

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Madison Gas and Electric Company

Docket Nos. ER00-586-002
ER00-586-003
ER00-586-004
ER00-586-005

ORDER ACCEPTING UPDATED MARKET POWER ANALYSIS AND REVISED
MARKET-BASED RATE TARIFF

(Issued March 25, 2005)

1. In this order we accept an updated market power analysis filed by Madison Gas & Electric Company (MGE). We also accept revisions to MGE's market-based rate tariff to include the Commission's market behavior rules.¹ As discussed below, we conclude that MGE satisfies the Commission's standards for market-based rate authority. This order benefits customers by reviewing the conditions under which market-based rate authority is granted, thus ensuring that the prices charged for jurisdictional sales are just and reasonable. MGE's next updated market power analysis is due three years from the date of this order.

Background

2. On November 10, 2003, in Docket No. ER00-586-002, MGE filed an updated market power analysis pursuant to the Commission's order granting MGE authority to sell electric energy and capacity at market-based rates.² In this filing, MGE informed the Commission that: (1) on January 1, 2001, MGE transferred ownership and control of its transmission assets to the American Transmission Company LLC (ATCo)³ which owns and operates the transmission system in the Wisconsin Upper-Michigan System (WUMS)

¹ FERC Electric Tariff, First Revised Volume No. 4, Original Sheet Nos. 2 through 22.

² *Madison Gas and Electric Company*, 90 FERC ¶ 61,115 (2000).

³ *See Wisconsin Public Service Corporation*, 93 FERC ¶ 61,215, *order on clarification*, 93 FERC ¶ 62,201 (2000).

region of Midwest Independent Transmission System Operator, Inc. (Midwest ISO); and (2) on February 1, 2002, MGE started taking network transmission service from Midwest ISO.

3. On November 9, 2004, as amended on March 3, 2005, MGE submitted a revised updated market power analysis, pursuant to the Commission's order issued on May 13, 2004.⁴ The May 13 Order addressed the procedures for implementing the generation market power analysis announced on April 14, 2004 and July 8, 2004.⁵

4. On November 15, 2004, MGE filed revised tariff sheets to its market-based rate tariff to include the Commission's market behavior rules.⁶

5. In its November 9 Filing MGE argued that the WUMS region should be used as the relevant geographic market for the purposes of the generation dominance screens. However, in its March 3 amendment, MGE revised its indicative screens to use the Midwest ISO as the relevant geographic market. MGE noted that once the Midwest ISO performs functions such as central commitment and dispatch with Commission approved market monitoring and mitigation it will be considered a distinct and appropriate geographic market for the purposes of the generation dominance screens (which is currently scheduled for April 1, 2005). Based on the analysis provided by MGE, MGE passes both the pivotal supplier screen and wholesale market share screen for the Midwest ISO market.

6. MGE states that it is an investor-owned utility with headquarters in Madison, Wisconsin. MGE states that MGE Energy, Inc. (MGE Energy) is an investor-owned public utility holding company. MGE Energy's non-utility subsidiaries are MGE Power LLC (MGE Power), MGE Power West Campus, LLC (MGE West Campus), MGE Construction LLC, Central Wisconsin Development Corp., and MAGAEL, LLC.

7. MGE states that MGE Power owns real estate and new generation assets to meet MGE's growing customer demand. MGE states that MGE Power leases plants to MGE under long-term contracts approved by the Wisconsin Public Service Commission (Wisconsin Commission) pursuant to Wisconsin Statute § 196.52(9).

⁴ *Acadia Power Partners, LLC*, 107 FERC ¶ 61,168 (2004) (May 13 Order).

⁵ *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004) (July 8 Order).

⁶ *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).

8. MGE states that MGE West Campus owns the controlling interest in the electric generating assets of the West Campus Cogeneration Facility (West Campus Cogen) located at the University of Wisconsin. MGE states that West Campus Cogen is a 150 MW natural gas-fired combined cycle electric generation facility expected to commence operations in the summer of 2005. MGE states that MGE West Campus is a passive investor and will lease the facility to MGE on a long-term basis on terms approved by the Wisconsin Commission which has continuing jurisdiction over MGE West Campus, MGE, and MGE Energy.

9. MGE states that MGE Construction LLC provides construction services for building new generation to meet the needs of MGE's customers. MGE states that Central Wisconsin Development Corp. provides planning, financing, property acquisition and related services and promotes growth in MGE's service territory. MAGAEL, LLC holds title to properties acquired for future utility plant expansion and non-utility property.

Notice of Filings and Pleadings

10. Notice of MGE's November 10, 2003 Filing was published in the *Federal Register*, 66 Fed. Reg. 66,088 (2003), with protests and motions to intervene due on or before December 1, 2003. None was filed.

11. Notice of MGE's November 15, 2004 Filing was published in the *Federal Register*, 69 Fed. Reg. 70,137 (2004), with protests and motions to intervene due on or before December 6, 2004. None was filed.

12. Notice of MGE's March 3, 2005 Filing was published in the *Federal Register*, 70 Fed. Reg. 12,671 (2005), with protests and motions to intervene due on or before March 14, 2005. None was filed.

Discussion

Market-Based Rate Authorization

13. 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.⁷

⁷ 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).

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

Generation Market Power

15. In the April 14 Order, the Commission adopted two indicative screens for assessing generation market power, the pivotal supplier screen and the wholesale market share screen. In its November 9 Filing, MGE submitted both indicative screens for the WUMS region, arguing that the WUMS region was the appropriate geographic market.⁸ In its March 3 amendment, MGE revised both indicative screens to use the Midwest ISO as the relevant geographic market. MGE indicates in this filing that it passes both indicative screens for the Midwest ISO.

16. The Commission has reviewed MGE's generation market power screens analyses for the Midwest ISO and has determined that MGE passes both the pivotal supplier and wholesale market share screens in those markets. As the Commission noted in the April 14 Order, once Midwest ISO becomes a single market and performs functions such as a central commitment and dispatch with Commission-approved market monitoring and mitigation, Midwest ISO would be considered to have a single geographic market for purposes of our generation dominance screens. Accordingly, we find that MGE satisfies the Commission's generation market power standard for the grant of market-based rate authority based on the Midwest ISO becoming a single market and performing these functions with Commission-approved market monitoring and mitigation.

Transmission Market Power

17. When a transmission-owning public utility seeks market-based rate authority, the Commission has required the public utility have an open access transmission tariff (OATT) on file before granting such authorization. MGE indicates that it transferred its transmission facilities to ATCo which operates those facilities under the Midwest ISO's OATT.⁹ Further, no intervenors have raised transmission market power concerns. Based on MGE's representation, the Commission finds that MGE satisfies the Commission's transmission market power standard for of the grant of market-based rate authority.

⁸ We note that MGE also submitted both indicative screens for its home and first-tier interconnected control areas in its November 9 Filing.

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

Other Barriers to Entry

18. MGE states that it has no ability to block or impede development of new power plants. In support of this, MGE states that, since the Commission granted MGE market-based rate authority in 2000, numerous new merchant plant facilities have developed in the WUMS region. MGE submits that it does not control access to economic fuel supply or fuel transportation facilities. MGE concludes that it is unable to erect any barriers inhibiting new supply from entering the Midwest wholesale power markets. In addition, no intervenors have raised barrier to entry concerns. Based on these representations, the Commission is satisfied that MGE cannot erect barriers to entry. However, should MGE or its affiliates deny, delay, or require unreasonable rates, terms, or conditions for natural gas service to a potential electric competitor, then the Commission may suspend MGE's authority to sell electricity at market-based rates.¹⁰

Affiliate Abuse

19. MGE explains that its relationship with its affiliates does not create the potential for affiliate abuse or reciprocal dealing because they do not own generation assets that sell wholesale power to MGE and MGE does not sell power to them. No intervenors have raised affiliate abuse concerns. MGE's market-based rate tariff states that "sales to affiliates will not be made until MGE files for approval of such sales under section 205 of the Federal Power Act." However, the tariff does not state that MGE will not make sales to its affiliates "without first receiving" Commission authorization of the transaction under section 205 of the FPA. Therefore, consistent with Commission precedent, MGE is directed to make a compliance filing within 30 days of the date of issuance of this order to revise its market-based rate tariff to include such language.¹¹ Based on MGE's representations and subject to the tariff revision we direct herein, we find that MGE satisfies the Commission's concerns with regard to affiliate abuse.

Reporting Requirements

20. 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: (i) a summary of the contractual terms and conditions in every effective service agreement for market-based power sales; and (ii) transaction information for effective short-term (less than one year) and long-term (one year or

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

¹¹ *Aquila Inc.*, 101 FERC ¶ 61,331 at P 12 (2002).

greater) market-based power sales during the most recent calendar quarter.¹² Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.¹³

21. MGE 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.¹⁴ Order No. 652 requires that the change in status reporting requirement be incorporated in the market-based rate tariff of each entity authorized to make sales at market-based rates. Accordingly, MGE is directed, within 30 days of the date of issuance of this order, to revise its market-based rate tariff to incorporate the following provision:

MGE must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority. A change in status includes, but is not limited to, each of the following: (i) ownership or control of generation or transmission facilities or inputs to electric power production other than fuel supplies, or (ii) affiliation with any entity not disclosed in the application for market-based rate authority that owns or controls generation or transmission facilities or inputs to electric power production, or affiliation with any entity that has a franchised service area. Any change in status must be filed no later than 30 days after the change in status occurs.

22. MGE is directed to file an updated market power analysis within three years of the date of this order, and every three years thereafter. The Commission also reserves the right to require such an analysis at any intervening time.

¹² *Revised Public Utility Filing Requirements*, Order No. 2001, 67 Fed. Reg. 31,043 (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>.

¹³ 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.

¹⁴ *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).

The Commission orders:

(A) MGE's updated market power analysis is hereby accepted for filing, as discussed in the body of this order.

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

(C) MGE is directed, within 30 days of the issuance of this order, to revise its market-based rate tariff to include the change in status reporting requirement adopted in Order No. 652 and to revise the affiliate sales prohibition language, as discussed in the body of this order.

(D) MGE's revised tariff sheets incorporating the market behavior rules are accepted for filing effective December 17, 2003.

By direction of the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.