

124 FERC ¶ 61,055
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Market-Based Rates for Wholesale Sales of Electric
Energy, Capacity and Ancillary Services by Public
Utilities

Docket No. RM04-7-005

ORDER ON REHEARING AND CLARIFICATION

(Issued July 17, 2008)

Introduction

1. On June 21, 2007, the Commission issued Order No. 697,¹ codifying and, in certain respects, revising its standards for obtaining and retaining market-based rates for public utilities. In order to accomplish this, as well as streamline the administration of the market-based rate program, the Commission modified its regulations at 18 C.F.R. Part 35, subpart H, governing market-based rate authorization. Order No. 697 focused on market power analyses of sellers and associated conditions and filing requirements to ensure that market-based rates charged by public utilities are just and reasonable. Order No. 697 became effective on September 18, 2007.

2. On April 21, 2008, the Commission issued an order responding to a number of requests for rehearing and clarification of Order No. 697. In most respects, in Order No. 697-A, the Commission reaffirmed its determinations made in Order No. 697. However, with respect to several issues, the Commission granted rehearing or provided clarification.

¹ *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, 73 Fed. Reg. 25,832 (May 7, 2008) FERC Stats. & Regs ¶ 31,268 (2008).

3. A number of entities filed requests for clarification or rehearing of Order No. 697-A concerning, among other things, the discussion in footnote 208 of Order No. 697-A concerning how simultaneous transmission import capability is to be allocated among competing suppliers for purposes of performing the indicative screen market power analysis. On June 6, 2008, the Commission issued a notice granting Transmission Owners in the Southeast Region an extension of time to file their revised updated market power analyses until 45 days after the date of issuance of a Commission order addressing this issue. On that same date, the Commission also granted certain filers in PJM Interconnection, L.L.C. (PJM) the same extension.

4. In this order, the Commission addresses the requests for rehearing or clarification of footnote 208. However, this order does not address the remaining issues raised in requests for rehearing or clarification of Order No. 697-A. The remaining issues raised on rehearing of Order No. 697-A will be addressed in a subsequent order.

5. Specifically, in this order the Commission grants the requests for rehearing with regard to footnote 208 of Order No. 697-A and clarifies that in performing the indicative screen analysis, market-based rate sellers may allocate the simultaneous import limit (SIL) capability on a *pro rata* basis (after accounting for the seller's firm transmission rights) based on the relative shares of the seller's (and its affiliates') and competing suppliers' uncommitted generation capacity in first-tier markets.

6. The Transmission Owners in the Southeast Region and certain filers in PJM are required to file their revised updated market power analyses within 45 days after the date of issuance of this order.

Discussion

7. In Order No. 697, the Commission adopted the requirement that SIL studies be used as a basis for transmission access when performing the market power analysis (either the indicative screens or the delivered price test (DPT) analysis).²

8. In Order No. 697-A, the Commission explained that the objective of the SIL calculation is to determine the amount of transmission imports available to bring in supply from first-tier areas. At the same time, the Commission attempted to explain the difference between two distinct steps in performing the market power analysis: (1) the calculation of the SIL capability and (2) the allocation of that SIL capability for purposes of performing the indicative screens. In particular, the Commission stated in footnote 208:

² Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 19.

The Commission recognizes that there may be confusion concerning the use of a *pro rata* allocation of generation capacity when performing a simultaneous transmission import limit (SIL) study and the requirement that, when performing the indicative screens, “[a]ny simultaneous transmission import capability should first be allocated to the seller’s uncommitted remote generation. Any remaining simultaneous transmission import capability would then be allocated to any uncommitted competing supplies.”

With regard to performing a SIL study, pro-rata allocation is used to assign shares to two “groups” of uncommitted generation capacity in the aggregated first-tier market. The seller must first calculate the sum of its owned and affiliated uncommitted generation capacity, then it must sum all other sellers’ uncommitted generation capacity. The seller then divides these two numbers to compute a ratio of the seller’s (and affiliated) uncommitted generation capacity to all other sellers’ uncommitted generation which determines the “share” that each seller is allocated to import into the study area. In other words, when performing the SIL study, any uncommitted generation capacity in the aggregate first-tier market is allocated pro rata for the purpose of determining the value of the SIL.

With regard to performing the indicative screen analyses, all of the seller’s and its affiliated uncommitted generation capacity in first-tier markets (remote capacity) should be allocated to the seller’s total uncommitted capacity in the relevant market (study area), up to the SIL limit. Any remaining simultaneous transmission import capability is then allocated to any uncommitted competing generation.³

9. In this order, we address the allocation of the SIL capability when performing the indicative screens. Specifically, we clarify that, to the extent the seller has remaining uncommitted first-tier generation capacity after accounting for the seller’s (and its affiliates’) firm transmission rights, the remaining SIL capability may be allocated on a *pro rata* basis to import the remaining uncommitted first-tier generation capacity of both the seller and competing suppliers.

³ See Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, n. 208, *citing* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 38.

Requests for Rehearing and Clarification

10. The Edison Electric Institute (EEI), the Electric Power Supply Association (EPSA), Southern Company Services, Inc.,⁴ MidAmerican Energy Company (MidAmerican), Reliant Energy, Inc. (Reliant), E.ON U.S., PacifiCorp and Public Service Company of New Mexico (collectively, Indicated Parties), FirstEnergy Service Company (FirstEnergy), and Exelon Corporation (Exelon) filed requests for rehearing and/or clarification of footnote 208.⁵

11. Generally, Petitioners argue that the statements in footnote 208 of Order No. 697-A are a change from past Commission policy and that market-based rate sellers should be allowed to allocate remaining transmission capability *pro rata* among all outside (i.e., first-tier) suppliers. Petitioners argue that this change was adopted without necessary notice and comment due process. Petitioners argue that the *pro rata* allocation approach reflects the Commission's open access transmission policies embodied in Orders No. 888⁶ and 890.⁷

12. Petitioners argue that since the Commission first began requiring use of the market-based rate indicative screens, the industry has understood SIL studies to involve

⁴ Southern Companies Services, Inc. filed its request for clarification or rehearing acting as agent for Alabama Power Company, Georgia Power company, Gulf Power Company, Mississippi Power Company and Southern Power Company (collectively, Southern Companies).

⁵ Southern Companies, MidAmerican, Indicated Parties, and Exelon join EEI in its arguments, or incorporate them by reference, on the issue of *pro rata* allocation of capacity when performing SIL studies.

⁶ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

⁷ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241 (2007), *order on reh'g*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats & Regs. ¶ 31,261 (2007).

pro rata allocation of “uncommitted transmission capability”⁸ to all market participants, including the seller and its affiliates, in performing indicative screens and other analyses. But, as Petitioners argue, Order No. 697-A includes a seemingly contrary statement that is creating confusion and concern.⁹ EEI explains that in paragraph 143 of Order No. 697-A, focusing on the treatment of remote generation capacity with firm and network transmission reservations, the Commission stated that the objective of the SIL study is to determine transmission availability to import power from uncommitted remote generation capacity, and the Commission explained how sellers¹⁰ should factor in existing long-term firm transmission reservations.¹¹ Petitioners argue that footnote 208 is facially inconsistent with the Commission’s historical policy of a *pro rata* allocation of import capability, as reflected in Order No. 697 and its predecessor orders, the April 14 and July 8 Orders.¹² Concerns regarding footnote 208’s inconsistency with Commission precedent are shared by EEI, MidAmerican, EPSA, Reliant, Exelon, FirstEnergy, Southern and MidAmerican.

13. Footnote 208 states that “all of the seller’s and its affiliated uncommitted generation capacity in first-tier markets (remote capacity) should be allocated to the seller’s total uncommitted capacity in the relevant market (study area), up to the SIL limit. Any remaining simultaneous transmission import capability is then allocated to any uncommitted competing generation.”¹³

⁸ Petitioners variously use the terms “uncommitted transmission capability,” “uncommitted transmission capacity,” “uncommitted simultaneous transmission import capability” and “uncommitted transmission import capability.” See Rehearing Requests of Southern, FirstEnergy, and EEI. However, in Order Nos. 697 and 697-A, the Commission did not use the modifier “uncommitted” in this context to refer to transmission. It is our understanding that Petitioners use these terms to generally refer to “simultaneous transmission import limit capability,” or “SIL capability.”

⁹ EEI Rehearing Request at 3.

¹⁰ We have substituted the term “seller” when Petitioners used “applicant” so that the text of this order is consistent with the terminology used in Order Nos. 697 and 697-A.

¹¹ EEI Rehearing Request at 4.

¹² EEI Rehearing Request at 5, Southern Rehearing Request at 2-3, referring to Order No. 697 as well as *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (April 14 Order), *order on reh’g*, 108 FERC ¶ 61,026 (2004) (July 8 Order).

¹³ Order No. 697-A, FERC Stats. & Regs ¶ 31,268 at n. 208.

14. However, Petitioners state that, in the July 8 Order, the Commission directed sellers to allocate uncommitted transmission capacity *pro rata* between themselves (and affiliates) and other sellers based on the parties' respective shares of uncommitted generation capacity. In other words, Petitioners argue that the Commission did not require that sellers first assign all available transmission capacity to their own and affiliated uncommitted generation capacity before engaging in a *pro rata* allocation of any remaining import capacity to outside supplies.¹⁴

15. Petitioners state that in Order No. 697, the Commission reaffirmed the approach sanctioned in the July 8 Order "that the current practice of allocating simultaneous import capability *pro rata* to sellers based on uncommitted capacity should be continued."¹⁵ Petitioners note that, similarly, in Order No. 697, the Commission stated, "[w]e then allocate imports based on transmission capacity (limited by the physical capabilities of the transmission system as determined by the SIL study) *pro rata* based on sellers' first-tier uncommitted generation capacity."¹⁶ EEI notes that the accompanying footnote explained how the study accounted for the seller's transmission reservations: "The SIL study also accounts for transmission reservations when determining the amounts of import available to reach the study area as discussed herein and in the April 14 and July 8 Orders."¹⁷ Petitioners argue that that the Commission has stated that "*pro rata* allocation is used to assign shares of simultaneous transmission import capability to uncommitted generation capacity in aggregated first-tier balancing authority areas to determine how much uncommitted generation capacity can enter the study area."¹⁸

¹⁴ EEI Rehearing Request at 5, Southern Rehearing Request at 6-7. We note that the Commission did not use the term "uncommitted transmission capacity" in the July 8 Order. However, as noted above, it appears that in discussing the July 8 Order EEI uses "uncommitted transmission capacity" to refer to "simultaneous transmission import capability." See EEI Rehearing Request at 5.

¹⁵ EEI Rehearing Request at 6, *citing* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 373 (emphasis added by EEI).

¹⁶ Southern Rehearing Request at 10 n. 12, FirstEnergy Rehearing Request at 5, EEI at 6, Reliant Rehearing Request at 18 n. 46, *citing* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 374.

¹⁷ EEI Rehearing Request at 6, *citing* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at n. 381.

¹⁸ Southern Rehearing Request at 6-7, EEI Rehearing Request at 6-7, *citing* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 375.

16. EEI points to paragraph 45 of the July 8 Order. There, the Commission stated:

In response to the argument that the April 14 Order improperly directs applicants to first allocate simultaneous transmission import capability to their own uncommitted remote generation, we clarify that only the portion of an applicant's uncommitted remote generation capacity that has firm or network reservations should be modeled in the base case and subtracted from available simultaneous transmission import capability. Specifically, remote resources owned or controlled by the applicant or its affiliates that are located in first-tier control areas should be modeled in each seasonal power flow case at the output level that utilizes the network or firm point-to-point transmission reservations historically used by the applicant or its affiliates. The remaining capacity should be modeled as uncommitted capacity and, with other unaffiliated supply, ramped up pro-rata to calculate the simultaneous transmission import capability into the area under study. This treatment is consistent with the pro forma tariff (OATT) that gives priority to network and firm point-to-point reservations over non-firm reservation requests.¹⁹

17. Petitioners argue that the practice of *pro rata* allocation was reflected in numerous market power studies submitted by EEI members and others.²⁰ EEI states that it is unaware of any orders or deficiency letters where the Commission or the Commission's staff challenged a seller's allocation of import capability among sellers/affiliates and competing suppliers on the basis of a *pro rata* share of uncommitted capacity in first-tier markets.²¹

18. Petitioners argue that footnote 208 departs from the current practice of allocating simultaneous transmission import capability on a *pro rata* basis without explanation or reasoned analysis.²² They contend that, for the first time on rehearing in Order No. 697-A, in footnote 208, the Commission indicated its intention to change a long-standing

¹⁹ *AEP Power Marketing Inc.*, 108 FERC ¶ 61,026, at P 45, EEI Rehearing Request at 7-8, (2004) (July 8 Order).

²⁰ EEI Rehearing Request at 8, Exelon Rehearing Request at 4, FirstEnergy Rehearing Request at 6.

²¹ EEI Rehearing Request at 8, FirstEnergy Rehearing Request at 6.

²² EEI Rehearing Request at 12, EPSA Rehearing Request at 22, Reliant Rehearing Request at 19-20.

policy that had not previously been viewed as open to possible modification.²³ Thus, Petitioners argue that the statement contained in footnote 208 establishes a new regulatory requirement, without a proper notice-and-comment rulemaking.²⁴

19. Petitioners argue that the *pro rata* approach to allocating import capability accurately reflects the Commission's strong, effective open access transmission policies embodied in Order Nos. 888 and 890.²⁵ They argue that jurisdictional transmission providers offer open access for all sellers of electricity and have no first-call right on available transmission capacity and no ability to block competitors from using it.²⁶ Specifically, EEI argues that "under the Commission's existing open access to transmission regulations, market-based rate sellers have no 'first-call' rights to import power into their study area markets absent any confirmed network resource designations or long-term firm transmission reservations, which already are reflected in the SIL study."²⁷ Petitioners argue that a *pro rata* allocation of uncommitted transmission capacity for purposes of conducting the indicative screens accurately reflects the reality of the marketplace and is consistent with the OATT.²⁸ Petitioners argue that the presumed priority underlying the footnote 208 methodology is contrary to Order Nos. 888 and 890, which establish a system of non-discriminatory access to the transmission grid.²⁹ EPSA, for example, states that it appears that the Commission intends for the footnote 208 methodology to apply even when the study area and first-tier markets are Regional Transmission Operator (RTO) or Independent System Operator (ISO) markets, where transmission service is provided by an entity that is independent of market participants. Petitioners argue that one of the goals which prompted the Commission to encourage the development of RTOs and ISOs was to assure the non-discriminatory access to the transmission grid and the presumption of preferential treatment evident in

²³ Exelon Rehearing Request at 15.

²⁴ EEI Rehearing Request at 5, Southern Rehearing Request at 10-11.

²⁵ EEI Rehearing Request at 8-9. FirstEnergy Rehearing Request at 7-9, Reliant Rehearing Request at 20.

²⁶ EEI Rehearing Request at 7-8, FirstEnergy Rehearing Request at 7.

²⁷ EEI Rehearing Request at 5. Indicated Parties make a similar "first right" argument in Indicated Parties Rehearing Request at 4-5.

²⁸ EEI Rehearing Request at 9, FirstEnergy Rehearing Request at 7-9.

²⁹ EPSA Rehearing Request at 25, Exelon Rehearing Request at 10-11.

footnote 208's methodology is at odds with the direct assignment approach of footnote 208.³⁰

20. Petitioners argue that the results of the indicative screens will be skewed by assigning to transmission-owning market-based rate sellers uncommitted generation capacity for which there are no associated rights to transmission service.³¹ Petitioners argue that this in turn is likely to result in "false positives" that will require sellers to prepare more costly and time-consuming DPT analyses.³² EPSA argues that the methodology in footnote 208 does not lead to a conservative view of import capability into a particular market, but rather to a fundamentally flawed assumption about the seller's ability to exercise market power.³³ Exelon argues that the approach in footnote 208 exaggerates the seller's market shares through inflated import levels of affiliated capacity based on implausible or non-existent reservations and scheduling arrangements.³⁴

21. Petitioners further argue that the new SIL allocation policy stated in footnote 208 conflicts with the Commission's stated objective of conforming the assumptions and data used by parties filing market power studies within the same region.³⁵ If one follows the requirements of footnote 208, each seller's indicative screens thus would assume a different allocation of imports, and the market shares reported for the collective group would substantially exceed total amounts of capacity in the relevant market. This would undermine the Commission's objective of assuring consistent data and indicative screens results within the same region.³⁶

22. Exelon states that a change in the SIL allocation scheme at this point in the filing schedule would result in a plethora of non-comparable screen results between the filings made in the three Northeast RTOs by market-based rate sellers affiliated with

³⁰ EPSA Rehearing Request at 26, FirstEnergy Rehearing Request at 9.

³¹ FirstEnergy Rehearing Request at 12, EEI Rehearing Request at 9-10, Reliant Rehearing Request at 20.

³² EEI Rehearing Request at 9-10, Exelon Rehearing Request at 8, FirstEnergy Rehearing Request at 9-10.

³³ EPSA Rehearing Request at 24.

³⁴ Exelon Rehearing Request at 5.

³⁵ Exelon Rehearing Request at 8-10, FirstEnergy Rehearing Request at 11.

³⁶ Exelon Rehearing Request at 9.

transmission owners in January 2008 under the old *pro rata* scheme and the filings made in the same three Northeast RTOs in June 2008 by other market-based rate sellers using the footnote 208 guidance.³⁷

23. EEI requests that the Commission clarify that its interpretation of SIL studies in footnote 208 of Order No. 697-A, if retained, will apply only prospectively to applications due more than 60 days after the Commission issues an order in response to requests for rehearing of Order No. 697-A. EEI states that this would avoid confusion and allow market-based rate sellers to complete their current studies and submit their applications without delay.³⁸

Commission Determination

24. As noted above, the Commission attempted through the use of footnote 208 in Order No. 697-A to address confusion that may exist between: (1) the calculation of the SIL capability, and (2) the allocation of that SIL capability among the seller and competing suppliers for the purposes of performing the indicative screen analysis. Based on the requests for rehearing received on this issue, it is apparent that confusion regarding this matter remains. There are two separate and distinct calculations addressed in footnote 208, one an engineering calculation and the other an economic one. While both of the calculations discussed in footnote 208 relate to performing a market power analysis, they are distinct steps in the market power analysis. The instant order only addresses the second step.

25. At issue here is the statement in footnote 208 that “all of the seller’s and its affiliated uncommitted generation capacity in first-tier markets (remote capacity) should be allocated to the seller’s total uncommitted capacity in the relevant market (study area), up to the SIL limit. Any remaining simultaneous transmission import capability is then allocated to any uncommitted competing generation.” Petitioners contend that this statement is in error and that SIL capability should be allocated between the seller (and its affiliates) and competing suppliers on a *pro rata* basis. EEI argues that after accounting for the seller’s firm transmission rights into the study area, the remaining SIL capability should be allocated between the seller and the competing suppliers on a *pro rata* basis. Upon further deliberation and careful consideration of petitioners’ arguments, we grant the rehearing request of EEI and other Petitioners on this issue and clarify our policy below.

³⁷ Exelon Rehearing Request at 9-10.

³⁸ EEI Rehearing Request at 4.

26. We agree with Petitioners that the principles of Order Nos. 888 and 890 provide for non-discriminatory access to available transmission capacity. In particular, Order Nos. 888 and 890 require that jurisdictional transmission providers offer open access to all sellers of electricity and, thus, it is not reasonable to assume that all of a seller's uncommitted generation capacity in first-tier markets has a first-call right on available transmission capacity. Accordingly, after accounting for the firm transmission rights of the seller and its affiliates, allocating the remaining SIL capability on a *pro rata* basis (that is, based on the relative shares of the market-based rate seller's and competing suppliers' uncommitted generation capacity in the first-tier market that could be sold into the relevant market)³⁹ for purposes of conducting the indicative screens is consistent with the underlying principles of the OATT.

27. We also note that some sellers have used *pro rata* allocation in horizontal market power studies since the July 8 Order and these studies have been accepted by the Commission and available for public examination.⁴⁰ No party has protested the use of *pro rata* allocations in these studies.⁴¹

28. We find that granting rehearing on this issue does not modify the fundamental conservative nature of our market power analysis, in which the Commission has opted for the more conservative approach regarding a number of factors in the analysis, including using two initial screens to identify those sellers that may have market power;⁴² the threshold for the market share indicative screen;⁴³ attributing generation to more than one

³⁹ In this regard, a *pro rata* allocation refers to allocating the SIL capability, after accounting for the seller's firm transmission rights, based on the ratio of the seller's uncommitted first-tier generation capacity divided by the total uncommitted first-tier generation capacity (i.e., the seller's uncommitted first-tier generation capacity plus the first-tier uncommitted generation capacity of competing suppliers).

⁴⁰ See, e.g., *FirstEnergy Operating Companies*, 111 FERC ¶ 61,032 (2005); *Idaho Power Company*, 110 FERC ¶ 61,219 (2005), *Dynegy Power Marketing Inc.*, 111 FERC ¶ 61,411 (2005).

⁴¹ Given our past acceptance of studies using *pro rata* allocation, and our determination herein to accept future studies using *pro rata* allocation, we need not address Petitioners' due process arguments.

⁴² Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 62.

⁴³ *Id.* P 89.

seller for the purposes of the horizontal analysis in certain circumstances;⁴⁴ and the elimination of the section 35.27(a) exemption for post-1996 generators.⁴⁵

29. In light of our decision to grant rehearing, and in an attempt to provide clarity concerning the allocation of SIL capability based on the sellers' and competing suppliers' uncommitted generation capacity in the first-tier markets, we describe below how we expect a *pro rata* allocation to be made. However, the Commission will consider alternative approaches provided such approaches do not change the fundamental principles described below.

30. The first step is the computation of the SIL capability. The SIL capability represents the limit of the transmission system to simultaneously import power into the study area.

31. After that computation is finished, one performs the second step, which is to allocate the SIL capability between the seller's (and its affiliates') uncommitted first-tier generation capacity and the uncommitted first-tier generation capacity of competing suppliers. As noted by EEI,⁴⁶ after allocating to the seller a portion of the SIL capability equal to its firm transmission rights, one then determines the respective shares of uncommitted generation capacity of the seller (and its affiliates) and competing suppliers. The remaining SIL capability is then allocated on a *pro rata* basis based on the seller's (and affiliates') and the competing suppliers' respective shares of uncommitted generation capacity in the first-tier markets. The instant order only addresses the second step.⁴⁷

32. The typical situation is that both the seller and competitors have uncommitted generation capacity in the first-tier markets. To determine the respective shares of uncommitted generation capacity to be used in performing the market power analysis, a seller should: (1) determine the amount of firm transmission capacity⁴⁸ the seller has into

⁴⁴ *Id.* P 185.

⁴⁵ *Id.* P 322.

⁴⁶ EEI Rehearing Request at 2, 4.

⁴⁷ We note that the amount of first-tier uncommitted generation capacity attributed to the seller and the competing suppliers in performing the market power analysis is limited by the SIL.

⁴⁸ *See, e.g.*, Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 368. "Firm transmission capacity" includes network and firm point-to-point.

the study area and assume that any seller's uncommitted first-tier generation capacity fully utilizes the seller's firm transmission rights (i.e., if the seller has 150 MW of firm transmission rights into the study area and 200 MW of uncommitted first-tier generation capacity, assume 150 MW of the seller's uncommitted first-tier generation capacity is imported into the study area, leaving the seller with 50 MW of uncommitted first-tier generation capacity);⁴⁹ and (2) to the extent the seller has remaining uncommitted first-tier generation capacity (in the preceding example, 50 MW),⁵⁰ the remaining SIL capability will be allocated on a *pro rata* basis to import the remaining uncommitted first-tier generation capacity of both the seller and competing suppliers.

33. Finally, it is unnecessary to make any further determinations regarding the issue of timing. Consistent with the notices issued June 6, 2008 granting certain filers an extension of time to file updated market power analyses, Transmission Owners in the Southeast Region as well as certain filers in PJM are required to file their revised updated market power analyses within 45 days after the date of issuance of this order.

The Commission orders:

(A) The Commission grants the requests for rehearing with regard to footnote 208 of Order No. 697-A and clarifies that market-based rate sellers, after accounting for the firm transmission rights held by the sellers and their affiliates, may allocate simultaneous transmission import capability on a *pro rata* basis (i.e., based on the relative shares of the market-based rate seller's (and its affiliates') and competing suppliers' uncommitted generation capacity in first-tier markets when performing the indicative screens.

⁴⁹ We note that EPSA expressed concern that accounting for the seller's and affiliates' firm transmission rights should not be "double counted" by being deducted in both the calculation of the SIL capability and the allocation of the SIL capability. EPSA Rehearing Request at n. 84. Here, we clarify that the values of these transmission rights must only be deducted once from the value of the SIL capability.

⁵⁰ In performing the indicative screens, to the extent the seller does not have any uncommitted generation capacity in the first-tier markets or its uncommitted generation capacity in the first-tier markets is fully accounted for through recognition of the seller's firm transmission rights, no SIL capability allocation is needed between the seller and competing suppliers.

(B) Transmission Owners in the Southeast Region as well as certain filers in PJM are required to file their revised updated market power analyses within 45 days after the date of issuance of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.