

137 FERC ¶ 61,211
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

Bishop Hill Energy LLC	Docket Nos. ER12-161-001
Bishop Hill Energy II LLC	ER12-162-001
Bishop Hill Energy III LLC	ER12-164-001

ORDER GRANTING MARKET-BASED RATE AUTHORIZATION AND REQUESTS
FOR WAIVERS

(Issued December 14, 2011)

1. In this order, the Commission grants Bishop Hill Energy LLC (Bishop Hill I), Bishop Hill Energy II LLC (Bishop Hill II), and Bishop Hill Energy III LLC (Bishop Hill III) (collectively, Bishop Hill Companies) authority to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates, effective December 21, 2011, as requested. Also, as discussed below, we grant Bishop Hill Companies waiver of the requirements under Order Nos. 888¹ and 890² and section 35.28 of the Commission's

¹ *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).

² *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

regulations³ to file an Open Access Transmission Tariff (OATT), the requirements under Order No. 889⁴ and Part 37 of the Commission's regulations⁵ to establish an Open Access Same-Time Information System (OASIS), and the requirements under Order Nos. 889, 2004,⁶ and 717,⁷ and Part 358 of the Commission's regulations⁸ to comply with the Standards of Conduct. We also grant Bishop Hill Companies' request for other waivers commonly granted to market-based rate sellers.

2. Additionally, we find that Bishop Hill I meets the criteria for a Category 1 seller in the Northwest, Southeast, Southwest, Southwest Power Pool, and Central regions and is

³ 18 C.F.R. § 35.28 (2011).

⁴ *Open Access Same-Time Information System and Standards of Conduct*, Order No. 889, FERC Stats. & Regs. ¶ 31,035 (1996), *order on reh'g*, Order No. 889-A, FERC Stats. & Regs. ¶ 31,049, *reh'g denied*, Order No. 889-B, 81 FERC ¶ 61,253 (1997).

⁵ 18 C.F.R. Part 37 (2011).

⁶ *Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs. ¶ 31,155 (2003), *order on reh'g*, Order No. 2004-A, FERC Stats. & Regs. ¶ 31,161, *order on reh'g*, Order No. 2004-B, FERC Stats. & Regs. ¶ 31,166, *order on reh'g*, Order No. 2004-C, FERC Stats. & Regs. ¶ 31,172 (2004), *order on reh'g*, Order No. 2004-D, 110 FERC ¶ 61,320 (2005), *vacated and remanded as it applies to natural gas pipelines sub nom. National Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831 (D.C. Cir. 2006); *see Standards of Conduct for Transmission Providers*, Order No. 690, FERC Stats. & Regs. ¶ 31,237, *order on reh'g*, Order No. 690-A, FERC Stats. & Regs. ¶ 31,243 (2007); *see also Standards of Conduct for Transmission Providers*, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,611 (2007); Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,630 (2008).

⁷ *Standards of Conduct for Transmission Providers*, Order No. 717, FERC Stats. & Regs. ¶ 31,280 (2008), *order on reh'g*, Order No. 717-A, FERC Stats. & Regs. ¶ 31,297, *order on reh'g*, Order No. 717-B, 129 FERC ¶ 61,123 (2009), *order on reh'g*, Order No. 717-C, 131 FERC ¶ 61,045 (2010), *order on reh'g*, Order No. 717-D, 135 FERC ¶ 61,017 (2011).

⁸ 18 C.F.R. Part 358 (2011).

so designated.⁹ Further, we designate Bishop Hill I as a Category 2 seller in the Northeast region. We find that Bishop Hill II and Bishop Hill III meet the criteria for Category 1 sellers in the Northeast, Northwest, Southeast, Southwest, and Southwest Power Pool regions and are so designated. We designate Bishop Hill II and Bishop Hill III as Category 2 sellers in the Central region. Accordingly, Bishop Hill Companies must file updated market power analyses for each region in which they are designated as Category 2 sellers in compliance with the regional reporting schedule adopted in Order No. 697.

I. Background

3. On October 21, 2011, as amended that same date, pursuant to section 205 of the Federal Power Act (FPA),¹⁰ Bishop Hill Companies filed applications for market-based rate authority with accompanying tariffs providing for the sale of electric energy, capacity, and ancillary services at market-based rates.¹¹

4. Bishop Hill I states that it will own a 214 megawatt (MW) wind-powered electric generation facility in Henry County, Illinois, located within the PJM market, and interconnected to the PJM transmission system.¹²

⁹ See *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, at P 848-850, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010), *aff'd sub nom. Montana Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011).

¹⁰ 16 U.S.C. § 824d (2006).

¹¹ The applications include requests for authorization to sell ancillary services in the markets administered by PJM Interconnection, L.L.C. (PJM), New York Independent System Operator, Inc., ISO New England Inc., California Independent System Operator Corp., and Midwest Independent Transmission System Operator, Inc. (MISO), as well as authorization to engage in the sale of certain ancillary services as a third-party provider in other markets.

¹² Bishop Hill I expects to first produce test power on or about December 21, 2011.

5. Further, Bishop Hill I represents that it will own and operate an approximately 28-mile, 138 kilovolt (kV) generator tie-line that will interconnect to the transmission system owned by Commonwealth Edison Company (Commonwealth Edison). Bishop Hill I states that this tie-line does not form an integrated transmission facility, is not designed or constructed to serve as a transmission facility, and is not intended to serve as a transmission facility for third-party transmission customers. Bishop Hill I states that it will own 34.5 kV collection lines, interconnection poles, conductors, insulators, buswork, transformers, a substation, and other related equipment that will connect its facility to the transmission system owned by Commonwealth Edison.

6. Bishop Hill II states that it will own an 81 MW wind-powered electric generation facility in Henry County, Illinois, located within the MISO market, and interconnected to the transmission system controlled by MISO.¹³

7. Further, Bishop Hill II represents that it will own and operate an approximately 28-mile, 138 kV generator tie-line (Bishop Hill II Line) that will interconnect to the transmission system owned by Illinois Power Company d/b/a AmerenIP (Ameren). Bishop Hill II states that this tie-line does not form an integrated transmission facility, is not designed or constructed to serve as a transmission facility, and is not intended to serve as a transmission facility for third-party transmission customers. Bishop Hill II will construct, own, and operate 34.5 kV collection lines and related facilities, a collection line substation and related station service transformers, and other facilities that will interconnect the Bishop Hill II facility to the transmission system owned by Ameren.

8. Bishop Hill III states that it will own and operate a 136 MW wind-powered generation facility in Henry County, Illinois, located with in the MISO market, and interconnected to the transmission system controlled by MISO.¹⁴

9. Bishop Hill III represents that its facility will include radial electric interconnection facilities necessary to effectuate its wholesale power sales from the Bishop Hill III facility. The electric interconnection facilities that Bishop Hill III will own interests in will consist of 34.5 kV collection lines and related equipment that Bishop Hill III will solely own for its own use and may consist of ownership interests in other interconnection facilities (i.e., interconnection poles, the joint ownership and use arrangements with respect to the Bishop Hill II Line and the Bishop Hill II substation) so that the Bishop Hill III facility can interconnect to the transmission system owned by Ameren.

¹³ Bishop Hill II expects to first produce test power in the second quarter of 2012.

¹⁴ Bishop Hill III expects to first produce test power in the second quarter of 2012.

10. Bishop Hill Companies state that they are entering into an Assignment, Co-Tenancy, and Shared Facilities Agreement (Agreement) which will govern their proposed joint ownership and use of certain interconnection facilities. These facilities include interconnection poles, the Bishop Hill II Line, and the Bishop Hill II substation. The cost to operate and maintain the property jointly owned by Bishop Hill Companies will be shared based on the pro rata share of the undivided ownership interest each company holds in such property.

11. Bishop Hill Companies request that the Commission waive the OATT, OASIS, and Standards of Conduct requirements with respect to their interconnection facilities.

12. Bishop Hill Companies state that they are indirect, wholly-owned subsidiaries of Invenergy Investment Company LLC (Invenergy), a wholly-owned subsidiary of Polsky Energy Investments LLC, which is owned and controlled by an individual.

13. Bishop Hill Companies represent that, through their relationship with Invenergy, they are affiliated with various companies that own and operate generation and transmission facilities in the United States, including in the PJM and MISO markets. Bishop Hill Companies represent that some of their affiliates have ownership interests in limited interconnection facilities. Bishop Hill Companies state that the following affiliates have been granted waivers of the Commission's open access transmission requirements with respect to their ownership interests in interconnection facilities: Wolverine Creek Energy LLC and Wolverine Creek Goshen Interconnection LLC (collectively, Wolverine); Hardee Power Partners Limited (Hardee Power); Grand Ridge Energy LLC, Grand Ridge Energy II LLC, Grand Ridge Energy III LLC, Grand Ridge Energy IV LLC, Grand Ridge Energy V LLC (collectively, Grand Ridge Companies); Invenergy Wind Development Michigan LLC (Invenergy Wind Development); and Gratiot County Wind LLC and Gratiot County Wind II LLC (collectively, Gratiot Companies).¹⁵

¹⁵ See *Wolverine Creek Goshen Interconnection, LLC*, Docket No. ER06-267-000 (Jan. 13, 2006) (delegated letter order); *Hardee Power Partners Limited*, 125 FERC ¶ 61,036 (2008); *Grand Ridge Energy*, 128 FERC ¶ 61,134 (2009); *Invenergy Wind Development Michigan LLC*, 136 FERC ¶ 61,209 (2011); *The Detroit Edison Co.*, 136 FERC ¶ 61,210 (2011).

II. Notice of Filing

14. Notice of Bishop Hill Companies' October 21, 2011 Filings was published in the *Federal Register*,¹⁶ with interventions and comments due on or before November 14, 2011. None was filed.

15. Notice of Bishop Hill Companies' requests for blanket authorization under Part 34 was separately published in the *Federal Register*,¹⁷ with interventions or protests due on or before November 15, 2011. None was filed.

III. Determination

16. As discussed below, we will grant Bishop Hill Companies' request for authorization to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates and Bishop Hill Companies' request for certain waivers.

A. Market-Based Rate Authorization

17. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, horizontal and vertical market power.¹⁸ As discussed below, we find that Bishop Hill Companies satisfy the Commission's standards for market-based rate authority and we will accept their market-based rate tariffs, effective December 21, 2011, as requested.

1. Horizontal Market Power

18. The Commission has adopted two indicative screens for assessing horizontal market power: the pivotal supplier screen and the wholesale market share screen.¹⁹ The Commission has stated that passage of both screens establishes a rebuttable presumption that the applicant does not possess horizontal market power, while failure of either screen creates a rebuttable presumption that the applicant has horizontal market power.²⁰

¹⁶ 76 Fed. Reg. 67,162 (2011); 76 Fed. Reg. 67,163 (2011); 76 Fed. Reg. 67,433 (2011); 76 Fed. Reg. 67,434 (2011).

¹⁷ 76 Fed. Reg. 67,721 (2011); 76 Fed. Reg. 67,720 (2011).

¹⁸ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 62, 399, 408, 440.

¹⁹ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 62.

²⁰ *Id.* P 33, 62-63.

19. Bishop Hill I performed an analysis for the PJM market. Bishop Hill II and Bishop Hill III performed an analysis for the MISO market. The Commission has reviewed Bishop Hill Companies' pivotal supplier and wholesale market share screens for the relevant markets and has determined that they pass the screens in the relevant markets. Bishop Hill Companies' pivotal supplier screens indicate that their uncommitted capacity is less than the net uncommitted supply in each relevant market. With respect to the wholesale market share screens, Bishop Hill Companies pass in all seasons in the PJM and MISO markets with market shares no higher than two and three percent, respectively. Accordingly, we find that Bishop Hill Companies satisfy the Commission's requirements for market-based rates regarding horizontal market power.

2. Vertical Market Power

20. In cases where a public utility, or any of its affiliates, owns, operates, or controls transmission facilities, the Commission requires that there be a Commission-approved OATT on file or that the seller has received waiver of the OATT requirement before granting a seller market-based rate authorization.²¹

21. In this case, as discussed more fully below, the Commission will grant Bishop Hill Companies' request for waiver of the requirement to have an OATT on file for their transmission facilities.²² In addition, as noted above, Wolverine, Hardee Power, Grand Ridge Companies, Invenergy Wind Development, and Gratiot Companies have been granted waiver of the Commission's open access requirements, including the requirement to file an OATT in connection with their ownership interests in their transmission facilities.

²¹ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408.

²² A generator lead line is a transmission facility. *See* 16 U.S.C. §§ 796(23), 824(a)-(b) (2006). Each of Bishop Hill Companies is subject to the requirement under Order Nos. 888 and 890 to file an OATT, or seek a waiver of the requirement to file an OATT, unless and until it receives a request for transmission service. *See Milford Wind Corridor, LLC*, 129 FERC ¶ 61,149, at P 24 (2009) (noting that the fact that the facilities merely tie a generator to the grid does not render a line exempt from the Commission's regulation of transmission facilities). *See also Evergreen Wind Power III, LLC*, 135 FERC ¶ 61,030 (2011).

22. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.²³ The Commission requires a seller to provide a description of its ownership or control of, or affiliation with an entity that owns or controls, intrastate natural gas transportation, storage or distribution facilities; sites for generation capacity development; and physical coal supply sources and ownership of or control over who may access transportation of coal supplies (collectively, inputs to electric power production).²⁴ The Commission also requires sellers to make an affirmative statement that they have not erected barriers to entry into the relevant market and will not erect barriers to entry into the relevant market.²⁵ The Commission adopted a rebuttable presumption that the ownership or control of, or affiliation with any entity that owns or controls, inputs to electric power production does not allow a seller to raise entry barriers but will allow intervenors to demonstrate otherwise.²⁶

23. Regarding other barriers to entry, Bishop Hill Companies represent that neither they nor their affiliates own or control any intrastate natural gas transportation, storage or distribution facilities, or coal resources or transportation facilities or companies that own or control such things. Bishop Hill Companies state that neither they nor their affiliates own or control sites that can be used to impose barriers to market entry in the PJM and MISO markets. Bishop Hill Companies commit to file any necessary quarterly site control reports with the Commission in accordance with Commission rules applicable to entities with market-based rates authority.²⁷

24. Finally, consistent with Order No. 697, Bishop Hill Companies affirmatively state that they and their affiliates have not erected barriers to entry and will not erect barriers in the relevant geographic markets.

25. Based on Bishop Hill Companies' representations, and our determinations discussed below, we find that Bishop Hill Companies satisfy the Commission's requirements for market-based rates regarding vertical market power.

²³ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 440.

²⁴ Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

²⁵ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

²⁶ *Id.* P 446.

²⁷ *E.g., Alabama Electric Marketing, LLC*, Docket No. LA11-2-000 (Oct. 18, 2011) (delegated letter order).

B. Waiver Requests

1. Waiver of Order Nos. 888, 889, and 890

26. As explained above, Bishop Hill Companies seek waiver of the requirements to file an OATT, establish and maintain an OASIS, and abide by the Standards of Conduct with respect to the interconnection facilities that they own. In support of the request for waiver, Bishop Hill Companies represent that the facilities will be discrete, radial interconnection facilities used and owned by the owners of the generation projects to accommodate connection to the transmission grid. Bishop Hill Companies represent that the interconnection facilities do not form an integrated transmission grid.

27. Order Nos. 888 and 890 and section 35.28 of the Commission's regulations require public utilities that own, operate, or control facilities used for the transmission of electric energy in interstate commerce to file an OATT. Order No. 889 and Part 37 of the Commission's regulations require public utilities to establish and maintain an OASIS. Order Nos. 889, 2004, and 717 and Part 358 of the Commission's regulations require public utilities to abide by certain standards of conduct.²⁸ In prior orders, the Commission has enunciated the standards for exemption from some or all of the requirements of Order Nos. 888 and 889.²⁹ The criteria for waiver of these requirements are unchanged by Order Nos. 890, 2004, and 717.³⁰

28. The Commission may grant requests for waiver of the obligation to file an OATT to public utilities that can show that they own, operate, or control only limited and discrete transmission facilities (facilities that do not form an integrated transmission grid), until such time as the public utility receives a request for transmission service. Should the public utility receive such a request, the Commission has determined that the public utility must file with the Commission a *pro forma* tariff within 60 days of the date of the request, and must comply with any additional requirements that are effective on the date of the request.³¹

²⁸ Order No. 889, FERC Stats. & Regs. ¶ 31,035 at 31,590; Order No. 2004, FERC Stats. & Regs. ¶ 31,155 at P 16; Order No. 717, FERC Stats. & Regs. ¶ 31,280 at P 313.

²⁹ See, e.g., *Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232, at 61,941 (1996) (*Black Creek*); *Entergy Mississippi, Inc.*, 112 FERC ¶ 61,228, at P 22 (2005) (*Entergy*).

³⁰ See *Alcoa Power Generating Inc.*, 120 FERC ¶ 61,035, at P 3 (2007); Order No. 717, FERC Stats. & Regs. ¶ 31,280 at P 31-33.

³¹ *Black Creek*, 77 FERC at 61,941.

29. The Commission has also determined that waiver of the requirement to establish an OASIS and abide by the Standards of Conduct would be appropriate for a public utility if the applicant: (1) owns, operates, or controls only limited and discrete transmission facilities (rather than an integrated transmission grid); or (2) is a small public utility that owns, operates, or controls an integrated transmission grid, unless it is a member of a tight power pool or other circumstances are present that indicate that a waiver would not be justified.³² The Commission has held that waiver of Order No. 889 will remain in effect until the Commission takes action in response to a complaint to the Commission that an entity evaluating its transmission needs could not get the information necessary to complete its evaluation (for OASIS waivers) or an entity complains that the public utility has unfairly used its access to information about transmission to benefit the utility or its affiliate (for Standards of Conduct waivers).³³

30. Based on the statements in Bishop Hill Companies' application, we find that their facilities qualify as limited and discrete. The facilities will be used solely by Bishop Hill Companies to interconnect their facilities to the transmission grid. Accordingly, we will grant Bishop Hill Companies waiver of the requirements of Order Nos. 888 and 890 and section 35.28 of the Commission's regulations to have an OATT on file. However, if any of Bishop Hill Companies receives a request for transmission service, it must file with the Commission a *pro forma* OATT within 60 days of the date of the request, and must comply with any additional requirements that are effective on the date of the request in compliance with Order Nos. 888 and 890.

31. The Commission will also grant Bishop Hill Companies waiver of the requirements of Order No. 889 and Part 37 of the Commission's regulations with respect to OASIS and Order Nos. 889, 2004, and 717 and Part 358 with respect to the Standards of Conduct. We note that Bishop Hill Companies' waiver of the requirement to establish an OASIS will remain in effect until the Commission takes action in response to a complaint to the Commission that an entity evaluating its transmission needs could not

³² *Id.* In *Black Hills Power, Inc.*, 135 FERC ¶ 61,058, at P 2-3 (2011), the Commission explained that membership in a tight power pool is no longer a factor in the determination for waiver of Standards of Conduct. Additionally, size is not relevant to whether waivers are granted to public utilities that participate in a Commission-approved Independent System Operator or Regional Transmission Organization.

³³ *Entergy*, 112 FERC ¶ 61,228 at P 23 (citing *Central Minnesota Municipal Power Agency*, 79 FERC ¶ 61,260, at 62,127 (1997); *Easton Utilities Commission*, 83 FERC ¶ 61,334, at 62,343 (1998)).

get the information necessary to complete its evaluation.³⁴ Likewise, Bishop Hill Companies' waiver of the Standards of Conduct will remain in effect unless and until the Commission takes action on a complaint by an entity that one of Bishop Hill Companies has unfairly used its access to information to unfairly benefit itself or its affiliate.³⁵

2. Other Waivers, Approvals, and Authorizations

32. Bishop Hill Companies also request the following waivers and authorizations: (1) waiver of the filing requirements of subparts B and C of Part 35, except sections 35.12(a), 35.13(b), 35.15, and 35.16; (2) waiver of the accounting and other requirements of Parts 41, 101, and 141, except sections 141.14 and 141.15; and (3) blanket authorization under section 204 of the FPA³⁶ and Part 34 for all future issuances of securities and assumptions of liability.

33. The Commission will grant the requested waivers and authorizations consistent with those granted other entities with market-based rate authorizations.³⁷ Notwithstanding the waiver of the accounting and reporting requirements, the Commission expects Bishop Hill Companies to keep their accounting records in accordance with generally accepted accounting principles.

3. Reporting Requirements

34. Consistent with the procedures the Commission adopted in Order No. 2001, an entity with market-based rate authorization must electronically file an Electric Quarterly Report (EQR) with the Commission containing: (1) a summary of the contractual terms

³⁴ *Id.*

³⁵ *Id.* Bishop Hill Companies must notify the Commission if there is a material change in facts that affect their waiver, within 30 days of the date of such change. *Material Changes in Facts Underlying Waiver of Order No. 889 and Part 358 of the Commission's Regulations*, 127 FERC ¶ 61,141, at P 5 (2009).

³⁶ 16 U.S.C. § 824c (2006).

³⁷ We note that the Commission has examined and approved the continued applicability of the waiver of its accounting and reporting requirements in Parts 41, 101, and 141 of the Commission's regulations, as well as the continued applicability of the blanket authorization for the issuance of securities and the assumption of liabilities. *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 984-985 (regarding waiver of Parts 41, 101, and 141), 999-1000 (regarding blanket approval under Part 34).

and conditions in every effective service agreement for market-based power sales; and (2) transaction information for effective short-term (less than one year) and long-term (one year or longer) market-based power sales during the most recent calendar quarter.³⁸ Public utilities must file EQRs no later than 30 days after the end of the reporting quarter.³⁹

35. Additionally, Bishop Hill Companies 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.⁴⁰

36. In Order No. 697, the Commission created two categories of sellers.⁴¹ Category 1 sellers are not required to file regularly scheduled updated market power analyses. Category 1 sellers are wholesale power marketers and wholesale power producers that own or control 500 MW or less of generation in aggregate per region; that do not own, operate, or control transmission facilities other than limited equipment necessary to

³⁸ *Revised Public Utility Filing Requirements*, Order No. 2001, FERC Stats. & Regs. ¶ 31,127, *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reh'g denied*, Order No. 2001-B, 100 FERC ¶ 61,342, *order directing filing*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002), *order directing filing*, Order No. 2001-D, 102 FERC ¶ 61,334, *order refining filing requirements*, Order No. 2001-E, 105 FERC ¶ 61,352 (2003), *order on clarification*, Order No. 2001-F, 106 FERC ¶ 61,060 (2004), *order revising filing requirements*, Order No. 2001-G, 120 FERC ¶ 61,270, *order on reh'g and clarification*, Order No. 2001-H, 121 FERC ¶ 61,289 (2007), *order revising filing requirements*, Order No. 2001-I, FERC Stats. & Regs. ¶ 31,282 (2008). Attachments B and C of Order No. 2001 describe the required data sets for contractual and transaction information. Public utilities must submit EQRs 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>.

³⁹ The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2011). Failure to file an EQR (without an appropriate request for extension), or failure to report an agreement in an EQR, 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.

⁴⁰ *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005); 18 C.F.R. § 35.42 (2011).

⁴¹ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 848.

connect individual generation facilities to the transmission grid (or have been granted waiver of the requirements of Order No. 888); that are not affiliated with anyone that owns, operates, or controls transmission facilities in the same region as the seller's generation assets; that are not affiliated with a franchised public utility in the same region as the seller's generation assets; and that do not raise other vertical market power issues.⁴² Sellers that do not fall into Category 1 are designated as Category 2 sellers and are required to file updated market power analyses.⁴³

37. Bishop Hill I represents that it meets the criteria for Category 1 seller status in the Northwest, Southeast, Southwest, Southwest Power Pool, and Central regions, and the criteria for Category 2 seller status in the Northeast region. Bishop Hill II and Bishop Hill III represent that they meet the criteria for Category 1 seller status in the Northwest, Southeast, Southwest, Southwest Power Pool, and Northeast regions, and the criteria for Category 2 seller status in the Central region.

38. Bishop Hill I states that it only owns generation in the Northeast region, and that it is affiliated with more than 500 MW of generation in that region. Bishop Hill II and Bishop Hill III state that they only own generation in the Central region, and that it is affiliated with more than 500 MW of generation in that region. Bishop Hill Companies further state that neither they nor any of their affiliates own, operate, or control transmission facilities other than the limited facilities that are necessary to interconnect their generation facilities to the grid. Bishop Hill Companies further state that they are not affiliated with any franchised public utility, and that they do not raise any other vertical market power issues. Based on Bishop Hill Companies' representations and the Commission's decision herein to grant waivers of the OATT requirement, we designate Bishop Hill I as a Category 1 seller in the Northwest, Southeast, Southwest, Southwest Power Pool, and Central regions and as a Category 2 seller in the Northeast region. Likewise, we designate Bishop Hill II and Bishop Hill III as Category 1 sellers in the Northwest, Southeast, Southwest, Southwest Power Pool, and Northeast regions and as Category 2 sellers in the Central region. Bishop Hill Companies must file updated market power analyses for all regions in which they are designated as Category 2 sellers in compliance with the regional reporting schedule adopted in Order No. 697. The Commission reserves the right to require an updated market power analysis at any time for any region.⁴⁴

⁴² 18 C.F.R. § 35.36(a) (2011).

⁴³ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 850.

⁴⁴ *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 853.

The Commission orders:

(A) Bishop Hill Companies' market-based rate tariffs are hereby accepted for filing, effective December 21, 2011, as requested, as discussed in the body of this order.

(B) Waiver of the provisions of Subparts B and C of Part 35 of the Commission's regulations, with the exception of sections 35.12(a), 35.13(b), 35.15, and 35.16, is hereby granted.

(C) Waiver of Parts 41, 101, and 141 of the Commission's regulations is hereby granted, with the exception of sections 141.14 and 141.15.

(D) Blanket authorization under Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability is hereby granted. Bishop Hill Companies are hereby authorized to issue securities and assume obligations or liabilities as guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Bishop Hill Companies, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(E) The Commission reserves the right to modify this order to require a further showing that neither the public nor private interests will be adversely affected by continued Commission approval of Bishop Hill Companies' issuance of securities or assumptions of liability.

(F) Bishop Hill Companies are hereby granted waiver of the requirements under Order Nos. 888 and 890 and section 35.28 of the Commission's regulations to file an OATT, the requirements under Order No. 889 and Part 37 of the Commission's regulations to establish an OASIS, and the requirements under Order Nos. 889, 2004, and 717, and Part 358 to comply with the Standards of Conduct, as discussed in the body of this order.

(G) Bishop Hill Companies are hereby required to file EQRs in compliance with Order No. 2001. If the effective date of Bishop Hill Companies' market-based rate

tariffs falls within a quarter of the year that has already expired, Bishop Hill Companies' EQRs for the expired quarter are due within 30 days of the date of this order.

By the Commission. Commissioner Spitzer is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.