business and financial arrangements reporting requirement and for prompt initiation and completion of the generic reporting requirements proceeding. MS Capital again asks the Commission, pending the outcome of the generic proceeding announced in the November 8 Order, to stay the business and financial arrangements reporting requirement or to limit its scope.

As we explain below, we will grant MS Capital's request for rehearing concerning the business and financial arrangements reporting requirement.[4] With the issuance of this order, we will no longer require MS Capital, or any power marketer with market-rate authority, to report business and financial arrangements between the marketer (or an affiliate of the marketer) and the entities that buy power from, sell power to, or transmit power on behalf of, the marketer. We also provide guidance in this order concerning the determination of affiliation under Part II of the Federal Power Act (FPA). Further, we will deny the requests for rehearing of our decision in the November 8 Order to apply the annual charge obligation to all power marketers.

Discussion

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (1995), the Commission finds that the late interventions in this proceeding of CL Sales, the Electric Power Monitoring Group (and its individual members identified *supra* note 1), and Calpine will not prejudice the interests of any party and that good cause exists to permit the late interventions.

Business and Financial Arrangements Reporting Requirement

We will grant MS Capital's request for rehearing with regard to the business and financial arrangements reporting requirement. We will, effective as of the date of issuance of this order, no longer require power marketers to comply with that reporting requirement.

As the Commission explained in the November 8 Order, the Commission has required power marketers, as a condition of market rate approval, to report business and financial arrangements involving the marketer (or an affiliate of the marketer) and the entities that buy power from, sell power to, or transmit power on behalf of, the marketer. 69 FERC at 61,694.[5] This reporting requirement was designed to assist the Commission in detecting reciprocal dealing.

We have given careful consideration to the concerns voiced by MS Capital (and other power marketers) that the costs and burdens of the business and financial arrangements reporting requirement far outweigh any possible benefits of such reporting. We find that MS Capital has raised valid concerns as to, among other things, the breadth of such reporting requirement, the ''potentially impossible compliance burden'' that the requirement imposes on marketers such as MS Capital that are ''involved in numerous, disparate investments and business arrangements pertaining to thousands of different business matters,'' [6] and the adequacy of the resulting data in detecting reciprocal dealing.

On this basis, we conclude that the business and financial arrangements reporting requirement imposes costs and burdens on power marketers (in terms of compiling and filing the data) as well as on the Commission (in terms of reviewing the data for the purpose of detecting reciprocal dealing) that are not justified by the potential benefits of such reporting. As a result, although the possibility of reciprocal dealing remains a valid concern, we do not believe that the business and financial arrangements reporting requirement is an effective means of detecting such behavior by power marketers. Rather, we believe that this matter can be appropriately addressed through a complaint mechanism.

In several orders issued in the other dockets that are captioned in this order, we indicated that the same reporting requirements and reporting options that the Commission imposed on MS Capital apply to other power marketers with market-based rate authority.[7] Consistent with our holdings in that regard, we clarify that our decision to eliminate the business and financial arrangements reporting requirement, effective on the date of issuance of this order, applies not just to MS Capital, but to all other power marketers with authorization to engage in wholesale electric energy transactions at market-based rates, including, but not limited to, the power marketer applicants in Docket Nos. ER94–1450, ER94–1685, ER94–1690, ER94–1691, and ER95–393.[8]

Determination of Affiliation

In the November 8 Order, the Commission directed MS Capital, as a condition to authorization to transact at market-based rates, to report, among other things, affiliation with any entity that owns generation or transmission facilities or inputs to electric power production, or affiliation with any entity that has a franchised service area. 69 FERC at 61,695. The Commission also directed MS Capital to revise its proposed rate schedule to eliminate all sales to affiliates at market-based rates.[9] Indicating that it has not yet determined affiliation under Part II of the FPA based on a bright line test, the Commission directed MS Capital, ''until the Commission provides more guidance,'' to determine affiliation by applying the definition set forth in the Uniform System of Accounts. 69 FERC at 61,693 n.4. Under that definition, ''affiliated companies'' are defined as ''companies or persons that directly, or indirectly through one or more intermediaries, control, or are controlled by, or are under common control with, the [subject] company.'' 18 CFR Part 101, Definitions, 5.

We take this opportunity to provide further guidance to MS Capital, and to all public utilities,[10] concerning the determination of affiliation under Part II of the FPA. The Commission believes that it is appropriate, in the move toward competitive bulk power markets, to adopt a definition of affiliation that

[4] In light of our decision to eliminate altogether the business and financial arrangements reporting requirement for power marketers, we will dismiss as moot the requests of CL Sales and Calpine for rehearing and clarification, respectively, as to the scope of that requirement.

[5] See, *e.g.*, Louis Dreyfus Electric Power, Inc., 61 FERC ¶ 61,303 (1992). In Enron Power Marketing, Inc., 65 FERC ¶ 61,305 (1993), *order on clarification and reh'g*, 66 FERC ¶ 61,244 (1994), the Commission limited the reporting requirement to the activities of any affiliates located or doing business in the United States, Puerto Rico, Canada, and Mexico.

[6] MS Capital Rehearing Request at 4, 5.

[7] See Engelhard Power Marketing, Inc., 70 FERC ¶ 61,250 (1995) (*Engelhard*); CLP Hartford Sales, L.L.C., 71 FERC ¶ 61,127 (1995) (*CLP Hartford*); AIG Trading Corporation, 71 FERC ¶ 61,148 (1995) (*AIG*); Citizens Lehman Power Sales, 71 FERC ¶ 61,149 (1995) (*Citizens Lehman*); Coastal Electric Services Company, 71 FERC ¶ 61,374 (1995) (*Coastal*).

[8] Of course, the elimination of the business and financial arrangements reporting requirement should not be construed as affecting, in any way, a power marketer's obligation to file quarterly transaction reports. See *infra* note 15 (discussing the need for power marketers to file reports of jurisdictional transactions).

[9] The Commission noted that its decision in this regard was consistent with recent orders in which the marketer voluntarily agreed to a ban on sales to affiliates in order to ameliorate any possible concern for affiliate abuse. 69 FERC at 61,694 n.5. See Heartland Energy Services, Inc., 68 FERC ¶ 61,223 at 62,063 (1994) (*Heartland*); InterCoast Power Marketing Company, 68 FERC ¶ 61,248 at 62,133 (1994); LG&E Power Marketing Inc., 68 FERC ¶ 61,247 at 62,123 (1994). At the same time, the Commission explained that the general ban on sales to affiliates ''is without prejudice to MS Capital filing in the future a specific proposal to sell power to an affiliate, which would provide the Commission with an opportunity to consider the possibility of affiliate abuse in the context of a specific transaction.'' 69 FERC at 61,694.

[10] See 16 U.S.C. 824(e) (1988).