

135 FERC ¶ 61,030
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Evergreen Wind Power III, LLC

Docket Nos. ER11-2201-000
ER11-2201-002

ORDER GRANTING MARKET-BASED RATE AUTHORIZATION AND
GRANTING REQUEST FOR WAIVERS

(Issued April 14, 2011)

1. In this order, the Commission grants Evergreen Wind Power III, LLC (Evergreen Wind) authority to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates, effective April 4, 2011, as requested. As discussed below, we grant Evergreen Wind waivers of the requirement under Order Nos. 888¹ and 890² to file an Open Access Transmission Tariff (OATT), the requirement under Order No. 889³

¹ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

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

³ *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).

to establish an Open Access Same-Time Information System (OASIS), and the requirement under Order Nos. 889, 2004,⁴ and 717⁵ to comply with the Standards of Conduct. We also grant Evergreen Wind other waivers commonly granted to market-based rate sellers.

2. Additionally, we find that Evergreen Wind meets the criteria for a Category 1 seller in the Southwest, Southwest Power Pool, Central, and Southeast regions and is so designated.⁶ Further we designate Evergreen Wind as a Category 2 seller in the Northwest and Northeast regions and, therefore, Evergreen Wind must file an updated market power analysis in the Northwest and Northeast regions in compliance with the regional reporting schedule adopted in Order No. 697.⁷

⁴ *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).

⁵ *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).

⁶ *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, *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).

⁷ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 882-93, app. D; Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at apps. D, D-1, D-2.

Background

3. On November 29, 2010, pursuant to section 205 of the Federal Power Act,⁸ Evergreen Wind filed an initial application for market-based rate authority with an accompanying tariff providing for the sale of energy, capacity, and ancillary services at market-based rates.⁹ Evergreen Wind asks the Commission to accept its market-based rate tariff, effective July 1, 2011. Evergreen Wind also requests waivers commonly granted to similar market-based rate applicants.

4. Evergreen Wind states that is developing and will own and operate a 60 megawatt (MW) wind-powered electric generation facility located in Penobscot County, Maine in the Northeast region. Evergreen Wind states that it will sell the entire capacity and energy output from this facility to Bangor Hydro Electric Company (Bangor Hydro) and Central Maine Power Company under long-term power purchase agreements. Evergreen Wind explains that its facility will interconnect with the transmission system owned by Bangor Hydro and located within the ISO-NE market. Evergreen Wind explains that its facility will interconnect with Bangor Hydro's transmission system over two lines: an 8.8 mile 115 kV generator tie line facility (Evergreen Wind Line), owned by Evergreen Wind, which connects to a 38 mile generator tie line facility (Evergreen Gen Lead Line), owned by Evergreen Gen Lead, LLC (Evergreen Gen Lead), which in turn connects to the transmission system owned by Bangor Hydro. Evergreen Wind states that it and its affiliates, Evergreen Wind Power V, LLC (Evergreen Wind V), Champlain Wind, LLC, and Stetson Wind II, LLC (Stetson Wind II), own the membership interests in Evergreen Gen Lead. Evergreen Wind explains that the Commission issued an order granting it and its affiliates waivers of the requirements to file an OATT, establish an OASIS, and abide by the Standards of Conduct in connection with their ownership of Evergreen Gen Lead and the Evergreen Gen Lead Line.¹⁰

5. Evergreen Wind states that it is a wholly-owned indirect subsidiary of First Wind Holdings, LLC (First Wind), an independent North American wind energy company focused exclusively on the development, ownership, and operation of utility-scale wind energy projects. According to Evergreen Wind, various entities own voting interests in First Wind. Only two of these entities, however, own interests in excess of 10 percent.

⁸ 16 U.S.C. § 824d (2006).

⁹ The application includes a request for authorization to sell ancillary services in the markets administered by PJM Interconnection, L.L.C., New York Independent System Operator, Inc., and ISO New England Inc. (ISO-NE), as well as authorization to engage in the sale of certain ancillary services as a third-party provider in other markets.

¹⁰ *Evergreen Wind Power V, LLC*, 130 FERC ¶ 61,186 (2010).

Specifically, D.E. Shaw MWP Acquisition Holdings, L.L.C. owns 46 percent, and Madison Dearborn Capital Partners IV, L.P. owns 46 percent.

6. Evergreen Wind represents that First Wind has a number of operating subsidiaries that own and operate wind generating facilities in Hawaii, Maine, New York, and Utah and that are developing a number of other wind generating facilities throughout the United States that are not yet in service. Specifically, Evergreen Wind states that its affiliate, Evergreen Wind Power, LLC, owns and operates a 42 MW wind-powered generating facility located at Mars Hill, Maine, which is located in the Northern Maine Independent System Administrator balancing authority area. Evergreen Wind further explains that its affiliate, Evergreen Wind V, owns and operates a 57 MW wind-powered generating facility located next to Evergreen Wind's facility and its affiliate, Stetson Wind II, owns and operates a 26 MW wind-powered generating facility next to Evergreen Wind's facility. Evergreen Wind represents that neither it nor its affiliates have franchised electric utility service territories or captive customers.

7. On March 8, 2011, Evergreen Wind filed an amendment stating that, since the November 29 Filing, Evergreen Wind has determined that it will need to generate test power prior to July 1, 2011. Accordingly, Evergreen Wind submits a revised tariff and requests an effective date of April 4, 2011. In addition, Evergreen Wind requests waiver of the requirement of Order Nos. 888 and 890 to file an OATT for the Evergreen Wind Line and for waiver of the requirements of Order No. 889. Also, Evergreen Wind reports that its affiliate, Milford Wind Corridor Phase II, LLC (Milford II), has now obtained market-based rate authority.¹¹ However, Evergreen Wind states that the additional generation output from Milford II does not affect the representations it previously made in support of its initial application, because Milford II is not located in the ISO-NE market and its entire capacity is sold under long-term contracts to unaffiliated purchasers.

II. Notice of Filing

8. Notice of Evergreen Wind's November 29, 2010 filing was published in the *Federal Register*, 75 Fed. Reg. 76,722 (2010), with interventions or protests due on or before December 20, 2010. None was filed.

9. On December 1, 2010, the Commission issued a supplemental notice explaining that Evergreen Wind's application for market-based rate authority includes a request for blanket authorization under Part 34 of the Commission's rules and regulations for the future issuance of securities and assumptions of liability. This supplemental notice was

¹¹ Milford II's request for market-based rate authority was granted by the Commission on March 4, 2011. *Milford Wind Corridor Phase II, LLC*, Docket No. ER11-2657-000 (Mar. 4, 2011) (delegated letter order).

separately published in the *Federal Register*, 75 Fed. Reg. 76,727 (2010), with interventions or protests due on or before December 21, 2010. None was filed.

10. Notice of Evergreen Wind's March 8, 2011 filing was published in the *Federal Register*, 76 Fed. Reg. 14,964 (2011), with interventions or protests due on or before March 29, 2011. None was filed.

III. Discussion

A. Market-Based Rate Authorization

11. 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.¹² As discussed below, we find that Evergreen Wind satisfies the Commission's standards for market-based rate authority. We note, however, that, when Evergreen Wind submitted a revised tariff in the March 8 Filing through the eTariff filing system, Evergreen Wind failed to properly target the tariff that it had filed. Therefore, the tariff filed on November 29 is currently pending before the Commission. Accordingly, we will reject the tariff filed in the November 29 Filing as moot and accept the tariff filed on March 8, 2011 on the condition that Evergreen Wind revise its tariff as discussed below. We also find that good cause exists to grant Evergreen Wind's request for waiver of the 60-day prior notice requirement to permit an effective date of April 4, 2011.¹³

1. Horizontal Market Power

12. The Commission has adopted two indicative screens for assessing horizontal market power, the pivotal supplier screen and the wholesale market share screen.¹⁴ Evergreen Wind prepared the pivotal supplier and wholesale market share screens for the ISO-NE market, consistent with the requirements of Order No. 697.¹⁵ Evergreen Wind relies on the data from Constellation Mystic Power, LLC's recently-accepted market power analysis¹⁶ to demonstrate that Evergreen Wind passes both the pivotal supplier and the wholesale market share screens for the ISO-NE market.

¹² Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 62, 399, 408, 440.

¹³ *Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106, *order on reh'g*, 61 FERC ¶ 61,089 (1992).

¹⁴ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408, 440.

¹⁵ *Id.* P 62.

¹⁶ *Constellation Mystic Power, LLC*, Docket No. ER10-2281-000 (Oct. 27, 2010) (delegated letter order).

13. The market share screen analysis included in Evergreen Wind's application, which took into consideration the capacity of Evergreen Wind's affiliates, as well as that of Evergreen Wind, indicates that its market share in all seasons in the ISO-NE market is less than one percent. Similarly, Evergreen Wind's pivotal supplier screen analysis indicates that the net uncommitted supply in the ISO-NE market exceeds Evergreen Wind's uncommitted capacity.

14. The Commission has reviewed Evergreen Wind's pivotal supplier and wholesale market share screens and has determined that Evergreen Wind passes both screens in the ISO-NE market. Accordingly, we find that Evergreen Wind satisfies the Commission's requirements for market-based rates regarding horizontal market power.

2. Vertical Market Power

15. 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.¹⁷ In this case, the Commission will grant Evergreen Wind's request for waiver of the requirement to have an OATT on file, as discussed below.¹⁸ In addition, as noted above, the Commission has granted Evergreen Wind and its affiliates waiver of the requirement to file an OATT in connection with their ownership interests in the Evergreen Gen Lead Line.¹⁹

16. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.²⁰ 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

¹⁷ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408.

¹⁸ A generator lead line, such as the Evergreen Wind Line, is a transmission facility. See 16 U.S.C. §§ 796(23), 824(a)-(b) (2006). Therefore, by virtue of its ownership of the Evergreen Wind Line, Evergreen Wind 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).

¹⁹ *Evergreen Wind Power V, LLC*, 130 FERC ¶ 61,186.

²⁰ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 440.

electric power production).²¹ 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.²²

17. Regarding other barriers to entry, Evergreen Wind represents that neither it nor any of its other affiliates own, control, or operate intrastate natural gas transportation, intrastate natural gas storage or distribution facilities. Similarly, Evergreen Wind represents that it and its affiliates only own a limited number of sites for generation capacity development.

18. Consistent with Order No. 697, Evergreen Wind affirmatively states that neither it nor any of its affiliates have erected barriers to entry in the relevant market, and will not erect barriers to entry into the relevant market.

19. Based on Evergreen Wind's representations, we find that Evergreen Wind 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

20. Evergreen Wind seeks waiver of certain requirements under Order Nos. 888, 889, and 890. In support of its request for waiver, Evergreen Wind states that it does not own, operate, or control any transmission-related equipment other than the limited and discrete facilities interconnecting the wind facility to Bangor Hydro's transmission grid. Specifically, Evergreen Wind states that the Evergreen Wind Line is designed, constructed, and used solely for the purpose of interconnecting Evergreen Wind's facility to the grid. It contends that the Evergreen Wind Line does not comprise an integrated transmission system and does not serve, and is not designed to serve, other users.

21. Order Nos. 888 and 890 and section 35.28²³ of the Commission's regulations require public utilities that own, control, or operate facilities used for the transmission of electric energy in interstate commerce to file an OATT. Order Nos. 889 and Part 37 of the Commission's regulations²⁴ require public utilities to establish and maintain an Open Access Same-Time Information System (OASIS), and Order Nos. 889, 2004, and 717

²¹ Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

²² Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

²³ 18 C.F.R. § 38.28 (2010).

²⁴ 18 C.F.R. Part 37 (2010).

and Part 358 of the Commission's regulations²⁵ require public utilities to abide by certain standards of conduct.²⁶ In prior orders, the Commission has enunciated the standards for exemption from some or all of the requirements of Order Nos. 888 and 889.²⁷ The Commission has stated that the criteria for waiver of the requirements of Order No. 890 and Order No. 2004 are unchanged from those used to evaluate requests for waiver under Order No. 888 and Order No. 889.²⁸ Order No. 717 did not change those criteria.²⁹

22. 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.

23. 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.³⁰

24. Based on Evergreen Wind's representations, we find that the Evergreen Wind Line is limited and discrete. The Evergreen Wind Line does not form an integrated transmission system and will be used solely by Evergreen Wind to interconnect its wind project to the transmission grid. Accordingly, we will grant Evergreen Wind waiver of the requirements in Order Nos. 888 and 890 to have an OATT on file. However, if Evergreen Wind 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

²⁵ 18 C.F.R. Part 358 (2010).

²⁶ 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.

²⁷ 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*).

²⁸ See *Alcoa Power Generating Inc.*, 120 FERC ¶ 61,035, at P 3 (2007); *Alcoa Power Generating Inc.*, 108 FERC ¶ 61,243, at P 27 (2004).

²⁹ See Order No. 717, FERC Stats. & Regs. ¶ 31,280 at P 31-33.

³⁰ *Black Creek*, 77 FERC at 61,941.

compliance with Order Nos. 888 and 890.³¹ The Commission also grants Evergreen Wind waiver from the requirements to maintain an OASIS and of the Standards of Conduct. We note that Evergreen Wind'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.³² Likewise, Evergreen Wind'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 Evergreen Wind has unfairly used its access to information to unfairly benefit itself or its affiliate.³³

2. Other Waivers, Approvals and Authorizations

25. Evergreen Wind requests a number of waivers and authorizations typically granted by the Commission to market-based rate sellers. In particular, Evergreen Wind requests the following waivers and authorizations under the Commission's regulations: (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 related reporting requirements of Parts 41, 101, and 141, except sections 141.14 and 141.15; and (3) blanket authorization under Part 34 for all future issuances of securities and assumptions of liability.

26. The Commission will grant the requested waivers and authorizations consistent with those granted other entities with market-based rate authorizations.³⁴ Notwithstanding the waiver of the accounting and reporting requirements, the

³¹ See *Terra-Gen Dixie Valley, LLC*, 132 FERC ¶ 61,215, at P 47 (2010), *order on reh'g*, 134 FERC ¶ 61,021 (2011).

³² *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).

³³ *Id.* Evergreen Wind 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).

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

Commission expects Evergreen Wind to keep its accounting records in accordance with generally accepted accounting principles.

C. Reporting Requirements

27. 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.³⁵ Public utilities must file EQRs no later than 30 days after the end of the reporting quarter.³⁶

28. Additionally, Evergreen Wind 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.³⁷

³⁵ *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, 125 FERC ¶ 61,103 (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>.

³⁶ The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2010). 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.

³⁷ *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(a) (2010).

29. In Order No. 697, the Commission created two categories of sellers.³⁸ 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.³⁹ Sellers that do not fall into Category 1 are designated as Category 2 sellers and are required to file an updated market power analysis.⁴⁰

30. Evergreen Wind states that it meets the criteria for Category 1 seller status in all regions except the Northeast and Northwest regions because in all regions where it is seeking Category 1 seller status it: (1) owns, operates, controls or is affiliated with 500 MW or less of generation in aggregate per region; (2) does not own, operate, or control transmission facilities other than the limited equipment necessary to connect individual generating facilities to the transmission grid; and (3) is not affiliated with any entity that owns, operates, or controls transmission facilities. Evergreen Wind also represents that it and its affiliates do not have franchised electric utility service territories or captive customers, and that its application for market-based rate authority does not raise any vertical market power issues.

31. Based on Evergreen Wind's representations, we grant Evergreen Wind Category 1 seller status in all regions except the Northwest and Northeast regions; however, the Commission reserves the right to require an updated market power analysis at any time for those regions.⁴¹ Further, based on its representations, we designate Evergreen Wind as a Category 2 seller in the Northwest and Northeast regions; thus, Evergreen Wind must file an updated market power analysis in the Northeast and Northwest regions in compliance with the regional reporting schedule adopted in Order No. 697.⁴²

32. We note that the tariff that Evergreen Wind submitted with the March 8 Filing mistakenly refers to Evergreen Wind V and states that it is a Category 2 seller in all

³⁸ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 848.

³⁹ 18 C.F.R. § 35.36(a) (2010).

⁴⁰ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 850.

⁴¹ *Id.* P 853.

⁴² *Id.* P 882.

regions. Evergreen Wind should revise its tariff to remove the reference to its affiliate, Evergreen Wind V and Evergreen Wind should then correctly identify itself and reflect its status as a Category 1 seller in the Southwest, Southwest Power Pool, Central, and Southeast regions and a Category 2 seller in the Northeast and Northwest regions. Thus, we condition our grant of market-based rate authority on Evergreen Wind making a compliance filing within 30 days of the date of this order, correcting these errors

The Commission orders:

(A) Evergreen Wind's market-based rate tariff submitted on November 29, 2010 is hereby rejected as moot, as discussed in the body of this order.

(B) Evergreen Wind is hereby directed to submit a compliance filing, within 30 days of the date of this order, as discussed in the body of this order.

(C) Evergreen Wind's amended market-based rate tariff, as modified in accordance with Ordering Paragraph (B), is hereby accepted for filing, effective April 4, 2011, as discussed in the body of this order.

(D) 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.

(E) 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.

(F) Blanket authorization under Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability is hereby granted. Evergreen Wind 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 Evergreen Wind, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(G) 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 Evergreen Wind's issuance of securities or assumptions of liability.

(H) Evergreen Wind's request for waiver of the requirements of Order Nos. 888, 889, and 890, is hereby granted, as discussed in the body of this order.

(I) Evergreen Wind is hereby required to file EQRs in compliance with Order No. 2001. If the effective date of Evergreen Wind's market-based rate tariff falls within a quarter of the year that has already expired, Evergreen Wind's 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.