

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 No. ER03-762-002

ORDER ON REHEARING

(Issued March 25, 2005)

1. In this order we deny the request for rehearing filed by Madison Gas and Electric Company (MG&E) and Wisconsin Public Power Inc. (WPPI) of the Commission's October 14, 2003 Order issued in this proceeding.¹

I. Background

2. On April 22, 2003, Alliant Energy Corporate Services, Inc. (Alliant), on behalf of the Alliant Energy Operating Companies,² filed with the Commission a new market-based rate wholesale power sales tariff (Tariff MR-2).³ On June 16, 2003, the Commission's Division of Tariffs and Market Development - South staff issued a deficiency letter requesting, among other things, that Alliant provide a Supply Margin

¹ *Alliant Energy Corporate Services, Inc.*, 105 FERC ¶ 61,061 (2003) (October 14 Order).

² The Alliant Energy Operating Companies are Interstate Power and Light Company (IPL or Alliant West) and Wisconsin Power and Light Company (WPL or Alliant East). Alliant is authorized to serve as agent for the Alliant Energy Operating Companies.

³ FERC Electric Tariff, Original Volume 3, Original Sheet Nos. 1-2. The Commission notes that the October 14 Order improperly designated Tariff MR-2 as FERC Electric Tariff, Original Volume 2, Original Sheet Nos. 1-2. October 14 Order at P 2 n.2.

Assessment (SMA) for Alliant East and Alliant West consistent with *AEP*⁴ as well as an SMA for each control area market directly interconnected to Alliant East and Alliant West.

3. On August 15, 2003, Alliant submitted a response to staff's deficiency letter, stating that it was providing the SMA analyses and additional information staff requested. The SMA analyses submitted by Alliant showed that "IPL and WPL do not 'pass' the SMA analysis for the Alliant West and Alliant East control areas," but that IPL and WPL pass the SMA for all other control areas.⁵ Alliant requested that if the Commission declined to exempt Alliant from application of the SMA screen (because both IPL and WPL are members of the Midwest Independent Transmission System Operator, Inc. (Midwest ISO)) and considered it appropriate to impose mitigation as a result of IPL's and WPL's failures of the SMA screen in Alliant East and Alliant West, then the Commission should stay mitigation measures in the manner in which it treated AEP Power Marketing, Inc. (AEP), Entergy Services Inc. (Entergy), and Southern Company Energy Marketing L.P. (Southern Companies).⁶

4. In the October 14 Order, the Commission accepted Alliant's Tariff MR-2, subject to the technical conference on the SMA, Commission action in the *AEP* proceeding, and Commission action in the updated market analysis proceeding pending in Docket No. ER99-230-002.⁷ The Commission explained that the Midwest ISO did not at that time have a Commission-approved market monitoring and market power mitigation program in place sufficient for purposes of exempting sellers from the SMA screen. Thus, with regard to Alliant's request that, if the Commission considers it appropriate to impose mitigation, then the Commission should grant a stay of mitigation measures consistent with *AEP*, the Commission noted that "the mitigation measures imposed in *AEP*, as well

⁴ *AEP Power Marketing, Inc.*, 97 FERC ¶ 61,219 at 61,970 (2001) (*AEP*).

⁵ October 14 Order, 105 FERC ¶ 61,061 at P 4 (*citing* Alliant's deficiency response at 7).

⁶ Alliant deficiency response at 12 n.12 (*citing AEP Power Marketing, Inc.*, Docket No. ER96-2495-019, *et al.*, Notice Delaying Effective Date of Mitigation and Announcing Technical Conference (December 20, 2001) (December 20 Notice) (deferring the date by which companies must implement the mitigation for spot market energy sales set forth in Section II.E of the *AEP* order and announcing intention to hold a technical conference).

⁷ Alliant had an existing market-based rate tariff on file with the Commission, Tariff MR-1, which is the subject of the Docket No. ER99-230-002 proceeding.

as the SMA itself, are currently pending rehearing before the Commission.”⁸ The Commission also reiterated its intent to hold a technical conference, open to all interested parties, prior to considering the rehearing requests and finalizing any required mitigation. As a result, the Commission granted Alliant’s request that it “impose the *AEP* mitigation measures here.”⁹ The Commission stated that its finding in that regard was subject to the technical conference on the SMA, Commission action in the *AEP* proceeding, and Commission action in the updated market analysis proceeding pending in Docket No. ER99-230-002. Finally, the Commission stated that it would address Municipal Wholesale Power Group (MWPG), MG&E and WPPI’s concerns at that time.

5. On November 13, 2003, MG&E and WPPI filed a joint request for rehearing of the Commission’s October 14 Order, stating that, to the extent the order fails to presently impose adequate mitigation, MG&E and WPPI request rehearing. On December 4, 2003, MG&E and WPPI filed a supplemental pleading to their request for rehearing.

II. Discussion

A. MG&E and WPPI’s Rehearing Request

6. In their request for rehearing, MG&E and WPPI state that the October 14 Order appears to impose the *AEP* mitigation measures, but that it is not clear whether those measures are stayed pending rehearing in *AEP*. They assert that Alliant’s Tariff MR-2 filing included a request for a stay, however, the October 14 Order fails to mention a stay and merely states that the Commission “will grant [Alliant’s] request that we also impose the *AEP* mitigation measures here.”¹⁰ MG&E and WPPI state that to the extent that the October 14 Order fails to presently impose adequate mitigation, they request rehearing.

7. MG&E and WPPI also assert that the Commission erred in the October 14 Order if it allowed the new tariff to take effect before the effective date of adequate market mitigation measures. MG&E and WPPI state that Alliant has never been found to lack market power and has failed the Commission’s SMA screen. They argue that neither the fact that *AEP* remains on rehearing nor the Commission’s plan to hold a technical conference provides a statutory basis to allow Alliant to sell at unregulated and unmitigated rates and, at a minimum, suspension and rehearing were required. MG&E and WPPI argue that, far from imposing adequate present mitigation, the October 14

⁸ October 14 Order, 105 FERC ¶ 61,061 at P 17.

⁹ *Id.*

¹⁰ MG&E and WPPI rehearing request at 1 (*citing* October 14 Order, 105 FERC ¶ 61,061 at P 17).

Order can be read to accept market-based rates now (and without suspension), while leaving customer protection safeguards unresolved for the indefinite future.¹¹

8. Further, MG&E and WPPI argue that the October 14 Order fails to clearly provide that any relief granted will apply retroactively to the date when the Tariff MR-2 takes effect. They also state that the order fails to provide “any specific timeline for the referenced proceedings, whose history provides no basis for optimism that the period during which Alliant will be permitted to exercise its market power without mitigation will be brief” and that it is intolerable to establish an indefinite period.¹²

B. Commission Determination

9. First, we note that, in the Commission’s December 20 Notice, we deferred the date by which AEP, Entergy, Southern Companies, or any other public utilities must implement the mitigation for spot market energy sales set forth in section II.E of *AEP*. In contrast, the Commission did not delay the mitigation imposed in section II.F of *AEP*, which requires “transmission providers that perform a study pursuant to a request for interconnection to treat unaffiliated entities, at their request, as competing network resources in meeting load and load growth and to post optimum, based on transmission consideration, areas on their systems for location prospective generating facilities on their website.”¹³ When the Commission stated in the October 14 Order that it “will grant Alliant Energy’s request that we also impose *AEP* mitigation measures here,” it intended that the spot market energy sales mitigation imposed, but deferred in *AEP*, also applied to Alliant.¹⁴ Thus, because the Commission deferred the date for implementation of the mitigation for spot market energy sales set forth in *AEP* pending Commission action on rehearing in the *AEP* proceeding, those aspects were also stayed for Alliant’s Tariff MR-2.

10. Second, in response to MG&E and WPPI’s argument that the October 14 Order fails to clearly provide that any relief granted will apply retroactively to the date when the Tariff MR-2 takes effect, we note that the Commission did not provide for retroactive relief in the October 14 Order. In the October 14 Order, we accepted Alliant’s Tariff MR-2 without suspension and the rates under Tariff MR-2 went into effect on that date.

¹¹ MG&E and WPPI rehearing request at 2.

¹² *Id.*

¹³ December 20 Notice at 2.

¹⁴ *See* October 14 Order, 105 FERC ¶ 61,061 at P 17.

11. Furthermore, since MG&E and WPPI filed their request for rehearing, the Commission has acted in each of the three proceedings referenced in the October 14 Order. On January 13 and 14, 2004, the Commission held the Technical Conference on Supply Margin Assessment Test and Alternatives. Following that technical conference, on April 14, 2004, as clarified on July 8, 2004, the Commission issued orders adopting two indicative screens for assessing generation market power: a pivotal supplier screen and a wholesale market share screen.¹⁵ Next, on May 13, 2004, the Commission issued an order addressing the procedures for implementing the generation market power analysis announced in the April 14 and July 8 Orders.¹⁶

12. As a result, on August 20, 2004, as amended on November 19, 2004, Alliant filed a revised updated market power analysis in Docket No. ER99-230-002, pursuant to the May 13 Order. Alliant also submitted revised tariff sheets to its market-based rate tariff to include the Commission's market behavior rules.¹⁷

13. On December 20, 2004, the Commission issued an order on Alliant's updated market power analysis, in which it instituted a proceeding under section 206 of the Federal Power Act (FPA),¹⁸ and established a refund effective date.¹⁹ The Commission found that Alliant's failure of the wholesale market share screen provided the basis for it to institute the section 206 proceeding, which was limited to the Dairyland Power Cooperative (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.²⁰ Accordingly, for the Dairyland, Alliant West and Alliant East control areas, the Commission gave Alliant 60 days from the date of issuance of the December 20 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

¹⁵ *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004) (July 8 Order).

¹⁶ *Acadia Power Partners, LLC*, 107 FERC ¶ 61,168 (2004) (May 13 Order).

¹⁷ *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).

¹⁸ 16 U.S.C. § 824e (2000).

¹⁹ *Alliant Energy Corporate Services, Inc.*, 109 FERC ¶ 61,289 (2004) (December 20 Order), *reh'g pending*.

²⁰ *Id.* at P 32.

April 14 Order's default cost-based rates or propose other cost-based rates and submit cost support for such rates."²¹ Nevertheless, the Commission found that Alliant passes both the pivotal supplier screen and the wholesale market share screen for the Midwest ISO market once the Midwest ISO becomes a single market and performs these functions with Commission-approved market monitoring and mitigation.²²

14. The December 20 Order also addressed the affiliate abuse concerns raised by MG&E, WPPI, and MWPG that were noted in the October 14 Order.²³ In response to those concerns, the Commission accepted 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 filing²⁴ and directed Alliant to file a revised Tariff MR-2 within 15 days of the order.²⁵ The Commission also reminded Alliant that, pursuant to *Aquila, Inc.*,²⁶ it must first receive Commission authorization under either of these tariffs prior to transacting with an affiliate. Finally, the Commission stated that, "[b]ased on these representations, Alliant satisfies the Commission's standards with regard to affiliate abuse."²⁷

15. In light of these events, including the institution of a section 206 proceeding to determine whether Alliant may continue to charge market-based rates, and the establishment of a refund effective date, we will deny MG&E and WPPI's request for rehearing.

²¹ *Id.* at P 32 (*citing* April 14 Order, 107 FERC ¶ 61,018 at P 201, 207-209).

²² December 20 Order, 109 FERC ¶ 61,289 at P 31. The Midwest ISO market is scheduled to start on April 1, 2005.

²³ *Id.* at P 40-41.

²⁴ 16 U.S.C. § 824d (2000). 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. *See* December 20 Order, 109 FERC ¶ 61,289 at P 40.

²⁵ *Id.* at P 41.

²⁶ 101 FERC ¶ 61,331 at P 12 (2002).

²⁷ December 20 Order, 109 FERC ¶ 61,289 at P 41.

The Commission orders:

MG&E and WPPI's request for rehearing is hereby denied.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.