

136 FERC 61,142  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Marc Spitzer, Philip D. Moeller,  
John R. Norris, and Cheryl A. LaFleur.

ORNI 39 LLC

Docket Nos. ER11-3808-000  
ER11-3808-001

ORDER GRANTING MARKET-BASED RATE AUTHORIZATION  
AND REQUESTS FOR WAIVERS

(Issued August 30, 2011)

1. In this order, the Commission grants ORNI 39 LLC (ORNI 39) authority to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates, effective August 1, 2011, as requested. Also, as discussed below, we grant ORNI 39's request for waiver of the requirements under Order Nos. 888<sup>1</sup> and 890<sup>2</sup> to file an Open Access Transmission Tariff (OATT), the requirements under Order No. 889<sup>3</sup> to establish an Open Access Same-Time Information System (OASIS), and the requirements under

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<sup>1</sup> *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).

<sup>2</sup> *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).

<sup>3</sup> *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).

Order Nos. 889, 2004,<sup>4</sup> and 717,<sup>5</sup> and Part 358<sup>6</sup> to comply with the Standards of Conduct. We also grant ORNI 39's request for other waivers commonly granted to market-based rate sellers.

2. Additionally, we designate ORNI 39 as a Category 1 seller in the Northeast, Northwest, Southeast, Southwest, Southwest Power Pool, and Central regions.<sup>7</sup>

### **I. Background**

3. On June 16, 2011, as amended on July 1, 2011, pursuant to section 205 of the Federal Power Act (FPA),<sup>8</sup> ORNI 39 filed an application for market-based rate authority

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<sup>4</sup> *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).

<sup>5</sup> *Standards of Conduct for Transmission Providers*, Order No. 717, FERC Stats. & Regs. ¶ 31,280 (2008), *order on reh'g*, Order No. 717-A, 129 FERC ¶ 61,043, *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).

<sup>6</sup> 18 C.F.R. Part 358 (2011).

<sup>7</sup> *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 848-50, *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).

<sup>8</sup> 16 U.S.C. § 824d (2006).

with an accompanying tariff providing for the sale of electric energy, capacity, and ancillary services at market-based rates.<sup>9</sup>

4. ORNI 39 states that it is a special purpose entity created by Ormat Technologies, Inc. (Ormat) for the sole purpose of constructing, owning, and operating the McGinniss Hills Geothermal Plant (McGinniss Hills), a 52 megawatt (MW) facility that is currently under development near Austin, Nevada. The plant is located within the balancing authority area of Sierra Pacific Power Company (Sierra Pacific) and will interconnect to transmission facilities owned and operated by Sierra Pacific.

5. ORNI 39 states that, other than the McGinniss Hills plant, ORNI 39 does not own or control any other electric generation facilities in the United States. Moreover, other than a nine mile, 230 kilovolt (kV) tie line that will connect the McGinniss Hills plant to the Sierra Pacific transmission system, ORNI 39 states that it does not own, operate, or control any transmission facilities in the United States.

6. ORNI 39 states that it is a wholly-owned subsidiary of OFC 2, LLC, which is 99 percent owned by Ormat Nevada, Inc. and one percent owned by ORNI Holding, LLC. Both Ormat Nevada, Inc. and ORNI Holding, LLC are direct, wholly-owned subsidiaries of Ormat, a publicly-traded company. Ormat designs, develops, manufactures, constructs, owns, and operates geothermal and recovered energy-based power plants around the world. Additionally, Ormat designs, manufactures, and sells geothermal and recovered energy power units and other power-generating equipment, and provides related services.

7. In addition to ORNI 39, Ormat owns indirect interests in various other entities that own and operate electric generation facilities in the United States. ORNI 39 states that it is affiliated with nine other entities that own or are developing generation resources in the Sierra Pacific balancing authority area, all of which are or will be certified as qualifying small power production facilities under the Public Utility Regulatory Policies Act of 1978.<sup>10</sup> Finally, ORNI 39 states that none of its affiliates own, operate, or control electric transmission facilities in the United States (other than interconnection facilities that are used to connect electric generation resources to the transmission grid), nor are any

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<sup>9</sup> ORNI 39 requests authorization to sell ancillary services in the markets administered by PJM Interconnection, L.L.C., New York Independent System Operator, Inc., ISO New England Inc., California Independent System Operator Corp., and Midwest Independent Transmission System Operator, Inc. ORNI 39 also requests authorization to engage in the sale of certain ancillary services as a third-party provider in other markets.

<sup>10</sup> 16 U.S.C. § 824a-3 (2006).

affiliated with any entity that owns, operates, or controls such facilities. Likewise, none of the affiliates of ORNI 39 holds a franchised service territory for the transmission, distribution, or sale of electric power in the United States, nor are any affiliated with any entity that holds such a franchise or service territory.

8. On July 1, 2011, ORNI 39 filed an amendment requesting “to the extent the Commission deems it necessary,”<sup>11</sup> waiver of the requirements of Order Nos. 888 and 890 to have an OATT on file, the requirements of Order No. 889 with respect to OASIS, and the requirements of Order Nos. 889, 2004, and 717 and Part 358 of the Commission’s regulations with respect to the Standards of Conduct. Also, ORNI 39 reports that its affiliate, ORNI 14 LLC, is concurrently filing a request for market-based rate authority, certain blanket authority, and waivers.<sup>12</sup> However, ORNI 39 states that this filing does not change any of the material facts set forth in its application for market-based rate authority. Finally, ORNI 39 submitted a revised tariff that adds the docket number of this proceeding to the Limitations and Exemptions section of its tariff and an updated asset appendix that includes the docket number of this proceeding and information regarding the nine-mile, 230 kV tie line that connects the McGinniss Hills plant to the Sierra Pacific transmission system.

## **II. Notice of Filing**

9. Notice of ORNI 39’s June 16, 2011 tariff and request for market-based rate authority filing was published in the *Federal Register*, 76 Fed. Reg. 36,528 (2011), with interventions or protests due on or before July 7, 2011. None was filed.

10. Notice of ORNI 39’s request for blanket authorization under Part 34 was separately published in the *Federal Register*, 76 Fed. Reg. 37,110 (2011), with interventions or protests due on or before July 11, 2011. None was filed.

11. Notice of ORNI 39’s July 1, 2011 Filing was published in the *Federal Register*, 76 Fed. Reg. 41,787 (2011), with interventions or protests due on or before July 22, 2011. None was filed.

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<sup>11</sup> July 1 Amendment at 2. ORNI 39 further states that, “to the extent that the Commission elects to grant the requested waivers on a conditional basis, ORNI 39 would reserve whatever rights it may have to challenge future requests for transmission service, or to request that some or all of the requested waivers be preserved even if a request for transmission service is received.” *Id.*

<sup>12</sup> ORNI 14 LLC’s request for market-based rate authority was filed in Docket No. ER11-3980-000.

### III. Determination

12. As discussed below, we will grant ORNI 39's request for authorization to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates and ORNI 39'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.<sup>13</sup> As discussed below, we find that ORNI 39 satisfies the Commission's standards for market-based rate authority and we will accept ORNI 39's market-based rate tariff, effective August 1, 2011, as requested.

##### 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.<sup>14</sup> 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.<sup>15</sup>

15. As stated above, ORNI 39 states that the McGinniss Hills plant is located in the Sierra Pacific balancing authority area. Several affiliates of ORNI 39 also own or control generation resources within the Sierra Pacific balancing authority area. ORNI 39 states that all of the output from the generation capacity owned or controlled by ORNI 39 and its affiliates within the Sierra Pacific balancing authority area is fully committed under long-term sales agreements to non-affiliated third party purchasers.

16. The Commission notes that ORNI 39's capacity is fully committed under long-term contract. Accordingly, we find that ORNI 39 satisfies the Commission's requirements for market-based rates regarding horizontal market power.

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<sup>13</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 62, 399, 408, 440.

<sup>14</sup> *Id.* P 62.

<sup>15</sup> *Id.* P 33, 62-63.

## 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.<sup>16</sup>

18. In this case, as discussed more fully below, the Commission will grant ORNI 39's request for waiver of the requirement to have an OATT on file for its transmission facilities.<sup>17</sup>

19. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.<sup>18</sup> 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).<sup>19</sup> 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.<sup>20</sup> 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.<sup>21</sup>

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<sup>16</sup> *Id.* P 408.

<sup>17</sup> A generator lead line is a transmission facility. *See* 16 U.S.C. §§ 796(23), 824(a)-(b) (2006). ORNI 39 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 designation as a "generator lead line" 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).

<sup>18</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 440.

<sup>19</sup> Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

<sup>20</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

<sup>21</sup> *Id.* P 446.

20. Regarding other barriers to entry, ORNI 39 represents that neither it nor any of its affiliates owns or controls any intrastate natural gas transportation, storage, or distribution facilities, or physical coal supply sources. ORNI 39 represents that neither it nor any of its affiliates owns or controls facilities used in the transportation of coal supplies such as railroad cars or barges. ORNI 39 states that several of its affiliates own or control sites for generation capacity development and ORNI 39 provides additional information pertaining to the reporting of these sites. ORNI 39 states that all of the sites are designed to accommodate the development of geothermal and solar energy projects less than 100 MW such that their acquisition does not confer vertical market power, create barriers to entry, or otherwise provide a basis for rebutting the presumption that ownership or control of sites for generation capacity development does not allow a seller to erect barriers to entry.

21. Finally, consistent with Order No. 697, ORNI 39 affirmatively states it and its affiliates have not and will not erect barriers to entry into the relevant market.

22. Based on ORNI 39's representations, and our determinations discussed below, we find that ORNI 39 satisfies the Commission's requirements for market-based rates regarding vertical market power.

## **B. Waiver Requests**

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

23. As explained above, ORNI 39 seeks waiver of the requirements to file an OATT, establish and maintain an OASIS, and abide by the Standards of Conduct. In support of its request for waiver, ORNI 39 states that it does not own, operate, or control any transmission-related equipment other than the limited and discrete facilities interconnecting the facility to the transmission grid. Specifically, ORNI 39 states that the nine-mile, 230 kV tie line that is to be constructed, owned, and operated by ORNI 39 is a limited and discrete facility that is designed to be used solely to connect the McGinniss Hills plant to the transmission grid. ORNI 39 states that the facility will not be networked and will not form an integrated transmission system.<sup>22</sup>

24. Order Nos. 888 and 890 and section 35.28<sup>23</sup> 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<sup>24</sup> of

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<sup>22</sup> July 1 Amendment at 2.

<sup>23</sup> 18 C.F.R. § 38.28 (2011).

<sup>24</sup> 18 C.F.R. Part 37 (2011).

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.<sup>25</sup> In prior orders, the Commission has enunciated the standards for exemption from some or all of the requirements of Order Nos. 888 and 889.<sup>26</sup> The criteria for waiver of these requirements are unchanged by Order Nos. 890, 2004, and 717.<sup>27</sup>

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.<sup>28</sup>

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 it is a member of a tight power pool or other circumstances are present that indicate that a waiver would not be justified.<sup>29</sup>

27. Based on the statements in ORNI 39's application, we find that ORNI 39's facilities qualify as limited and discrete. The facilities do not form an integrated

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<sup>25</sup> 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.

<sup>26</sup> 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*).

<sup>27</sup> 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.

<sup>28</sup> *Black Creek*, 77 FERC at 61,941.

<sup>29</sup> *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.

transmission system and will be used solely by ORNI 39 to interconnect its facility to the transmission grid. Accordingly, we will grant ORNI 39 waiver of the requirements of Order Nos. 888 and 890 to have an OATT on file.<sup>30</sup> However, if ORNI 39 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.<sup>31</sup>

28. The Commission will also grant ORNI 39 waiver from the requirements of Order No. 889 with respect to OASIS and Order Nos. 889, 2004, and 717 and Part 358 with respect to the Standards of Conduct. ORNI 39'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.<sup>32</sup> Likewise, ORNI 39'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 ORNI 39 has unfairly used its access to information to unfairly benefit itself or its affiliate.<sup>33</sup>

## 2. Other Waivers, Approvals, and Authorizations

29. ORNI 39 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,

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<sup>30</sup> Consistent with *Black Creek*, ORNI 39 must file a *pro forma* OATT in compliance with Order Nos. 888 and 890 within 60 days of receiving a request for transmission service.

<sup>31</sup> We note that ORNI 39 reserved the right to challenge the validity of a transmission request and to seek continued waiver despite such a transmission request. This was unnecessary, however, as our waiver policy has never prevented an entity from challenging the validity of a transmission request, *see, e.g., Sagebrush, a California Partnership*, 132 FERC ¶ 61,234, at P 42-44 (2010), nor have we prevented an entity from seeking continued waiver despite changed circumstances.

<sup>32</sup> *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)).

<sup>33</sup> *Id.* ORNI 39 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).

and 141, except sections 141.14 and 141.15; and (3) blanket authorization under Section 204 of the FPA<sup>34</sup> and Part 34 for all future issuances of securities and assumptions of liability.

30. We will grant the requested waivers and authorizations consistent with those granted other entities with market-based rate authorizations.<sup>35</sup> Notwithstanding the waiver of the accounting and reporting requirements, we expect ORNI 39 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.<sup>36</sup>

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<sup>34</sup> 16 U.S.C. § 824c (2006).

<sup>35</sup> 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 984-85 (regarding waiver of Parts 41, 101, and 141), 999-1000 (regarding blanket approval under Part 34).

<sup>36</sup> *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.<sup>37</sup>

32. Additionally, ORNI 39 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.<sup>38</sup>

33. In Order No. 697, the Commission created two categories of sellers.<sup>39</sup> 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.<sup>40</sup> Sellers that do not fall into Category 1 are designated as Category 2 sellers and are required to file updated market power analyses.<sup>41</sup>

34. ORNI 39 states that it does not own or control, and is not affiliated with any entities that own or control, more than 500 MW of generation capacity in aggregate within the Northeast, Northwest, Southeast, Southwest, Southwest Power Pool, and Central regions. ORNI 39 further states that neither it nor any of its affiliates owns, operates or controls transmission facilities in the same region as generation assets owned or controlled by ORNI 39 or its affiliates, other than those limited and discrete facilities

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<sup>37</sup> 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.

<sup>38</sup> *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).

<sup>39</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 848.

<sup>40</sup> 18 C.F.R. § 35.36(a) (2011).

<sup>41</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 850.

that are necessary to interconnect their generation facilities to the grid; that neither it nor its affiliates is affiliated with a franchised public utility in the same region as generation assets owned or controlled by ORNI 39 or its affiliates; and that neither it nor its affiliates raise any vertical market power issues.

35. Based on ORNI 39's representations and the Commission's decision herein to grant ORNI 39 waiver of the OATT requirement, we designate ORNI 39 as a Category 1 seller in the Northeast, Northwest, Southeast, Southwest, Southwest Power Pool, and Central regions. The Commission reserves the right to require an updated market power analysis from any market-based rate seller at any time, including for those sellers that fall within Category 1.<sup>42</sup>

The Commission orders:

(A) ORNI 39's market-based rate tariff, is hereby accepted, effective August 1, 2011, as requested, as discussed in the body of this order.

(B) ORNI 39's request for waiver 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) ORNI 39's request for 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. ORNI 39 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 ORNI 39, 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 ORNI 39's issuance of securities or assumptions of liability.

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<sup>42</sup> *Id.* P 853.

(F) ORNI 39's request for waiver of the requirements under Order Nos. 888 and 890 to file an OATT, the requirements under Order No. 889 to establish an OASIS, and the requirements under Order Nos. 889, 2004, and 717, and Part 358 to comply with the Standards of Conduct is hereby granted, as discussed in the body of this order.

(G) ORNI 39 is hereby required to file EQRs in compliance with Order No. 2001. If the effective date of ORNI 39's market-based rate tariff falls within a quarter of the year that has already expired, ORNI 39's EQRs for the expired quarter are due within 30 days of the date of this order.

By the Commission. Chairman Wellinghoff is not participating.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.