

140 FERC ¶ 61,074
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Copper Mountain Solar 2, LLC

Docket No. ER12-1566-001

ORDER GRANTING MARKET-BASED RATE AUTHORIZATION AND REQUEST
FOR WAIVERS

(Issued July 26, 2012)

1. In this order, the Commission grants Copper Mountain Solar 2, LLC (Copper Mountain) authority to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates, effective June 18, 2012, as requested. Also, as discussed below, we grant Copper Mountain waiver of the obligation to file an Open Access Transmission Tariff (OATT), to comply with the Commission's Standards of Conduct, and to establish and maintain an Open Access Same-Time Information System (OASIS). We also grant Copper Mountain's request for other waivers commonly granted to market-based rate sellers.

2. Additionally, we find that Copper Mountain meets the criteria for a Category 1 seller in the Northeast, Southeast, Central, Northwest, and Southwest Power Pool regions and is so designated. Further we designate Copper Mountain as a Category 2 seller in the Southwest region and, therefore, Copper Mountain must file updated market power analyses for the Southwest region in compliance with the regional reporting schedule adopted in Order No. 697.¹

¹ 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 PP 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), *cert. denied sub nom. Public Citizen, Inc. v. FERC*, 2012 U.S. LEXIS 4820 (U.S. June 25, 2012).

I. Background

3. On April 18, 2012, as amended on May 30, 2012, and June 18, 2012, pursuant to section 205 of the Federal Power Act (FPA),² Copper Mountain filed an application for market-based rate authority with an accompanying tariff providing for the sale of electric energy, capacity, and ancillary services at market-based rates.³ Copper Mountain explains that it is constructing a 150 megawatt (MW) solar photovoltaic electric generation facility near Bolder City, Nevada (Facility) located in the Nevada Power Company (Nevada Power) balancing authority area.⁴ Copper Mountain represents that the output of the Facility is fully committed to Pacific Gas and Electric Company (PG&E) pursuant to a long-term contract.

4. Copper Mountain states that the Facility will include a 34.5/230 kilovolt (kV) substation and related generator interconnection facilities, including a 230kV generator tie line approximately 1.6 miles in length. Copper Mountain states that the Facility will be interconnected to the grid at the Merchant Switchyard, which is currently owned by Nevada Power and San Diego Gas & Electric Company (SDG&E).

5. Copper Mountain states that work is in progress to reconfigure the Merchant Switchyard and the nearby Eldorado Substation operated by Southern California Edison Company to transition the Merchant Switchyard and its associated facilities from the Nevada Power balancing authority area into the CAISO market, with the initial phase of the transfer scheduled to have occurred in June 2012, when the south side of the Merchant Switchyard will be placed under CAISO control.⁵ Copper Mountain further

² 16 U.S.C. § 824d (2006).

³ Copper Mountain requests authorization to sell ancillary services in the markets administered by the California Independent System Operator Corp. (CAISO), as well as authorization to engage in the sale of certain ancillary services as a third-party provider in other markets.

⁴ Copper Mountain states that the first phase of the Facility, consisting of 92 MW, is under construction and is scheduled to begin commissioning in blocks commencing in June 2012.

⁵ Copper Mountain's April 18, 2012 Filing at 2-3. *See also California Independent System Operator Corp.*, Docket No. ER12-1897-000 (July 5, 2012) (delegated letter order) (accepting an amendment to the Interconnected Control Area Operating Agreement between CAISO and Nevada Power to reflect changes in points of interconnection to transition a portion of the Merchant substation from the Nevada Power balancing authority area to the CAISO balancing authority area).

states that, beginning with initial energization and for a period of several months until the reconfiguration is complete, which is scheduled to occur in the fourth quarter of 2012, the Facility will make temporary use of adjacent generator interconnection facilities owned by its affiliate, Copper Mountain Solar 1, LLC (Copper Solar).⁶ Copper Mountain states that, once the transmission reconfiguration is complete, the Facility will be directly interconnected to the Merchant Switchyard via its generator tie line, and will thus no longer make use of the Copper Solar facilities.

6. Copper Mountain states that its generator tie line does not comprise an integrated transmission system and it does not serve, and is not designed to serve, other customers. Copper Mountain requests that the Commission waive the requirements under Order Nos. 888⁷ and 890⁸ and section 35.28 of the Commission's regulations⁹ to file an OATT, the requirements under Order No. 889¹⁰ and Part 37 of the Commission's regulations¹¹ to

⁶ Cooper Mountain states that the Copper Solar facilities consist of a 230kV generator tie line that is less than 0.15 mile in length. We note that, in *Copper Mountain Solar 1, LLC*, 140 FERC ¶ 61,006 (2012), the Commission accepted a Joint Use Agreement between Copper Solar and Copper Mountain covering Copper Mountain's temporary use of Copper Solar's generator tie line.

⁷ *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).

⁸ *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).

⁹ 18 C.F.R. § 35.28 (2012).

¹⁰ *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).

¹¹ 18 C.F.R. Part 37 (2012).

establish an OASIS, and the requirements under Orders Nos. 2004¹² and 717¹³ and Part 358 of the Commission's regulations¹⁴ to comply with the Standards of Conduct.

7. Copper Mountain states that it is a wholly-owned subsidiary of Sempra Global, which in turn is a wholly-owned subsidiary of Sempra Energy, a public utility holding company that provides, through various subsidiaries and affiliates, a wide spectrum of electric, natural gas, and energy-related products and services. Copper Mountain states that Sempra Energy wholly-owns Southern California Gas Company (SoCalGas) and SDG&E, a public utility with a franchised service territory that provides electric and natural gas service in San Diego County and southern Orange County, California.

8. Copper Mountain states that SDG&E has conveyed operational control over its transmission facilities to CAISO. Copper Mountain represents that all other transmission facilities owned by Copper Mountain and its affiliates are limited and discrete facilities necessary to connect their generating facilities to the electric grid.¹⁵

9. Copper Mountain represents that it is affiliated with entities that have developed liquefied natural gas terminals, and a take-away interstate pipeline for one of those

¹² *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).

¹³ *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).

¹⁴ 18 C.F.R. Part 358 (2012).

¹⁵ Copper Mountain's April 18, 2012 Filing at 9-10. *See also Flat Ridge 2 Wind Energy LLC*, 139 FERC ¶ 61,160 (2012); *Mesquite Solar I, LLC*, 138 FERC ¶ 61,074 (2012); *Cedar Creek Wind Energy, LLC*, 134 FERC ¶ 61,130 (2011); *BP Wind Energy North America Inc.*, 129 FERC ¶ 61,207 (2009); *Termoelectrica U.S., LLC*, 105 FERC ¶ 61,087 (2003).

terminals. Copper Mountain further represents that other affiliates own interests in an interstate natural gas pipeline that offers transportation and hub services in Louisiana, and also a minority interest in the Rockies Express Pipeline system, which extends from natural gas production basins in Colorado and Wyoming to its terminus in eastern Ohio. Finally, Copper Mountain states that, in 2008, Sempra Energy acquired EnergySouth Inc. (EnergySouth) and that, in 2012, Sempra Energy announced a pending acquisition of Willmut Gas & Oil Company, a natural gas utility located in Hattiesburg, Mississippi.

II. Notice of Filing

10. Notice of Copper Mountain's April 18, 2012, May 30, 2012, and June 18, 2012 filings was published in the *Federal Register*,¹⁶ with interventions and comments due on or before July 9, 2012. None was filed.

11. Notice of Copper Mountain's request for blanket authorization under Part 34 was separately published in the *Federal Register*,¹⁷ with interventions or protests due on or before May 9, 2012. None was filed.

III. Determination

12. As discussed below, we will grant Copper Mountain's request for authorization to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates and we will accept its market-based rate tariff, effective June 18, 2012, as requested. We will also grant Copper Mountain's request for certain waivers.

A. Market-Based Rate Authorization

13. 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

1. Horizontal Market Power

14. The Commission has adopted two indicative screens for assessing horizontal market power: the pivotal supplier screen and the wholesale market share screen.¹⁹ The

¹⁶ 77 Fed. Reg. 25,160 (2012); 77 Fed. Reg. 34,376 (2012); 77 Fed. Reg. 39,491 (2012).

¹⁷ 77 Fed. Reg. 24,697 (2012).

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

¹⁹ *Id.* P 62.

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

15. Copper Mountain states that, in the Nevada Power balancing authority area, it will own or control only the 150 MW Facility and that the entire output of the Facility is fully committed under a long-term power purchase agreement with PG&E for a period of 25 years. Copper Mountain also represents that the output of the facility of its affiliate, Copper Solar, which is also located in the Nevada Power balancing authority area, is fully committed under a long-term power purchase agreement. Copper Mountain submitted screens that take into account imports into the Nevada Power balancing authority area, including potential imports of affiliated uncommitted capacity, and represents that it passes both the pivotal supplier and the wholesale market share screens for the Nevada Power balancing authority area. Copper Mountain's market share screen indicates that its market share in the Nevada Power balancing authority area ranges from 4.3 to 5.8 percent.²¹ Copper Mountain's pivotal supplier screen analysis indicates that the net uncommitted supply in the Nevada Power balancing authority area exceeds Copper Mountain's uncommitted capacity.

16. The Commission has reviewed Copper Mountain's pivotal supplier and wholesale market share screens and has determined that Copper Mountain passes both screens in the Nevada Power balancing authority area. Accordingly, we find that Copper Mountain satisfies the Commission's requirements for market-based rates regarding horizontal market power.

2. Vertical Market Power

17. 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.²²

18. In this case, as discussed more fully below, the Commission will grant Copper Mountain's request for waiver of the requirement to have an OATT on file for its

²⁰ *Id.* PP 33, 62-63.

²¹ We note that Copper Mountain's analysis of the Nevada Power balancing authority area relies on Simultaneous Transmission Import Limit values approved by the Commission in *Public Service Company of New Mexico*, 133 FERC ¶ 61,031 (2010).

²² Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408.

transmission facilities.²³ Also as noted above, Copper Mountain states that operational control of SDG&E's transmission facilities is exercised by CAISO, and the use of these assets is governed by CAISO's Commission-approved OATT.²⁴ Copper Mountain states that all other transmission facilities owned by Copper Mountain and its affiliates are limited and discrete facilities necessary to interconnect their generating facilities to the electric grid.

19. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.²⁵ 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).²⁶ 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.²⁷ 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.²⁸

²³ A generator lead line is a transmission facility. *See* 16 U.S.C. §§ 796(23), 824(a)-(b) (2006). Copper Mountain 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, at P 15 n.18 (2011).

²⁴ *Pacific Gas and Electric Co.*, 81 FERC ¶ 61,122 (1997); *see also California Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274 (2006), *order on reh'g*, 119 FERC ¶ 61,076 (2007).

²⁵ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 440.

²⁶ Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

²⁷ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

²⁸ *Id.* P 446.

20. Regarding other barriers to entry, Copper Mountain states that affiliates of Sempra Energy have demonstrated control over certain sites for generation capacity development in CAISO.²⁹ In addition, Copper Mountain represents that SDG&E and its affiliate SoCalGas own intrastate natural gas pipelines and local distribution facilities in the relevant market. These facilities can be and are used to deliver natural gas to electric generation customers in Southern California. Copper Mountain states that, as a result of Sempra Energy's acquisition of EnergySouth, Sempra Energy owns, directly or indirectly, interests in Southern Gas Transmission, which operates a 50-mile intrastate natural gas pipeline in Alabama; Mobile Gas Service Corp., a local distribution company serving customers in Alabama; Mississippi Hub, LLC, which operates an interstate natural gas storage facility in Mississippi; Bay Gas Storage Company, Ltd., which operates an intrastate natural gas storage facility that also provides natural gas transportation and storage; and Sempra Midstream Services, Inc., a natural gas marketer.

21. Consistent with Order No. 697, Copper Mountain affirmatively states that it and its affiliates have not erected barriers to entry and will not erect barriers to entry in the future.

22. Based on Copper Mountain's representations, and our determinations discussed below, we find that Copper Mountain satisfies the Commission's requirements for market-based rates regarding vertical market power.

B. Waiver Requests

1. OATT, OASIS, and Standards of Conduct

23. As noted above, Copper Mountain seeks waiver of the requirements to file an OATT, establish and maintain an OASIS, and abide by the Standards of Conduct with respect to its generator tie line. In support of its request for waiver, Copper Mountain states that its generator tie line does not comprise an integrated transmission system and it does not serve, and is not designed to serve, other customers.

24. 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

²⁹ Copper Mountain's April 18, 2012 Filing at 6 & n.15 (noting land acquisition reports filed in Docket Nos. LA10-1-000 and LA10-3-000 on April 30, 2010 and November 1, 2010, respectively).

public utilities to abide by certain standards of conduct.³⁰ In prior orders, the Commission has enunciated the standards for exemption from some or all of the requirements of Order Nos. 888 and 889.³¹ The criteria for waiver of these requirements are unchanged by Order Nos. 890, 2004, and 717.³²

25. 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.³³

26. 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 other circumstances are present that indicate that a waiver would not be justified.³⁴ 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

³⁰ 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.

³¹ 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*).

³² See *Alcoa Power Generating Inc.*, 120 FERC ¶ 61,035, at P 3 (2007); Order No. 717, FERC Stats. & Regs. ¶ 31,280 at PP 31-33.

³³ *Black Creek*, 77 FERC at 61,941.

³⁴ *Id.* Although the Commission originally precluded waiver of the requirements for OASIS and the Standards of Conduct for a small public utility that is a member of a tight power pool, in *Black Hills Power, Inc.*, 135 FERC ¶ 61,058, at PP 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. See 18 C.F.R. § 358.1(c) (2012).

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).³⁵

27. Based on the statements in Copper Mountain's application, we find that its transmission facilities qualify as limited and discrete. Accordingly, we will grant Copper Mountain 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 Copper Mountain 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.

28. The Commission will also grant Copper Mountain 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 Copper Mountain's 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 get the information necessary to complete its evaluation.³⁶ Likewise, Copper Mountain's waiver of the Standards of Conduct will remain in effect unless and until the Commission takes action on a complaint by an entity that Copper Mountain has unfairly used its access to information to unfairly benefit itself or its affiliate.³⁷

2. Other Waivers, Approvals, and Authorizations

29. Copper Mountain also requests 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

³⁵ *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)).

³⁶ *Id.*

³⁷ *Id.* Copper Mountain must notify the Commission if there is a material change in facts that affect its 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).

authorization under section 204 of the FPA³⁸ and Part 34 for all future issuances of securities and assumptions of liability.

30. The Commission will grant the requested waivers and authorizations consistent with those granted to other entities with market-based rate authorizations.³⁹ Notwithstanding the waiver of the accounting and reporting requirements, the Commission expects Copper Mountain to keep its accounting records in accordance with generally accepted accounting principles.

C. Reporting Requirements

31. 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 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.⁴⁰

³⁸ 16 U.S.C. § 824c (2006).

³⁹ 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 PP 984-985 (regarding waiver of Parts 41, 101, and 141) and PP 999-1000 (regarding blanket approval under Part 34).

⁴⁰ *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>.

Public utilities must file EQRs no later than 30 days after the end of the reporting quarter.⁴¹

32. Additionally, Copper Mountain 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.⁴²

33. In Order No. 697, the Commission created two categories of sellers.⁴³ 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 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.⁴⁴ Sellers that do not fall into Category 1 are designated as Category 2 sellers and are required to file updated market power analyses.⁴⁵

34. Copper Mountain represents that it meets the criteria for Category 1 Seller status in all regions except the Southwest region because in all regions where it is seeking Category 1 seller status: (1) it does not own or control more than 500 MW of generation in aggregate per region; (2) neither it nor any of its affiliates own, operate, or control transmission facilities, except for limited and discrete generation interconnection facilities; (3) it is not affiliated with a franchised public utility; (4) it does not raise any

⁴¹ The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2012). 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.

⁴² *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 (2012).

⁴³ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 848.

⁴⁴ 18 C.F.R. § 35.36(a) (2012).

⁴⁵ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 850.

other vertical market power issues. Copper Mountain states that because it is affiliated with entities that control more than 500 MW of generation in the Southwest region, it is a Category 2 Seller in the Southwest region.

35. Based on Copper Mountain's representations, we grant Copper Mountain Category 1 seller status in all regions except the Southwest region; however, the Commission reserves the right to require an updated market power analysis at any time for any region.⁴⁶ Further, based on its representations, we designate Copper Mountain as a Category 2 seller in the Southwest region; thus, Copper Mountain must file updated market power analyses for the Southwest region in compliance with the regional reporting schedule adopted in Order No. 697.

The Commission orders:

(A) Copper Mountain's market-based rate tariff is hereby accepted for filing, effective June 18, 2012, 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. Copper Mountain is 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 Copper Mountain, 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 Copper Mountain's issuance of securities or assumptions of liability.

(F) Copper Mountain is 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

⁴⁶ *Id.* P 853.

establish and maintain an OASIS, and the requirements under Order Nos. 889, 2004, and 717, and Part 358 of the Commission's regulations to comply with the Standards of Conduct, as discussed in the body of this order.

(G) Copper Mountain is required to file EQRs in compliance with Order No. 2001. If the effective date of Copper Mountain's market-based rate tariff falls within a quarter of the year that has already expired, Copper Mountain's EQRs for the expired quarter are due within 30 days of the date of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.