

142 FERC ¶ 61,081
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.

CPV Shore, LLC
CPV Maryland, LLC

Docket Nos. ER13-342-001
ER13-343-001

ORDER GRANTING MARKET-BASED RATE AUTHORIZATION
AND REQUEST FOR WAIVERS

(Issued February 1, 2013)

1. In this order, the Commission grants CPV Shore, LLC (CPV Shore) and CPV Maryland, LLC (CPV Maryland) (collectively, “Applicants”) authority to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates, effective January 10, 2013. Also, as discussed below, we grant Applicants’ requested waivers 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 Applicants’ requests for other waivers commonly granted to market-based rate sellers.
2. Additionally, we find that Applicants meet the criteria for Category 1 sellers in the Central, Northwest, Southwest, Southwest Power Pool, and Southeast regions and are so designated. Further, we designate Applicants as Category 2 sellers in the Northeast region; therefore, Applicants must file updated market power analyses for the Northeast 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.

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I. Background

3. On November 8, 2012, as amended on December 4, 2012, pursuant to section 205 of the Federal Power Act (FPA),² Applicants 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.³ CPV Shore and CPV Maryland explain that they are each constructing 725 megawatt (MW) electric generation facilities in New Jersey and Maryland, respectively, and that both plants will be located in the PJM Interconnection (PJM) market. CPV Shore states that its facility will be interconnected to transmission facilities owned by Jersey Central Power & Light Co. and operated by PJM. CPV Maryland states that its facility will be interconnected to 230 kV transmission facilities owned by Potomac Electric Power Company (PEPCO) and operated by PJM.

4. CPV Shore states that its interconnection facilities will consist of approximately 3.8 to 4.5 miles of 230 kV line. CPV Maryland states that the PEPCO transmission line its generation facility will interconnect with is immediately adjacent to the facility. Applicants maintain that their interconnection facilities are limited, discrete facilities, constructed, used, and owned only for the purpose to accommodate connection of their generation facilities to the transmission grid. Applicants state that their interconnection facilities are radial in nature and do not form an integrated transmission grid; accordingly, they each request that the Commission grant waiver of the requirements of Order Nos. 888,⁴ 889,⁵ 890,⁶ 717,⁷ 2004,⁸ section 35.28,⁹ and Parts 37¹⁰ and 358¹¹ of the

& Regs. ¶ 31,305 (2010), *aff'd sub nom. Montana Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011), *cert. denied sub nom. Pub. Citizen, Inc. v. FERC*, 133 S. Ct. 26 (2012).

² 16 U.S.C. § 824d (2006).

³ Applicants request authorization to sell ancillary services in the markets administered by the PJM Interconnection, L.L.C., New York Independent System Operator, Inc., ISO New England Inc., California Independent System Operator Corporation, and Midwest Independent Transmission System Operator, Inc., as well as authorization to engage in the sale of certain ancillary services as a third-party provider in other markets.

⁴ *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

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Commission's regulations with respect to their interconnection facilities. Applicants also request additional waivers and blanket approvals commonly granted to similar applicants with market-based rate authority.

¶ 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).

⁵ *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).

⁶ *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).

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 *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).

⁹ 18 C.F.R. § 35.28 (2012).

¹⁰ 18 C.F.R. Part 37 (2012).

¹¹ 18 C.F.R. Part 358 (2012).

5. Applicants represent that they are Delaware limited liability companies and subsidiaries of Competitive Power Ventures Holdings, LLC (CPV). According to Applicants, CPV, through its subsidiaries, develops, owns, and manages natural gas-fired and renewable generation facilities throughout North America. Applicants state that Warburg Pincus Private Equity IX, L.P. and Warburg Pincus Equity Partners Liquidating Trust (collectively, Warburg) have a collective ownership interest of 95.2 percent of the voting shares in CPV. Applicants state that individuals own the remaining outstanding ownership interests in CPV, but none owns 10 percent or more of the voting shares in CPV.

6. CPV Shore represents that it is a wholly-owned indirect subsidiary of CPV. CPV Maryland represents it is: (1) 50 percent owned by CPV Maryland Holding Company, LLC, which is 100 percent owned indirectly by CPV; (2) 50 percent owned by Diamond St. Charles, LLC, which is (a) 95 percent owned directly by Diamond Generating Corporation (Diamond Generating), a wholly-owned subsidiary of Mitsubishi Corporation (Americas) (MCA); and (b) 5 percent owned indirectly by MIC Nebraska Inc., also a subsidiary of MCA. CPV Maryland states that MCA is a wholly-owned subsidiary of Mitsubishi Corporation.

7. CPV Shore explains that it was one of three respondents selected in a New Jersey solicitation conducted in accordance with the New Jersey Long-Term Capacity Pilot Program. Consequently, CPV Shore states that it entered into Standard Offer Capacity Agreements (SOCA) with four Electric Distribution Companies for 15-year terms.¹² CPV Shore submits that its status as a party to the SOCA is not relevant to its request for market-based rate authority.¹³ CPV Shore notes that it includes the SOCA in its application “solely for information purposes” and is not requesting that the Commission address or discuss Commission jurisdiction over the SOCA in its decision on CPV Shore’s request for market-based rate authorization.¹⁴

¹² CPV Shore further states that the SOCA does not provide for sales of capacity or energy, but instead is a purely financial arrangement. CPV Shore explains that it will make payments to the Electric Distribution Companies when the market clearing price for capacity and energy in the PJM markets exceeds thresholds set forth in the SOCA and will receive payments from the Electric Distribution Companies when such clearing prices are below the contract thresholds. CPV Shore MBR Application at 3-4.

¹³ *Id.* at 8.

¹⁴ *See* CPV Shore MBR Application at 4 n.8 (“The Commission has determined that financial contracts that do not provide for the sale of capacity or energy are not subject to the filing and reporting requirements under section 205 of the Federal Power

8. Similarly, CPV Maryland explains that it was selected to enter into a Contract for Differences (CFD) with three Maryland Electric Distribution Companies for a 20 year term, under a Maryland Public Service Commission (Maryland Commission) program.¹⁵ CPV Maryland submits that its status as a party to the CFD is not relevant to its request for market-based rate authority.¹⁶ CPV Maryland also notes that it included the CFD in this application “solely for information purposes” and is not requesting that the Commission address or discuss Commission jurisdiction over the CFD in its decision on CPV Maryland’s request for market-based rates.¹⁷

II. Notice of Filing and Responsive Pleadings

9. Notices of CPV Shore¹⁸ and CPV Maryland’s¹⁹ November 8, 2012, filings were published in the *Federal Register*, with interventions and comments due on or before November 29, 2012. Notice of CPV Shore’s and CPV Maryland’s December 4, 2012, amended filing was published in the *Federal Register*,²⁰ with interventions and comments due on or before December 26, 2012. A timely notice of intervention, in Docket No. ER13-342-000, was filed by the New Jersey Board of Public Utilities

Act. *See, e.g., Revised Public Utility Filing Requirements*, FERC Stats. & Regs. ¶ 35,541 (2001) (citing *Morgan Stanley Capital Group, Inc.* 69 FERC ¶ 61,175, at 61,696 (1994), as modified in 72 FERC ¶ 61,082, at 61,435-36 (1995) (“*Morgan Stanley*”) and *New York Mercantile Exchange*, 74 FERC ¶ 61,311 (1996) (“*NYMEX*”). However, CPV Shore is not requesting the Commission to address or discuss its jurisdiction over the contract for differences in its decisions on this request for market-based rate authority.”).

¹⁵ CPV Maryland states that the CFD does not provide for sales of capacity or energy, but instead is a purely financial arrangement as similarly described above. CPV Maryland MBR Application at 4.

¹⁶ *Id.* at 8.

¹⁷ *See* CPV Maryland MBR Application at 4 n.7.

¹⁸ 77 Fed. Reg. 68,766 (2012).

¹⁹ 77 Fed. Reg. 68,768 (2012).

²⁰ 77 Fed. Reg. 74,655 (2012).

(New Jersey Board) and timely motions to intervene and comments were filed by the PSEG Companies in Docket Nos. ER13-342-000 and ER13-343-000.²¹

Comments

10. PSEG Companies state that their comments are to correct “mischaracterizations” of the nature of CPV Shore’s SOCA and CPV Maryland’s CFD.²² PSEG Companies dispute both CPV Shore’s characterization of the SOCA and CPV Maryland’s characterization of the CFD as “purely financial arrangements” that are “not subject to the filing and reporting requirements under Section 205 of the Federal Power Act.”²³ PSEG Companies assert that Applicants’ characterizations of their respective agreements are fundamentally wrong.²⁴ However, PSEG Companies state they otherwise take no position on either Applicant’s request for market-based rate authorization.²⁵

11. PSEG Companies maintain that both the SOCA and CFD require the physical sale of capacity and energy into the PJM wholesale market and that the SOCA and CFD set the price that Applicants are to be paid for those physical sales. Therefore, PSEG Companies state that the SOCA and CFD are contracts for the sale of electric energy at wholesale.²⁶ PSEG Companies claim the SOCA and CFD are neither “purely financial” nor similar to the contracts that the Commission has found are outside the section 205 reporting requirement.²⁷ In addition, PSEG Companies assert that the SOCA and CFD are not market-based rates because the rates, terms, and conditions of the SOCA and CFD were not freely negotiated or agreed to by the buyers. Finally, PSEG Companies state the

²¹ PSEG Companies are wholly owned, direct and indirect subsidiaries of Public Service Enterprise Group Inc. PSEG Companies include: Public Service Electric and Gas Company, PSEG Power LLC, and PSEG Energy Resources & Trade LLC.

²² PSEG Companies Motion to Intervene and Comments at 1.

²³ *Id.* at 3.

²⁴ *Id.*

²⁵ *Id.* at 5.

²⁶ *Id.* at 3.

²⁷ *Id.* at 3-4.

rates were established by the New Jersey Board and Maryland Commission, whereas market-based rates require agreement between buyer and seller.²⁸

III. Determination

12. As discussed below, we will grant Applicants' request for authorization to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates and we will accept their market-based rate tariffs, effective January 10, 2013. We will also grant Applicants' requests for certain waivers.

13. As discussed below, the Commission will not address comments by PSEG Companies regarding the SOCA and CFD contracts because those comments concern matters that are outside the scope of these market-based rate proceedings.

A. Procedural Matters

14. Pursuant to Rule 214(c) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the notice of intervention and timely, unopposed motion to intervene serve to make the entities that filed them parties to this proceeding.

B. Market-Based Rate Authorization

15. 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.²⁹

1. Horizontal Market Power

16. The Commission has adopted two indicative screens for assessing horizontal market power: the pivotal supplier screen and the wholesale market share screen.³⁰ 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.³¹

²⁸ *Id.* at 4-5.

²⁹ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 62, 399, 408, 440.

³⁰ *Id.* P 62.

³¹ *Id.* PP 33, 62-63.

17. CPV Shore states that it will own and operate a 725 MW electric generation facility located in the PJM East submarket. CPV Maryland states that it will own and operate a 725 MW electric generation facility located in the PJM market. Applicants represent that these two facilities are the only generation facilities that they are affiliated with in the PJM market, or in the markets first-tier to the PJM market.³²

18. Applicants submitted pivotal supplier and wholesale market share screens, which rely on data from Baltimore Gas and Electric Company's (Baltimore Gas and Electric) recently accepted market power analysis.³³ CPV Shore demonstrates that it passes both the pivotal supplier and the wholesale market share screens for the PJM East submarket. CPV Shore's market share screen indicates that its market share in the PJM East submarket ranges from 7.4 percent to 7.7 percent. CPV Shore's pivotal supplier screen analysis indicates that the net uncommitted supply in the PJM East submarket exceeds CPV Shore's uncommitted capacity. Accordingly, CPV Shore's submittal satisfies the Commission's requirements for market-based rate authority regarding horizontal market power.

19. CPV Maryland demonstrates that it passes both the pivotal supplier and the wholesale market share screens for the PJM market. CPV Maryland's market share screen indicates that its market share in the PJM market range from 1.9 percent to 2.3 percent. CPV Maryland's pivotal supplier screen analysis indicates that the net uncommitted supply in the PJM market exceeds CPV Maryland's uncommitted capacity. Accordingly, CPV Maryland's submittal satisfies the Commission's requirements for market-based rate authority 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

³² CPV Maryland states that Diamond Generating and Mitsubishi have ownership interests in a number of companies that own generation facilities and limited interconnection facilities. Applicants also state, that except as noted in their applications, neither they nor their affiliates own or control electric generation, transmission or distribution assets or gas transportation facilities in the PJM market.

³³ *Baltimore Gas and Electric Company*, Docket No. ER10-2172-007 (Nov. 1, 2012) (delegated letter order).

OATT on file or that the seller has received waiver of the OATT requirement before granting a seller market-based rate authorization.³⁴

21. In this case, as discussed more fully below, the Commission will grant Applicants' requests for waiver of the requirement to have an OATT on file for their transmission facilities.³⁵

22. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.³⁶ 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).³⁷ 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.³⁸ 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.³⁹

23. Applicants make the following representations regarding intrastate natural gas holdings: (1) Warburg Pincus Private Equity VIII, L.P., including two of its affiliated

³⁴ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408.

³⁵ A generator lead line is a transmission facility. *See* 16 U.S.C. §§ 796(23), 824(a)-(b) (2006). Applicants are 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 they receive 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).

³⁶ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 440.

³⁷ Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

³⁸ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

³⁹ *Id.* P 446.

funds, Warburg Pincus Netherlands Private Equity VIII, C.V. and WP-WPVIII Investors, L.P., and Warburg Pincus Private Equity IX, L.P., indirectly own two intrastate natural gas pipeline companies, Targa Intrastate Pipeline LLC (Targa Intrastate) in Texas and Targa Louisiana Intrastate LLC (Targa Louisiana); (2) Targa Intrastate owns an intrastate pipeline that transports natural gas from Targa's Shackelford processing plant to an interconnection with Atmos-Texas; (3) Targa Intrastate also owns an intrastate pipeline that transports natural gas from a third party gathering system into the Chico System in Denton County, Texas; and (4) Targa Louisiana owns an approximately 60-mile intrastate pipeline system that receives all of the natural gas it transports within or at the boundary of the State of Louisiana.

24. Applicants also represent that neither they nor their affiliates own or control physical coal sources or control access to coal transportation, or own or control sites located within the relevant geographic market that could be used to impose barriers to market entry by other wholesale suppliers.⁴⁰

25. Finally, Applicants affirmatively state that they have not erected barriers to entry and will not erect barriers to entry in the future in the relevant market.⁴¹

26. Based on Applicants' representations, and our determinations discussed below, we find that each Applicant satisfies the Commission's requirements for market-based rates regarding vertical market power.

C. Waiver Requests

1. OATT, OASIS, and Standards of Conduct

27. As noted above, Applicants seek waiver of the requirements to file an OATT, establish and maintain an OASIS, and abide by the Standards of Conduct with respect to their generator tie-lines. In support of their requests for waiver, Applicants state that their

⁴⁰ Our authorization here is predicated on the understanding that other than the intrastate natural gas facilities identified above, Applicants and their affiliates do not own or control inputs to electric power production in other regions besides PJM. If this is not correct Applicants are directed to so notify us in the instant dockets within 30 days of the date of this order.

⁴¹ We interpret this statement to apply to Applicants and their affiliates, and our authorizations herein are predicated on Applicants complying with this commitment. *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

interconnection facilities do not comprise an integrated transmission system and they do not serve, and are not designed to serve, other customers.

28. 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.⁴² In prior orders, the Commission has enunciated the standards for exemption from some or all of the requirements of Order Nos. 888 and 889.⁴³ The criteria for waiver of these requirements are unchanged by Order Nos. 890, 2004, and 717.⁴⁴

29. 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 and 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.⁴⁵

30. 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.⁴⁶ The

⁴² 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.

⁴³ 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*).

⁴⁴ 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.

⁴⁵ *Black Creek*, 77 FERC at 61,941.

⁴⁶ *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

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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).⁴⁷

31. Based on the statements in Applicants' applications, we find that their interconnection facilities qualify as limited and discrete. Accordingly, we will grant Applicants 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 CPV Shore or CPV Maryland 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.

32. The Commission will also grant Applicants 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 Applicants' individual waivers 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.⁴⁸ Likewise, Applicants' individual waivers of the Standards of Conduct will remain in effect unless and until the Commission takes action on a complaint by an entity that either Applicant has unfairly used its access to information to unfairly benefit itself or its affiliate.⁴⁹

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).

⁴⁷ *Entergy*, 112 FERC ¶ 61,228 at P 23 (citing *Central Minnesota Municipal Power Agency*, 79 FERC ¶ 61,260, at 62,127 (1997); and *Easton Utils. Comm'n*, 83 FERC ¶ 61,334, at 62,343 (1998)).

⁴⁸ *Id.*

⁴⁹ *Id.* Applicants 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*

2. Other Waivers, Approvals, and Authorizations

33. Applicants request the following waivers and authorizations: (1) waiver of the filing requirements of subparts B and C of Part 35 of the Commission's regulations, 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 of the Commission's regulations, except sections 141.14 and 141.15; and (3) blanket authorization under section 204 of the FPA⁵⁰ and Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability.

34. The Commission will grant the requested waivers and authorizations consistent with those granted to other entities with market-based rate authorizations.⁵¹ Notwithstanding the waiver of the accounting and reporting requirements, the Commission expects each Applicant to keep its accounting records in accordance with generally accepted accounting principles.

D. Comments

35. We will not address PSEG Companies' comments as they are outside the scope of this proceeding, which concerns Applicants' requests for market-based rate authorization and certain waivers. As noted above, the Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, horizontal or vertical market power. PSEG Companies' comments do not address issues relevant to the Commission's market-based rate analysis or to the grant of the waivers requested by Applicants. Therefore, they are not relevant to this proceeding and will not be addressed herein.

Facts Underlying Waiver of Order No. 889 and Part 358 of the Commission's Regulations, 127 FERC ¶ 61,141, at P 5 (2009).

⁵⁰ 16 U.S.C. § 824c (2006).

⁵¹ We note that the Commission has examined and approved the continued applicability of the waiver of its accounting and reporting requirements (18 C.F.R. Parts 41, 101, and 141), as well as the continued applicability of the blanket authorization for the issuance of securities and the assumption of liabilities (18 C.F.R. Part 34). 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).

E. Reporting Requirements

36. 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.⁵² Public utilities must file EQRs no later than 30 days after the end of the reporting quarter.⁵³

37. Additionally, Applicants 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.⁵⁴

⁵² *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>.

⁵³ 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.

⁵⁴ *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).

38. In Order No. 697, the Commission created two categories of sellers.⁵⁵ 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.⁵⁶ Sellers that do not fall into Category 1 are designated as Category 2 sellers and are required to file updated market power analyses.⁵⁷

39. Applicants represent that they each meet the criteria for Category 1 Seller status in all regions except the Northeast region because: (1) the Applicants' facilities are located in the Northeast region and neither company owns or controls generation in any other region; (2) neither Applicants nor any of their affiliates own, operate, or control transmission facilities, except for limited and discrete generation interconnection facilities; (3) while affiliates of Applicants may own generation assets that are located in the Southwest Power Pool or Southwest regions, such assets are not attributable to Applicants because they do not own or control those assets and those assets are not (or will not be) located in the same region in which Applicants' generation assets and limited interconnection facilities will be located; (4) neither Applicant is affiliated with a franchised public utility; and (5) neither Applicant raises any other vertical market power issues.

40. Based on Applicants' representations, we designate Applicants as Category 2 sellers in the Northeast region, and Category 1 sellers in the Central, Northwest, Southwest, Southwest Power Pool, and Southeast regions. Thus, Applicants must file updated market power analyses for the Northeast region in compliance with the regional reporting schedule adopted in Order No. 697. However, the Commission reserves the right to require an updated market power analysis at any time for any region.⁵⁸

⁵⁵ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 848.

⁵⁶ 18 C.F.R. § 35.36(a) (2012).

⁵⁷ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 850.

⁵⁸ *Id.* P 853.

The Commission orders:

(A) Applicants' market-based rate tariffs are hereby accepted for filing, effective January 10, 2013, 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, with the exception of sections 141.14 and 141.15, is hereby granted.

(D) Blanket authorization under Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability is hereby granted. Applicants 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 the Applicants, 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 either Applicant's issuance of securities or assumptions of liability.

(F) Applicants each 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 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) Applicants are required to file EQRs in compliance with Order No. 2001. If the effective date of either Applicant's market-based rate tariffs falls within a quarter of the year that has already expired, Applicants' EQRs for the expired quarter are due within 30 days of the date of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.