UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Ameren Energy Marketing Company	**)**	**Docket No. ER01-1945-001**

COMMENTS OF THE ILLINOIS COMMERCE COMMISSION

Pursuant to Rule 211 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §385.211, the Illinois Commerce Commission ("ICC") hereby submits its Comments in the above-captioned proceeding. The ICC respectfully requests that the Commission (1) find that AEM has failed provide a market power analysis as required by the Commission's June 27 Order for providing Reactive Supply service and, accordingly, reject AEM's continued attempt to include Reactive Supply and Voltage Control in its market-based rate tariff; and (2) direct AEM to modify its market-based rates tariff to terminate market-based ancillary services rates to customers on AEM's affiliates' transmission system once Ameren Services Company ceases to provide a cost-based ancillary services alternative.

I. BACKGROUND

On May 2, 2001, AEM filed an amendment to its market-based rate schedule to allow the sale of certain ancillary services to: (1) transmission customers on non-affiliated transmission systems; and (2) transmission customers on the transmission system of its affiliate, Ameren Services Company. Of the ancillary services for which AEM made this request, the pertinent service at issue in this proceeding is Reactive Supply and Voltage Control from Generation

Sources Service ("Reactive Supply").[1] Relying on a prior Commission order,[2] AEM argued that it did not need to provide an adequate market power analysis due primarily to data unavailability.[3] AEM committed, instead, to establish an Internet-based site in accordance with the guidelines outlined by the Commission in *Avista*.

In response to AEM's filing, the Commission issued an Order on June 27, 2001.[4] The Commission denied AEM's request, without prejudice, to provide Reactive Supply at market-based rates. The Commission noted that "AEM had not demonstrated that its generation is appropriately situated to supply the service or that it should be allowed to provide this service under its market-based rate authority."[5] More importantly, the Commission declined to apply *Avista* to AEM's request to supply Reactive Supply service at market-based rates.[6] Finally, the Commission directed AEM to make a compliance filing within 30 days.

On July 27, 2001, AEM submitted its compliance filing. Therein, AEM took steps to demonstrate that its generation is appropriately situated to supply the service.[7] However, AEM's filing lacked a market power analysis, as required by the Commission's June 27 Order, to demonstrate that it should be authorized to provide Reactive Supply service at market-based rates. Implicitly, AEM continued to rely on *Avista's* Internet-based alternative as a substitute for a market-power analysis.

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[1] In addition to reactive supply, AEM also proposed to sell the following services at market-based rates: (i) Regulation and Frequency Response Service, (ii) Energy Imbalance Service, (iii) Operating Reserve-Spinning Reserve Service, (iv) Operating Reserve-Supplemental Reserve Service, and (v) Loss Compensation Service.
[2] *Avista Corporation*, 87 FERC ¶61,223 (1999).
[3] *Id.*
[4] Order Conditionally Accepting for Filing Proposed Market-Based Rates for Third-Party Ancillary Services, *Ameren Energy Marketign Co.,* 95 FERC 61,448 (2001)("June 27 Order").
[5] Id. at 5.
[6] Id. at 6 n.10.
[7] Compliance Filing at 2.

II. DISCUSSION

A. THE COMMISSION SHOULD CONTINUE TO DENY AEM'S REQUEST TO PROVIDE REACTIVE SUPPLY AND VOLTAGE CONTROL SERVICE AT MARKET-BASED RATES ABSENT A SUFFICIENT MARKET-POWER ANALYSIS.

In Order 888,[8] the Commission stated that it would entertain requests for market-based pricing related to ancillary services on a case-by-case basis if supported by analyses that demonstrate that the seller lacks market power.[9] In *Ocean Vista Power Generation, L.L.C.*, the Commission offered further guidance on what is encompassed in a sufficient market-power analysis. 82 FERC ¶61,114, 61,407 (1998). As noted by the Commission, "[t]he guidance offered by the Commission in Order No. 888 and *Ocean Vista* was designed for two purposes: to ensure that sellers of ancillary services do not exercise market power and to further the goal of promoting competition in ancillary service markets."[10]

Subsequent to the Commission's issuance of *Ocean Vista*, the Commission realized that would-be third-party ancillary service sellers encountered data collection problems that interfered with their ability to conduct market-power analyses. In response to this problem, the Commission created an exception to its holding in *Ocean Vista*. Specifically, in *Avista*, the Commission held that "third party ancillary service sellers that cannot perform a market-power study should be allowed to sell ancillary services only in conjunction with a requirement that an

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[8] Order No. 888, *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, 61 Fed. Reg. 21,540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g.*, Order No. 888-A, 62 Fed. Reg. 12,274 (Mar. 4, 1997), FERC Stats. & Regs. ¶ 31,048 (1997), *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).
[9] Order No. 888 at ¶¶31,656-57.
[10] *Avista*, 87 FERC at ¶61,882.

Internet-based OASIS-like site for providing information about and transacting ancillary services be established."[11]

In this case, AEM relied on the *Avista* Internet exception, instead of providing a market-power analysis, as a basis for its initial request to provide Reactive Supply service at market-based rates. In its June 27 Order, however, the Commission did not approve AEM's request to provide Reactive Supply service at market-based rates. In so doing, the Commission limited *Avista's* Internet exception to the four ancillary services that were approved in *Avista*.[12] While the Commission denied AEM's request without prejudice, the Commission indicated via its holding that a market-power analysis is a necessary precondition to any grant to sell Reactive Supply service at market-base rates.

Avista did not establish new policy and procedures concerning the required market power demonstration for market-based rates for Reactive Supply as it did with the four other ancillary services. Therefore, the previous policy and procedures represented by *Ocean Vista* continue to apply. The Commission explained that the transmission provider is often uniquely situated to provide reactive power.[13] Indeed, the Commission noted that in Order 888 that Reactive Supply was one of two ancillary services that the transmission provider must provide and the transmission customer must purchase from the transmission provider.[14] The underlying rationale is that the existence of market power is so likely in the provisioning of Reactive Supply service that no condition, such as an Internet-based site, is likely to sufficiently mitigate the market power held by AEM controlled generators. In other words, the *Avista* Internet exception is not

[11] *Id.*, at ¶61,883.
[12] June 27 Order at 6 n.10 (specifically stating that it "will limit AEM's authorization to sell only the four ancillary services approved in *Avista*: Regulation Service, Energy Imbalance Service, Spinning Reserves, Supplemental Reserves").
[13] *Id.* at 5.
[14] *Id.*

an effective substitute for the Commission's review of a market-power analysis to mitigate market power in the provisioning of Reactive Supply service.

Ultimately, the Commission concluded that AEM had not demonstrated (1) that its generation is appropriately situated to supply this service, or (2) "that it should be allowed to provide this service under its market-based rate authority."[15] In its July 27 compliance filing, AEM attempts to address the Commission's concerns regarding its request for authority to sell Reactive Supply service at market-based rates.[16] However, while AEM attempts to make a showing in regard to the first deficiency in its application,[17] AEM fails to address the second deficiency identified by the Commission. AEM did not provide a market power analysis to satisfy the Commission's concern about the potential for market power and affiliate abuse in the provision of Reactive Supply service.

The Commission should once again decline to authorize AEM to provide Reactive Supply service at market-based rates. Consistent with *Ocean Vista*, sellers seeking market-based rates for Reactive Supply must demonstrate that the seller lacks market power in this discrete service. AEM has not done so. Instead, AEM continues to erroneously rely on the showing it attempted to make pursuant to the *Avista* Internet exception in its initial filing on May 2, 2001. As explained *supra*, the *Avista* Internet exception does not apply to Reactive Supply service. As a result, AEM has failed to provide any evidence that it should be allowed to sell Reactive Power at market-based rates. The Commission should continue to deny AEM's request for market-based rates for Reactive Power unless and until AEM makes the necessary showing via a market

[15] *Id*. (emphasis added).

[16] AEM's attempt to address the Reactive Supply issue in its compliance filing is procedurally defective. The issues to be addressed by AEM in the compliance filing were specifically enumerated by the Commission. *See*, June 27 Order at 8, Ordering Paragraph B. The Reactive Supply issue, however, was not enumerated by the Commission. More importantly, established Commission precedent requires AEM to address the issue via a separate Section 205 application. *See*, *Ocean Vista*, 82 FERC at ¶61,407.

power analysis, as required by the Commission's June 27 Order, that it lacks market power in the provisioning of Reactive Power.

B. THE COMMISSION SHOULD DIRECT AEM TO MODIFY ITS MARKET-BASED RATES TARIFF TO REFLECT THE FUTURE TERMINATION OF THE AMEREN OATT.

The Commission adopted its *Avista* policy to encourage entry by third-party suppliers into specified ancillary services markets "in which a transmission provider is obligated to provide such services at cost-based rates."[18] The rationale is that a cost-based alternative source of ancillary services will serve to protect customers from third-party sellers attempting to exercise market power. In fact, the Commission has stated that "[t]he backstop of cost-based ancillary services from the transmission provider will, in effect, limit the price at which customers are willing to buy ancillary services."[19]

AEM's proposed market-based rate tariff states as follows:

> [R]ates for sales of ancillary services under this Rate Schedule to any entity where the underlying transmission service is on the system of a public utility affiliated with AEM shall not exceed the rates for such ancillary services stated in <u>the currently effective</u> Open Access Transmission Tariff of the Ameren Operating Companies on file with FERC ("Ameren OATT").

Tariff, at ¶4 (emphasis added). The ancillary services rates in Ameren Services' OATT are currently cost-based. Therefore, Paragraph 4 of AEM's proposed market-based rate tariff <u>currently</u> complies with FERC's policy. In its June 27 Order, the Commission found this to be the case.[20]

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[17] *See*, Compliance Filing at 2.
[18] 87 FERC at ¶61,883.
[19] *Id.*
[20] June 27 Order at 6.

AEM's proposed market-based rate tariff, however, does not explicitly ensure that ancillary services customers will continue to have access to a cost-based alternative as required by *Avista*. Indeed, the cost-based backstop rate that the Commission relied on in granting AEM's application may disappear in less than four months. The Commission conditionally authorized Ameren Corporation, on behalf of AmerenCIPS and AmerenUE, to transfer its transmission facilities to the Alliance RTO.[21] The Alliance Companies have stated their intent to begin Alliance RTO operations on December 15, 2001.[22] As of that date, the Alliance RTO OATT will supersede Ameren's OATT and paragraph 4 of AEM's market-based rate tariff will cease to provide an effective cost-based backstop on the ability to exercise market power.

In the June 27 Order, the Commission reserved the right "to revoke AEM's authority to sell ancillary services at flexible rates on Ameren Services' system at any time and in response to changed circumstances, e.g., if a market has not developed and <u>there is no longer a cost-based backstop rate</u>."[23] As explained, transmission customers on the system of a public utility affiliated with AEM (e.g., AmerenCIPS or AmerenUE) will not continue to have a cost-based alternative supply of ancillary services available to them from Ameren Services once the Alliance RTO becomes operational. In acknowledgment of this scheduled occurrence, and in order to comply with the Commission's stated requirement that there be a cost-based alternative available to ancillary services customers, the Commission should require AEM to modify Paragraph 4 of its proposed market-based rate tariff now to rescind market-based rate service at that time. Specifically, AEM should modify its tariff to sunset on the date that Ameren Energy

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[21] *Alliance Companies*, 96 FERC ¶61,052, slip op. at 39 (July 12, 2001).

[22] *See*, Settlement Agreement Involving the Midwest Independent Transmission System Operator, Inc., Certain Transmission System Owners in the Midwest ISO, the Alliance Companies and Other Parties, *Illinois Power Company, et al.*, Docket No. ER01-123-000, *et al*., at Article VII, p. 20 (filed Mar. 21, 2001); *see also*, Order on Settlement Agreement, *Illinois Power Company, et al.,* 95 FERC ¶61,183 (2001)(approving with certain modifications and clarifications).

Services will no longer provide a cost-based alternative supply of ancillary services (i.e., December 15, 2001).

[23] June 27 Order at 7 (emphasis added).

III. CONCLUSION

WHEREFORE, for each of the aforementioned reasons, the Illinois Commerce Commission respectfully requests that the Commission: (1) find that AEM has failed to provide a market power analysis as required by the Commission's June 27 Order for providing Reactive Supply service and, accordingly, reject AEM's continued attempt to include Reactive Supply and Voltage Control in its market-based rate tariff; and (2) direct AEM to modify its market-based rates tariff to terminate market-based ancillary services rates to customers on AEM's affiliates' transmission systems once Ameren Services no longer provides a cost-based ancillary services alternative.

Dated: August 17, 2001

Respectfully submitted,

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