

138 FERC ¶ 61,056  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Heritage Garden Wind Farm I, LLC

Docket No. ER12-421-001

ORDER GRANTING MARKET-BASED RATE AUTHORIZATION AND REQUESTS  
FOR WAIVERS

(Issued January 26, 2012)

1. In this order, the Commission grants Heritage Garden Wind Farm I, LLC (Heritage Garden) authority to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates, effective December 31, 2011, as requested. Also, as discussed below, we grant Heritage Garden waiver of the obligation to file an Open Access Transmission Tariff (OATT), to comply with the Commission's Standards of Conduct, and to establish and maintain an Open Access Same-Time Information System (OASIS). We also grant Heritage Garden's request for other waivers commonly granted to market-based rate sellers.

2. Additionally, we find that Heritage Garden meets the criteria for a Category 1 seller in the Northeast, Northwest, Southeast, Southwest, Southwest Power Pool, and Central regions and is so designated.<sup>1</sup>

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<sup>1</sup> See *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, at P 848-850, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010), *aff'd sub nom. Montana Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011).

## I. Background

3. On November 16, 2011, as amended on November 30, 2011, pursuant to section 205 of the Federal Power Act (FPA),<sup>2</sup> Heritage Garden filed an application for market-based rate authority with an accompanying tariff providing for the sale of electric energy, capacity, and ancillary services at market-based rates.<sup>3</sup> Heritage Garden states that it will own a 28 megawatt (MW) wind-powered electric generation facility located in Delta County, Michigan (Facility).<sup>4</sup> It states that the Facility will interconnect with the transmission system owned by American Transmission Company LLC, which is under the operational control of MISO, through a seven-mile 138 kV generator lead line. Heritage Garden states that the entire net electric output of the Facility will be sold to Detroit Edison Company and Consumers Energy Company, pursuant to long-term power purchase agreements.

4. Heritage Garden states that its generator lead line is limited and discrete, and will be used solely by Heritage Garden to interconnect the Facility to the transmission system. With respect to this line, Heritage Garden requests that the Commission waive the requirements under Order Nos. 888<sup>5</sup> and 890<sup>6</sup> to file an OATT, the requirements under

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<sup>2</sup> 16 U.S.C. § 824d (2006).

<sup>3</sup> Heritage Garden requests authorization to sell ancillary services in the market administered by Midwest Independent Transmission System Operator, Inc. (MISO).

<sup>4</sup> Heritage Garden states that a single wind turbine generator could reach commercial operation in late-December 2011 and the remaining thirteen wind turbine generators comprising the Facility are expected to become operational in the second or third quarter of calendar-year 2012. Heritage Garden also states that the Facility site can accommodate additional generation capacity development of approximately 70 MW, which it may construct at a later time.

<sup>5</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>6</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

(continued...)

Order No. 889<sup>7</sup> to establish an OASIS, and the requirements under Order Nos. 889, 2004,<sup>8</sup> 717,<sup>9</sup> and Part 358 of the Commission's regulations<sup>10</sup> to comply with the Standards of Conduct.

5. Heritage Garden is owned by Northwestern Wind Energy, LLC (Northwestern Wind) (50.25 percent), Muskegon Development Company (23.88 percent), WJStrickler MI, LP (12.44 percent), and two other entities, each with ownership of less than 10 percent. Northwestern Wind is owned by Tira Vento, LLC (65.1 percent), and four other entities, each with ownership in Northwestern Wind of 10 percent or less.

6. Heritage Garden represents that its affiliate, Heritage Stoney Corners Wind Farm I, LLC (Stoney Corners), owns and operates a 60.25 MW qualifying facility under the

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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>7</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).

<sup>8</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>9</sup> *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).

<sup>10</sup> 18 C.F.R. Part 358 (2011).

Public Utility Regulatory Policies Act of 1978,<sup>11</sup> which is located in Missaukee and Osceola Counties, Michigan. Heritage Garden represents that Stoney Corners' generation output is fully committed under long-term power purchase agreements.

## **II. Notice of Filing**

7. Notice of Heritage Garden's November 16, 2011 filing was published in the *Federal Register*, 76 Fed. Reg. 72,402 (2011), with interventions and comments due on or before December 7, 2011. None was filed.

8. Notice of Heritage Garden's request for blanket authorization under Part 34 was separately published in the *Federal Register*, 76 Fed. Reg. 72,697 (2011), with interventions or protests due on or before November 18, 2011. None was filed.

9. Notice of Heritage Garden's November 30, 2011 filing was published in the *Federal Register*, 76 Fed. Reg. 76,394 (2011), with interventions and comments due on or before December 21, 2011. None was filed.

## **III. Determination**

10. As discussed below, we will grant Heritage Garden's request for authorization to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates and Heritage Garden's request for certain waivers.

### **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.<sup>12</sup> As discussed below, we find that Heritage Garden satisfies the Commission's standards for market-based rate authority and we will accept Heritage Garden's market-based rate tariff, effective December 31, 2011, as requested.

#### **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.<sup>13</sup> The

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<sup>11</sup> 16 U.S.C. § 824a-3 (2006).

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

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

Commission has stated that passage of both screens establishes a rebuttable presumption that the applicant does not possess horizontal market power, while failure of either screen creates a rebuttable presumption that the applicant has horizontal market power.<sup>14</sup>

13. As stated above, Heritage Garden represents that the Facility is located in the MISO market, and that the full output of its Facility, as well as Stoney Corners' facility, are fully committed under long-term power purchase agreements. Heritage Garden represents that it and its affiliates do not have uncommitted capacity available to sell in the MISO market and therefore cannot exercise market power in that market. Accordingly, we find that Heritage Garden satisfies the Commission's requirements for market-based rates regarding horizontal market power.

## 2. Vertical Market Power

14. 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>15</sup>

15. In this case, as discussed more fully below, the Commission will grant Heritage Garden's request for waiver of the requirement to have an OATT on file for its transmission facilities.<sup>16</sup>

16. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.<sup>17</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

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<sup>14</sup> *Id.* P 33, 62-63.

<sup>15</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408.

<sup>16</sup> A generator lead line is a transmission facility. *See* 16 U.S.C. §§ 796(23), 824(a)-(b) (2006). Heritage Garden 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, at P 15 n.18 (2011).

<sup>17</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 440.

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>18</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>19</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>20</sup>

17. Regarding other barriers to entry, Heritage Garden represents that neither it nor any of its affiliates own or control any intrastate natural gas transportation, storage, or distribution facilities, or sources of coal supply or the transportation of coal supplies.<sup>21</sup> Heritage Garden states that its affiliates own or control three potential sites for new generation capacity development within MISO, with the potential for aggregate capacity of approximately 300 MW.

18. Finally, consistent with Order No. 697, Heritage Garden affirmatively states that neither it nor any of its affiliates has erected barriers to entry into the relevant market, and that neither it nor any of its affiliates will erect barriers to entry into the relevant market.

19. Based on Heritage Garden's representations, and our determinations discussed below, we find that Heritage Garden 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. As explained above, Heritage Garden seeks waiver of the requirements to file an OATT, establish and maintain an OASIS, and abide by the Standards of Conduct with respect to its generator lead line. In support of its request for waiver, Heritage Garden states that the generator lead line is limited and discrete, and will be used solely by Heritage Garden to interconnect the Facility to the transmission system.

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<sup>18</sup> Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

<sup>19</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

<sup>20</sup> *Id.* P 446.

<sup>21</sup> Heritage Garden's November 30, 2011 Filing at 11.

21. Order Nos. 888 and 890 and section 35.28 of the Commission's regulations<sup>22</sup> 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<sup>23</sup> 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>24</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>25</sup> The criteria for waiver of these requirements are unchanged by Order Nos. 890, 2004, and 717.<sup>26</sup>

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. 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>27</sup>

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 other

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<sup>22</sup> 18 C.F.R. § 35.28 (2011).

<sup>23</sup> 18 C.F.R. Part 37 (2011).

<sup>24</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>25</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>26</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>27</sup> *Black Creek*, 77 FERC at 61,941.

circumstances are present that indicate that a waiver would not be justified.<sup>28</sup> The Commission has held that waiver of Order No. 889 will remain in effect until the Commission takes action in response to a complaint to the Commission that an entity evaluating its transmission needs could not get the information necessary to complete its evaluation (for OASIS waivers) or an entity complains that the public utility has unfairly used its access to information about transmission to benefit the utility or its affiliate (for Standards of Conduct waivers).<sup>29</sup>

24. Based on the statements in Heritage Garden's application, we find that its transmission facilities qualify as limited and discrete. The facilities will be used solely by Heritage Garden to interconnect its Facility to the transmission grid. Accordingly, we will grant Heritage Garden 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 Heritage Garden 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.

25. The Commission will also grant Heritage Garden 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 Heritage Garden'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>30</sup> Likewise, Heritage Garden's waiver of the

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<sup>28</sup> *Id.* Although the Commission originally precluded waiver of the requirements for OASIS and the Standards of Conduct for a small public utility that is a member of a tight power pool, in *Black Hills Power, Inc.*, 135 FERC ¶ 61,058, at 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.

<sup>29</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>30</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)).

Standards of Conduct will remain in effect unless and until the Commission takes action on a complaint by an entity that Heritage Garden has unfairly used its access to information to unfairly benefit itself or its affiliate.<sup>31</sup>

## 2. Other Waivers, Approvals, and Authorizations

26. Heritage Garden also requests the following waivers and authorizations: (1) waiver of the filing requirements of subparts B and C of Part 35, except sections 35.12(a), 35.13(b), 35.15, and 35.16; (2) waiver of the accounting and other requirements of Parts 41, 101, and 141, except sections 141.14 and 141.15; and (3) blanket authorization under section 204 of the FPA<sup>32</sup> and Part 34 for all future issuances of securities and assumptions of liability.

27. The Commission will grant the requested waivers and authorizations consistent with those granted other entities with market-based rate authorizations.<sup>33</sup> Notwithstanding the waiver of the accounting and reporting requirements, the Commission expects Heritage Garden to keep its accounting records in accordance with generally accepted accounting principles.

### C. Reporting Requirements

28. 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

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<sup>31</sup> *Id.* Heritage Garden 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).

<sup>32</sup> 16 U.S.C. § 824c (2006).

<sup>33</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 984-985 (regarding waiver of Parts 41, 101, and 141), 999-1000 (regarding blanket approval under Part 34).

(one year or longer) market-based power sales during the most recent calendar quarter.<sup>34</sup> Public utilities must file EQRs no later than 30 days after the end of the reporting quarter.<sup>35</sup>

29. Additionally, Heritage Garden 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>36</sup>

30. In Order No. 697, the Commission created two categories of sellers.<sup>37</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

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<sup>34</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>.

<sup>35</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>36</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>37</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 848.

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>38</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>39</sup>

31. Heritage Garden represents that it meets the criteria for Category 1 seller status in all regions. It represents that it and its affiliates do not own, operate, or control 500 MW or more of generation capacity in aggregate. Heritage Garden states that neither it nor any of its affiliates owns, operates, or controls transmission facilities, other than those limited and discrete facilities that are necessary to interconnect their generation facilities to the transmission grid, that it is not affiliated with any franchised public utility, and that Heritage Garden does not raise any other vertical market power issues. Based on Heritage Garden's representations and the Commission's decision herein to grant waiver of the OATT requirement, we designate Heritage Garden as a Category 1 seller in the Northeast, Northwest, Southeast, Southwest, Southwest Power Pool, and Central regions; however, the Commission reserves the right to require an updated market power analysis at any time for these regions.<sup>40</sup>

The Commission orders:

(A) Heritage Garden's market-based rate tariff is hereby accepted for filing, effective December 31, 2011, as requested, as discussed in the body of this order.

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

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

(D) Blanket authorization under Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability is hereby granted. Heritage Garden is hereby authorized to issue securities and assume obligations or liabilities as

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<sup>38</sup> 18 C.F.R. § 35.36(a) (2011).

<sup>39</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 850.

<sup>40</sup> See Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 853.

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 Heritage Garden, 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 Heritage Garden's issuance of securities or assumptions of liability.

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

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