors have raised transmission market power concerns. Based on EEInc's representation, the Commission finds that EEInc satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

Other Barriers to Entry

26. EEInc states that neither it nor any of its affiliates is engaged in the manufacture of electric equipment, has the ability to hinder the siting of generation plants or to block others from siting new plants, or owns or controls resources that could impede potential competitors from gaining access to alternative generation supplies. In addition, no intervenors have raised barrier to entry concerns. Based on EEInc's representations, the Commission is satisfied that EEInc cannot erect barriers to entry.

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[14] *Id.* at P 72.

[15] *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).

[16] *See Baltimore Gas & Electric Company,* Docket No. OA96-156-001, *et al.* (February 24, 1999) (unpublished letter order).

Affiliate Abuse

27. A utility with market-based rate authority is prohibited from making sales to its affiliates without first receiving authorization of those transactions pursuant to a separate filing with the Commission under section 205 of the Federal Power Act.[17] The Commission allows sales between affiliates at market-based rates so long as there are no concerns as to affiliate abuse.[18] The Commission has stated that affiliate abuse takes place when the traditional public utility (vertically integrated utility) and its affiliated power marketer transact in ways that result in a transfer of benefits from the traditional public utility (and its captive customers) to the affiliated power marketer (and its shareholders).[19] Where a traditional public utility makes sales to an affiliated power marketer, the Commission is concerned that such sales not be made at a rate that is too low. In effect, the difference between the market price and the lower rate charged to the affiliated power marketer could be transferred from the traditional public utility's captive customers to the power marketer's shareholders. Where a power marketer makes sales to its affiliated traditional public utility, the concern is that such sales not be made at a rate that is too high (*i.e.*, above the prevailing market price).[20] The Commission is also concerned about the potential impact of affiliate transactions on wholesale competition.[21]

[17] *See Aquila, Inc.*, 101 FERC ¶ 61,331 at P 12 (2002).

[18] *See Boston Edison Company Re: Edgar Electric Energy Company*, 55 FERC ¶ 61,382 at 62,167 (1991) (*Edgar*). "The Commission has stated that in cases where affiliates are entering agreements for which approval of market-based rates is sought, it is essential that ratepayers be protected and that transactions be above suspicion in order to ensure that the market is not distorted." *Id.* The Commission in that case listed ways to demonstrate lack of affiliate abuse, including evidence of direct head-to-head competition between the affiliate and competing unaffiliated suppliers in a formal solicitation or informal negotiation process; evidence of the prices which non-affiliated buyers were willing to pay for similar services from the affiliate, and benchmark evidence that shows the prices, terms and conditions of sales made by non-affiliated sellers.

[19] *See, e.g.*, *Heartland Energy Services Inc.*, 68 FERC ¶ 61,223 at 62,062 (1994).

[20] Where there are no captive ratepayers, such as two power marketers with a common parent but no affiliation with a traditional IOU, historically no affiliate abuse concerns are raised. *First Energy Generation Corporation*, 94 FERC ¶ 61,177 (2001); *U.S.Gen Power Services, L.P.* 73 FERC ¶ 61,302 at 61,846 (1995).

[21] *See Ameren Energy Marketing Company*, 99 FERC ¶ 61,226 (2002); *Entergy Services, Inc. and EWO Marketing LP*, 103 FERC ¶ 61,256 (2003).

28. In its protests in this proceeding, the Missouri Office argues that EEInc fails to satisfy the Commission's concerns regarding affiliate abuse because the approval of EEInc's application for market-based rate authorization would result in the transfer of benefits from the captive Missouri ratepayers of EEInc's affiliate, AmerenUE, to the shareholders of both AmerenUE and Ameren. According to the Missouri Office, the proposed tariff would permit EEInc to sell power from the Joppa Facility that AmerenUE has historically been entitled to purchase for its retail customers. The Missouri Office states that the proposed tariff explicitly prohibits EEInc from making sales to AmerenUE and other EEInc affiliates with franchised service territories.

29. The Missouri Office asserts that if the Commission authorizes EEInc to engage in market-based rate sales under the proposed tariff, then the 400 MW of Joppa capacity that was formerly part of AmerenUE's supply portfolio will need to be replaced by some other supply resources, and the replacement resource would undoubtedly put upward pressure on the rates of AmerenUE ratepayers as there is no known alternative resource that could provide the same low cost base load power to AmerenUE's customers. The Missouri Office states that Missouri ratepayers' historic cost support of the EEInc power supply entitles them to the full value of the plant for its remaining life. The Missouri Office states that its financial support falls in one or more of the following categories: (1) full payment of AmerenUE's share of all capital costs on a front-loaded basis over the life of the plant, through the point of full amortization (even if the payments were levelized rather than front-loaded during the amortization period, now that the investment is fully amortized the effect is still "front-loaded" in that full payment was made before the plant's useful life has ended); (2) payment for pollution control and other modernizing investments which extended the life of the plant; (3) cost responsibility for surplus capacity; and (4) responsibility for certain financial obligations extended by AmerenUE to EEInc such as assurances of a continuous source of economic power in return for the guaranty of EEInc's financial obligations.

30. In this regard, the Missouri Office argues that granting EEInc market-based rate authority will have an adverse effect on competitive wholesale markets. The Missouri Office asserts that EEInc and its owners will be able to reap benefits by marketing low-cost base load power from a generation asset that has been largely funded by captive customers and this will create distortions in wholesale electricity markets by providing an unfair competitive advantage to EEInc and will worsen the long-term outcomes from wholesale markets. The Missouri Office further asserts that because captive customers of vertically integrated utilities have borne much of the financial risk of EEInc's operations and because EEInc's costs have been recovered through cost-based rates paid by the same captive customers, allowing EEInc to sell power at market-based rates will have a detrimental effect on competition by deterring other entrants.

31. In its response, EEInc submits that the Missouri Office has failed to show that approval of EEInc's market-based rate application would result in prohibited affiliate relationships. EEInc states that AmerenUE's payment of a cost-based rate for a portion of the output of the Joppa Plant does not create any ownership rights for AmerenUE's ratepayers. EEInc asserts that the Missouri Office has misconstrued the Commission's concerns about affiliate abuse. According to EEInc, the Commission's stated concerns with affiliate abuse are that a power marketer could enter into a power sales agreement with its franchised utility affiliate that improperly transfers benefits from the franchised utility affiliate (and its captive customers) to the power marketer and its corporate shareholders. EEInc submits that the Missouri Office, in contrast, is protesting the *absence* of a transaction between affiliates (*i.e.*, the potential absence of the sale of power by EEInc to AmerenUE). EEInc adds that the Missouri Office is incorrect in stating that EEInc's market-based rate tariff prevents it from selling power to franchised utility affiliates including AmerenUE. It states that, consistent with Commission precedent, EEInc's tariff provides that it will not make any sales of power to a franchised utility affiliate *without first receiving* authorization from the Commission. However, this limitation does not prevent EEInc from selling to affiliates such as AmerenUE, either at a cost-based or market-based rate, once the necessary Commission authorizations have been received.

32. EEInc adds that many of the same arguments that the Missouri Office raises here have been raised and rejected by the Commission in another proceeding, in which the Commission found that the issues were retail rate issues that are properly before the Missouri Commission, the relevant state commission.[22]

33. EEInc also argues that the Missouri Office has failed to show that granting EEInc market-based rate authority will have any adverse impact on competitive wholesale markets. To the contrary, it submits that the entry of an additional seller into an existing competitive market will generally enhance competition. According to EEInc, it will have no incentive to sell power at anything other than the market price for bilateral agreements, and it will be paid the market-clearing price when it sells into energy markets administered by Midwest ISO. Further, EEInc asserts that there is no evidence that other sellers will be deterred from entering the wholesale market because they anticipate "lower returns" due to the availability of "low cost" power from the Joppa facility. EEInc submits that the Missouri Office's claim in this regard depends on the flawed assumption that EEInc will undercut the price at which other parties can sell

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[22] EEInc states that the Commission has addressed similar arguments in *Ameren Corp.*, 108 FERC ¶ 61,094 at P 68 (2004), *order on reh'g*, 111 FERC ¶ 61,055 at PP 9-10 (2005).

power to gain market share for itself. EEInc states that it, like any reasonable competitor, will seek to sell power in bilateral markets at the market price, not at a discount to market.

Commission Determination

34. The Missouri Office's concerns essentially center on the argument that it already made full payment of AmerenUE's share of all capital costs on a front-loaded basis and no longer will have the right to receive power from the plant once its contract expires. In particular, the Missouri Office argues that "Missouri ratepayers' historic cost support of the EEInc power supply entitles them to the full value of the plant for its remaining life." This argument is not relevant to the decision of this Commission as to whether EEInc meets this Commission's standards for market-based rate authority and further is an issue that is better resolved at the state level. In addition, the Missouri Commission has intervened in this proceeding but has not filed comments or protested the application.

35. We also find that the Missouri Office's argument that granting market-based rate authority to EEInc will have an adverse effect on competitive wholesale markets is speculative. The Missouri Office has provided no evidence to support its argument in this regard. We note that EEInc is in no different a position than any other generator that has low cost generation either as a result of technology advancements or because of plants that are fully depreciated before the expiration of their useful life.

36. We reject the Missouri Office's argument that EEInc fails to satisfy the Commission's affiliate abuse concerns for purposes of a grant of market-based rate authority. To satisfy concerns regarding affiliate abuse, the Commission requires that the entity seeking market-based rate authority include a provision in its tariff prohibiting sales to affiliates with franchised service territories without first receiving authority for those transactions pursuant to a separate filing with the Commission under section 205 of the FPA. The Commission has found that affiliate transactions are permissible where, among other things, there are no captive customers, or where the price is linked to a Commission approved locational marginal price (LMP).[23] In addition, where, as here, an affiliate of a traditional public utility seeks market-based rate authority, the Commission requires a code of conduct be filed to govern the relationship between the utility and its affiliate.

[23] *See, e.g., AmerGen Energy Co.*, 90 FERC ¶ 61,080 at 61,282 (2000) (no captive customers); *Union Light, Heat, and Power Co.*, 110 FERC ¶ 61,212 at P 16 (2005) (allowing sales to affiliates based on the Midwest ISO Cinergy Hub LMP).

37. In the instant case, EEInc states that its proposed market-based rate tariff reflects the aforementioned affiliate sales provision. Further, EEInc states that its tariff includes a code of conduct, as referenced above. Based on EEInc's representations and as discussed above, the Commission finds that EEInc satisfies the Commission's concerns with regard to affiliate abuse.

Other Waivers, Authorizations, and Reporting Requirements

38. EEInc also requests authority to reassign transmission capacity and to resell FTRs or their equivalent. The Commission finds these provisions consistent with the Commission's requirements.[24] Accordingly, the Commission will grant this request.

39. EEInc requests the following waivers and authorizations: (1) waiver of Subparts B and C of Part 35 of the Commission's regulations requiring the filing of cost-of-service information, except as to sections 35.12(a), 35.13(b), 35.15, and 35.16; (2) waiver of Parts 41, 101, and 141 of the Commission's accounting and periodic reporting requirements; (3) abbreviated filings with respect to interlocking directorates under Part 45 of the Commission's regulations; and (4) blanket authorization under Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability.

40. The Commission will grant the requested waivers and authorizations consistent with those granted other entities with market-based rate authorizations, with the exception of the waiver under Part 45.[25] Notwithstanding the waiver of the accounting and reporting requirements here, the Commission expects EEInc to keep its accounting records in accordance with generally accepted accounting principles.

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[24] *See Southwestern Public Service Co.*, 80 FERC ¶ 61,245 (1997); *Calif. Indep. Sys. Operator, Inc.*, 89 FERC ¶ 61,153 (1999).

[25] It should be noted that the Commission is examining the issue of continued applicability of the waivers of its accounting and reporting requirements (18 C.F.R. Parts 41, 101, and 141), as well as continued applicability of the blanket authorization for the issuance of securities and the assumption of obligations and liabilities (18 C.F.R. Part 34). *See Accounting and Reporting of Financial Instruments, Comprehensive Income, Derivatives and Hedging Activities*, Order No. 627, 67 Fed. Reg. 67,691 (Oct. 10, 2002), FERC Stats. & Regs. ¶ 32,558, at P 23-24 (2002).

41. The Commission will deny EEInc's request for waiver of the full requirements of Part 45 of the Commission's regulations. The Commission has stated that it will no longer grant waivers of the full requirements of Part 45 in orders granting market based rate authority.[26]

42. 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.[27] Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.[28] Accordingly, EEInc must file its first Electric Quarterly Report no later than 30 days after the first quarter EEInc's rate schedule is in effect.[29]

43. EEInc 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.[30] 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. As noted above, EEInc has included the change in status reporting requirement in its market-based rate tariff.

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[26] *See Commission Authorization to Hold Interlocking Positions*, Order No. 664, 70 Fed. Reg. 55,717 (Sept. 23, 2005), FERC Stats. & Regs. ¶ 31,194 at P 34 (2005).

[27] *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.

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

[29] 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.

[30] *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, *order on reh'g*, 111 FERC ¶ 61,413 (2005).

44. EEInc 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.

The Commission orders:

(A) EEInc's application for market-based rate authorization is hereby accepted for filing, as discussed in the body of this order.

(B) EEInc's rate schedule is accepted for filing effective November 14, 2005, as requested.

(C) Waiver of Parts 41, 101, and 141 of the Commission's regulations is here by granted, with the exception of 18 C.F.R. §§ 141.14, 141.15 (2004) (providing for the filing both of Form No. 80 and the Annual Conveyance Report).

(D) EEInc's request for waiver of Part 45 of the Commission's regulations is denied as discussed in the body of the order.

(E) Waiver of the provisions of Subparts B and C of Part 35 of the Commission's regulations, with the exception of sections 35.12(a), 35.13(b), 35.15 and 35.16, is hereby granted.

(F) Within 30 days of the date of the issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by EEInc should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.211 and 385.214 (2004).

(G) Absent a request to be heard within the period set forth above, EEInc is hereby authorized to issue securities and assume obligations or liabilities as guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of EEInc, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(H) The Commission reserves the right to modify this order to require a further showing that neither the public nor private interests will be adversely affected by continued Commission approval of EEInc's issuances of securities or assumptions of liabilities.

(I) Consistent with the procedures the Commission adopted in Order No. 2001, EEInc must file electronically with the Commission Electric Quarterly Reports no later than 30 days after the end of the reporting quarter. EEInc is directed to file its first Electric Quarterly Report no later than 30 days after the first quarter EEInc's rate schedule is in effect.

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

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.