

145 FERC ¶ 61,243
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Entergy Arkansas, Inc.	Docket Nos. ER13-2339-000
Entergy Gulf States Louisiana, L.L.C.	ER13-2340-000
Entergy Louisiana, LLC	ER13-2341-000
Entergy Mississippi, Inc.	ER13-2342-000
Entergy New Orleans, Inc.	ER13-2343-000
Entergy Texas, Inc.	ER13-2344-000
Entergy Nuclear Palisades, LLC	ER13-2345-000
EWO Marketing, LLC	ER13-2346-000
Llano Estacado Wind, LLC	ER13-2347-000
Northern Iowa Windpower, LLC	ER13-2348-000
EAM Nelson Holding, LLC	ER13-2349-000
RS Cogen, LLC	ER13-2350-000
Entergy Power, LLC	ER13-2351-000

ORDER GRANTING MARKET-BASED RATE AUTHORIZATION AND
ACCEPTING TARIFFS

(Issued December 18, 2013)

1. In this order, we accept proposed revisions to the market-based rate tariffs of subsidiaries of Entergy Corporation (Entergy). The proposed revisions remove the restrictions on the Entergy Operating Companies¹ and their Market-Regulated Power Sales Affiliates that conduct business outside the northeastern region of the United States² that prohibit market-based rate sales in the Entergy balancing authority area. As

¹ The Entergy Operating Companies are: Entergy Arkansas, Inc. (Entergy Arkansas); Entergy Gulf States Louisiana, L.L.C. (Entergy Gulf States Louisiana); Entergy Louisiana, LLC (Entergy Louisiana); Entergy Mississippi, Inc. (Entergy Mississippi); Entergy New Orleans, Inc. (Entergy New Orleans); and Entergy Texas, Inc. (Entergy Texas).

² The Market-Regulated Power Sales Affiliates that conduct business outside the northeastern region of the United States (Market-Regulated Power Sales Affiliates) are:
(continued...)

discussed below, the Commission concludes that the restrictions may be removed upon the Entergy Operating Companies' integration with the Midcontinent Independent System Operator, Inc. (MISO). Also in this order, the Commission grants two subsidiaries of Entergy, EAM Nelson Holding, LLC (EAM Nelson) and RS Cogen, LLC (RS Cogen), authority to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates. As discussed below, we accept the new tariffs of EAM Nelson and RS Cogen and the revised tariffs of the Entergy Operating Companies and the Market-Regulated Power Sales Affiliates (collectively, Applicants), effective December 19, 2013, as requested.³ We also grant the request of three of the Applicants, EAM Nelson, RS Cogen, and Entergy Power, for other waivers commonly granted to market-based rate sellers.

2. Additionally, we find that all but one of the Applicants meet the criteria for a Category 2 seller in the Central region and a Category 1 seller in the Northeast, Northwest, Southeast, Southwest, and Southwest Power Pool regions.⁴ We find that Llano Estacado meets the criteria for a Category 2 seller in the Southwest Power Pool region and a Category 1 seller in all other regions.

I. Background

3. On September 6, 2013, as amended November 21, 2013, pursuant to section 205 of the Federal Power Act (FPA),⁵ the Entergy Operating Companies and the Market-Regulated Power Sales Affiliates filed proposed revisions to their current market-based

Entergy Nuclear Palisades, LLC (Entergy Nuclear Palisades); Entergy Power, LLC (Entergy Power); EWO Marketing, LLC (EWO Marketing); Llano Estacado Wind, LLC (Llano Estacado); and Northern Iowa Windpower, LLC (Northern Iowa Windpower).

³ Applicants state that they submitted separate filings for each Applicant so that each individual tariff is filed in its own eTariff database. They state that their filings are identical in all respects except for the tariffs.

⁴ *See Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, at PP 848-850, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010), *aff'd sub nom. Montana Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011), *cert. denied*, 133 S. Ct. 26 (2012).

⁵ 16 U.S.C. § 824d (2012).

rate tariffs. In addition, EAM Nelson and RS Cogen filed applications for market-based rate authority with accompanying tariffs providing for the sale of electric energy, capacity, and ancillary services at market-based rates.⁶

4. Applicants explain that on December 19, 2013, the Entergy Operating Companies will become transmission-owning members of MISO, integrate their operations into MISO, and become participants in the wholesale markets administered by MISO. Additionally, Applicants state that the Market-Regulated Power Sales Affiliates and EAM Nelson and RS Cogen (the non-operating company Applicants) will participate in the MISO-administered markets after December 19, 2013. Applicants represent that they will own or control approximately 23,900 megawatts (MW) of generation in the post-integration MISO market.

5. Applicants represent that each of the Entergy Operating Companies is wholly owned by Entergy. Applicants state that the Entergy Operating Companies generate, transmit, distribute and sell electric power to retail customers in Arkansas, Tennessee, Louisiana, Mississippi, and Texas. Additionally, Applicants state that Entergy Gulf States Louisiana, Entergy Mississippi, and Entergy Texas serve wholesale requirements customers and that Entergy New Orleans makes sales to wholesale customers under rate schedules on file with the Commission. Applicants also state that Entergy Gulf States Louisiana provides natural gas utility service to customers in the Baton Rouge, Louisiana area and Entergy New Orleans provides natural gas utility service to customers in the city of New Orleans.

6. Applicants represent that of the seven non-operating company Applicants, Entergy wholly owns four of them: Entergy Nuclear Palisades, Entergy Power, EAM Nelson, and EWO Marketing. They state that EAM Nelson owns a 10.9 percent interest in the 615 MW RS Nelson Unit # 6 generating facility located in Louisiana. EWO Marketing markets the output associated with the interest in the generating facilities owned by EAM Nelson and RS Cogen and also provides service under a long-term cost-based wholesale requirements power supply agreement on file with the Commission. Applicants state that Entergy Power and EAM Nelson currently have cost-based rate schedules on file and that, in separate filings, Entergy Power and EAM Nelson will cancel those cost-based rate schedules effective as of the effective date of the market-based rate tariffs submitted in this proceeding.

⁶ EAM Nelson and RS Cogen request 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 MISO. EAM Nelson and RS Cogen also request authorization to engage in the sale of certain ancillary services as third-party providers in other markets.

7. Applicants also represent that of the seven non-operating company Applicants, three (Llano Estacado, Northern Iowa Windpower, and RS Cogen) are joint ventures with other entities. They state that Llano Estacado owns an approximately 80 MW facility, interconnected with the transmission system of Southwestern Public Service Company. Applicants state that RS Cogen is a joint venture between an indirect wholly-owned subsidiary of Entergy and Axiall Corporation, each of which owns 50 percent of the membership interests of RS Cogen. RS Cogen owns a 425 MW cogeneration qualifying facility.

8. Applicants state that Entergy Services, Inc. (Entergy Services), a subsidiary of Entergy, provides technical and administrative services to the Entergy Operating Companies. Applicants explain that the Entergy Operating Companies currently maintain a common market-based rate tariff under which Entergy Services, acting on behalf of each of the Entergy Operating Companies, arranges and implements market-based rate sales pursuant to each Entergy Operating Companies' market-based rate authority. Applicants explain that each of the Entergy Operating Companies is submitting in its own eTariff database an individual market-based rate tariff in place of the common Entergy Operating Companies' market-based rate tariff.

9. The currently effective market-based rate tariffs of the Entergy Operating Companies and Market-Regulated Power Sales Affiliates contain a limitation provision that provides that they do not have market-based rate authority for sales within the Entergy balancing authority area (including the balancing authorities operated by the Louisiana Energy and Power Authority and the City of Lafayette, which are located adjacent to the Entergy balancing authority area). Applicants state that the Entergy Operating Companies' integration into MISO will constitute a change in circumstance that will allow them to satisfy the Commission's criteria for market-based rate authority within the former Entergy balancing authority area and permit removal of the restrictions against market-based rate sales in the Entergy balancing authority area that are currently in their market-based rate tariffs. On that basis, the Entergy Operating Companies and the Market-Regulated Power Sales Affiliates propose to revise their currently effective market-based rate tariffs to remove the restrictions prohibiting market-based rate sales in the former Entergy balancing authority area effective December 19, 2013, the date the Entergy Operating Companies join MISO. EAM Nelson and RS Cogen request market-based rate authority for sales of energy, capacity, and ancillary services in all regions effective as of that date.⁷

⁷ As noted above, EAM Nelson and RS Cogen request authorization to sell ancillary services in certain markets and to engage in the sale of certain ancillary services as third-party providers in other markets. *Id.*

10. Applicants note that they are affiliated with market-regulated power sales affiliates that conduct business in the northeastern region of the United States.⁸ Applicants state that these sellers have market-based rate authority and are precluded from making market-based rate sales within the Entergy balancing authority area, but they do not seek to transact within the former Entergy balancing authority area following the Entergy Operating Companies' integration into MISO, and therefore do not join this application.

11. Last, Applicants note that, as explained in the joint application in Docket No. EC12-145-000 for authorization pursuant to FPA section 203, Applicants have proposed to undertake a transaction in which subsidiaries of ITC Holdings Corp. (ITC) will assume ownership of the transmission facilities and transmission businesses owned by the Entergy Operating Companies (ITC Transaction).⁹

II. Notice of Filings

12. Notice of Applicants' filings was published in the *Federal Register*,¹⁰ with interventions and comments due on or before December 2, 2013. None was filed.

13. Notice of Applicants' request for blanket authorization under Part 34 of the Commission's regulations for EAM Nelson, RS Cogen, and Entergy Power was separately published in the *Federal Register*,¹¹ with interventions or protests due on or before November 18, 2013. None was filed.

⁸ The market-regulated power sales affiliates that conduct business in the northeastern region of the United States are: Entergy Nuclear FitzPatrick, LLC; Entergy Nuclear Generation Company; Entergy Nuclear Indian Point 2, LLC; Entergy Nuclear Indian Point 3, LLC; Entergy Nuclear Power Marketing, LLC, Entergy Nuclear Vermont Yankee, LLC; and Entergy Rhode Island State Energy, L.P.

⁹ The Commission authorized the ITC transaction in *ITC Holdings Corp.*, 143 FERC ¶ 61,256 (2013). However, on December 13, 2013, Entergy Services and ITC filed a notice of termination of the proposed transaction. See Notice of Termination of Transaction, Docket No. EC12-145-000 (Dec. 13, 2013).

¹⁰ 78 Fed. Reg. 57,147-57,148; 78 Fed. Reg. 72,875 (2013).

¹¹ 78 Fed. Reg. 66,352-66,353 (2013).

III. Discussion

A. Market-Based Rate Authorization

14. 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, the Commission concludes that Applicants satisfy the Commission's standards for market-based rate authority.

1. Horizontal Market Power

15. The Commission has adopted two indicative screens for assessing horizontal market power: the pivotal supplier screen and the wholesale market share screen.¹³ 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.¹⁴ Additionally, the Commission has adopted a rebuttable presumption that existing Commission-approved regional transmission organization/independent system operator market monitoring and mitigation is sufficient to address any market power concerns that may arise with respect to an applicant for market-based rate authority.¹⁵

16. Applicants have prepared the pivotal supplier and wholesale market share screens for the post-integration MISO market. Applicants state that they and their affiliates will own or control approximately 23,900 MW in the post-integration MISO market. Applicants' market share screen indicates that their market share in the post-integration MISO market ranges from 8.7 to 14.3 percent. Applicants' pivotal supplier screen indicates that the net uncommitted supply in the post-integration MISO market exceeds Applicants' uncommitted capacity. Applicants state that they pass the indicative screens and therefore they do not need to rely on MISO's Commission-approved market-monitoring and mitigation to qualify for market-based rate authority following the Operating Companies' integration into MISO, but they add that the existence of MISO's market-monitoring and mitigation program provides a further basis for concluding that Applicants will not be able to exercise market power in the MISO market.

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

¹³ *Id.* P 62.

¹⁴ *Id.* PP 33, 62-63.

¹⁵ Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 111.

17. We note that in consideration of the anticipated integration, MISO recently submitted a filing in Docket No. ER14-136-000¹⁶ to establish two new Narrow Constrained Areas (NCAs)¹⁷ and related mitigation measures for the MISO South region.¹⁸ In that filing, MISO acknowledges that within the MISO South region substantial local market power exists associated with both local reliability requirements embodied in MISO Operating Guides (which will be enforced after integration), and with binding transmission constraints that isolate local areas, which include both Broad Constrained Areas (BCAs) and the proposed new NCAs in the MISO South region.¹⁹ MISO contends that its existing mitigation measures as supplemented by the new NCAs in the MISO South region will be fully effective in addressing these local market power concerns. MISO contends that the previously-approved Voltage and Local Reliability mitigation measures will address the market power associated with local reliability

¹⁶ Midcontinent Independent System Operator, Inc., Docket No. ER14-136-000 (filed Oct. 18, 2013) (MISO NCA Filing).

¹⁷ According to the MISO NCA Filing, the MISO tariff defines an NCA as an electrical area that has been identified by the Independent Market Monitor as having one or more Binding Transmission Constraints or Binding Reserve Constraints that are expected to be binding for at least five hundred (500) hours during a given year and within which one or more suppliers are pivotal. MISO NCA Filing at 3.

¹⁸ MISO states that it anticipates that Entergy Corporation's Operating Companies, along with Cleco Power, Lafayette Utilities Systems, East Texas Power Cooperatives and South Mississippi Electric Power Association, will integrate into MISO effective December 19, 2013, an event it refers to as the "MISO South Integration." When completed, MISO will act as the Balancing Authority Operator for the MISO South Region, and each of the integrating utilities will be full participants in MISO's energy and ancillary services markets. MISO states that the MISO South Integration will not result in significant changes to operations under the MISO energy and ancillary services markets, including the market monitoring requirements in Module D of MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff. MISO NCA Filing at 1 & n.2, 2 & n.4.

¹⁹ MISO NCA Filing at 11. The MISO filing also includes a study produced by the Independent Market Monitor, Potomac Economics, titled "*Study of Narrow Constrained Areas in the MISO South Region*" (Potomac Study). The Potomac Study summarizes its findings of substantial market power in local areas within the MISO South Region at 4.

requirements,²⁰ and the BCA²¹ and NCA mitigation measures will effectively mitigate local market power associated with binding constraints and ancillary reserve zones.²²

18. In an order in the MISO NCA proceeding being issued concurrently with this order, the Commission finds that the proposed NCA mitigation measures, in conjunction with the market-wide monitoring and mitigation measures currently in place under Module D of MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff, are sufficient to address market power concerns.²³ Accordingly, we will accept the revised tariffs removing the restrictions against market-based rate sales in the former Entergy balancing authority area so that Applicants may make market-based rate sales of energy, capacity, and ancillary services throughout the MISO market upon the Entergy Operating Companies' integration into MISO.

19. Accordingly, we find that Applicants satisfy the Commission's requirements for market-based rate authority regarding horizontal market power.

2. Vertical Market Power

20. In cases where a public utility, or any of its affiliates, owns, operates, or controls transmission facilities, the Commission requires that there be a Commission-approved Open Access Transmission Tariff (OATT) on file or that the seller has received waiver of the OATT requirement before granting a seller market-based rate authorization.²⁴

21. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.²⁵ The Commission requires a seller to provide a description of its ownership or control of, or affiliation with, an entity that owns or controls, intrastate natural gas transportation, storage or distribution facilities; sites for generation capacity development; and physical coal supply sources and ownership of or

²⁰ See *Midwest Indep. Transmission Sys. Operator, Inc.*, 140 FERC ¶ 61,171 (2012) (approving Voltage and Local Reliability mitigation measures).

²¹ See *Midwest Indep. Transmission Sys. Operator, Inc.*, 120 FERC ¶ 61,250 (2007) (accepting tariff change to make BCA mitigation permanent).

²² MISO NCA Filing at 11. See also Potomac Study at 5.

²³ *Midcontinent Independent System Operator, Inc.*, 145 FERC ¶ 61,248 (2013).

²⁴ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408.

²⁵ *Id.* P 440.

control over who may access transportation of coal supplies (collectively, inputs to electric power production).²⁶ The Commission also requires sellers to make an affirmative statement that they have not erected barriers to entry into the relevant market and will not erect barriers to entry into the relevant market.²⁷ The Commission adopted a rebuttable presumption that the ownership or control of, or affiliation with any entity that owns or controls, inputs to electric power production does not allow a seller to raise entry barriers but will allow intervenors to demonstrate otherwise.²⁸

22. Applicants state that if the Entergy Operating Companies integrate into MISO prior to completion of the proposed ITC Transaction, or if the proposed ITC Transaction does not occur, MISO will provide open access transmission service over the Entergy Operating Companies' transmission facilities under MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff.

23. With regard to other barriers to entry, Applicants state that they do not have dominant control over sites for new capacity development in relevant markets. They state that Entergy Louisiana owns one undeveloped site in Louisiana that could be used for generation capacity development. They also state that the Entergy Operating Companies own and or control sites at existing generating facilities that may be used to develop new generation facilities. Next, Applicants state that Entergy Texas owns the Spindletop Gas Storage Facility, which is located in Texas, and consists of two natural gas caverns, electric compression and withdrawal facilities, leaching facilities (including brine and fresh water pipelines, disposal equipment and brine storage wells), an electrical substation, and approximately 23 miles of intrastate pipeline that connects the electric generation facilities of Entergy Texas to other intrastate and interstate pipelines located in Texas. Applicants also state that Varibus, L.L.C., a wholly-owned subsidiary of Entergy Gulf States Louisiana, owns the Varibus Intrastate Pipeline, consisting of 29 miles of intrastate pipeline which supplies natural gas to certain generating units. Last, Applicants state that they do not control coal supplies or barges and rail cars used for the

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

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

²⁸ *Id.* P 446.

transportation of coal supplies, except rail cars leased solely to deliver fuel for their coal-fired generating plants.²⁹

24. Applicants affirmatively state that they have not erected barriers to entry into the relevant market and will not erect barriers to entry into the relevant market.³⁰

25. Based on Applicants' representations, the Commission finds that Applicants satisfy the Commission's requirements for market-based rate authorization regarding vertical market power.

B. Other Waivers, Approvals and Authorizations

26. Some of the Applicants request the following waivers and authorizations: (1) waiver of the filing requirements of subparts B and C of Part 35 of the Commission's regulations, except sections 35.12(a), 35.13(b), 35.15, and 35.16; (2) waiver of the accounting and other requirements of Parts 41, 101, and 141 of the Commission's regulations, except sections 141.14 and 141.15; and (3) blanket authorization under section 204 of the FPA³¹ and Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability.

27. Applicants state that they request such waivers for Applicants other than the Entergy Operating Companies and EWO Marketing and that such waivers are appropriate because those Applicants do not maintain cost-based rates and do not have captive customers. They note that the Entergy Operating Companies maintain cost-based rate schedules and have captive customers, and EWO Marketing maintains a cost-based rate schedule. They further note that Entergy Power and EAM Nelson currently have cost-based rate schedules and that in separate filings they will cancel those cost-based rate schedules effective as of the effective date of the market-based rate tariffs accepted in this order.

²⁹ Applicants note that Entergy Gulf States Louisiana and Entergy Texas jointly own Southern Gulf Railway LLC, which owns and operates several miles of rail track in Louisiana for the purpose of transporting coal for use as a boiler fuel at the RS Nelson Unit # 6 generating facility, which is owned by Entergy Gulf States Louisiana, Entergy Texas, and EAM Nelson.

³⁰ We interpret this statement to apply to Applicants and their affiliates. *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

³¹ 16 U.S.C. § 824c (2012).

28. The Commission will grant the requested waivers and authorizations for EAM Nelson, RS Cogen, and Entergy Power consistent with those granted to other entities with market-based rate authorizations.³² Notwithstanding the waiver of the accounting and reporting requirements, the Commission expects these entities to keep their accounting records in accordance with generally accepted accounting principles. Our approval of the request for waivers and authorizations for EAM Nelson and Entergy Power will become effective upon the effective date of the cancellation of their cost-based rate tariffs.

29. We note that Entergy Nuclear Palisades, Llano Estacado, and Northern Iowa Windpower previously received these waivers.³³ We direct Entergy Nuclear Palisades, Llano Estacado, and Northern Iowa Windpower to submit compliance filings containing revisions to the limitations and exemptions sections of their market-based rate tariffs to include appropriate citations to the relevant orders granting these waivers.³⁴

C. Reporting Requirements

30. 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

³² We note that the Commission has examined and approved the continued applicability of the waiver of its accounting and reporting requirements (18 C.F.R. Parts 41, 101, and 141), as well as the continued applicability of the blanket authorization for the issuance of securities and the assumption of liabilities (18 C.F.R. Part 34). *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 984-985 (regarding waiver of Parts 41, 101, and 141) and PP 999-1000 (regarding blanket approval under Part 34).

³³ *See Consumers Energy Co.*, 118 FERC ¶ 61,143 (2007); *Entergy Nuclear Generation Co.*, Docket No. ER99-1004-008 (Sept. 28, 2007) (unpublished letter order); *Llano Estacado Wind, LP*, Docket No. ER02-73-000 (Dec. 28, 2001) (unpublished letter order); *Northern Iowa Windpower, LLC*, Docket No. ER01-1570 (May 3, 2001) (unpublished letter order).

³⁴ *See* Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 384. *See also Niagara Mohawk Power Corp.*, 121 FERC ¶ 61,275, at P 8 (2007). The revisions to the tariffs of Entergy Nuclear Palisades, Llano Estacado, and Northern Iowa Windpower may be filed the next time each respective entity makes a market-based rate filing with the Commission.

(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

31. Additionally, Applicants must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.³⁷

32. 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

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, 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>.

³⁶ The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2013). 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 (2013).

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

waiver of the requirements of Order No. 888³⁹); 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.⁴⁰ Sellers that do not fall into Category 1 are designated as Category 2 sellers and are required to file updated market power analyses.⁴¹

33. Applicants propose to update the Entergy Operating Companies' and the Market-Regulated Power Sales Affiliates' current market-based rate tariffs to memorialize their status as Category 1 and Category 2 sellers in the various regions. Applicants represent that, with the exception of Llano Estacado, they meet the criteria for Category 2 Seller status in the Central region and Category 1 seller status in all other regions. Applicants state that when the Entergy Operating Companies join MISO, the generating facilities owned by all the Applicants except Llano Estacado will be located within MISO, in the Central region. They state that after December 19, 2013, Applicants (other than Llano Estacado) will own more than 500 MW of generating capacity in the Central region and the Entergy Operating Companies will be franchised public utilities in the Central region. With respect to other regions, after December 19, 2013, Applicants state that Applicants (other than Llano Estacado) will not own, operate, or control any generation in those regions; they will not own, operate or control transmission facilities in those regions; they will not be affiliated with anyone that owns, operates or controls transmission facilities in those regions; they will not be, or be affiliated with, a franchised public utility in those regions; and their request for Category 1 sellers status in those regions does not raise other vertical market power issues. With respect to Llano Estacado, they note that Llano Estacado's generating facility is located in the Southwest Power Pool region. Applicants state that, as documented in Llano Estacado's existing market-based rate tariff, Llano Estacado is a Category 2 seller in the Southwest Power Pool region and a Category 1 seller in all other regions.

³⁹ *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).

⁴⁰ 18 C.F.R. § 35.36(a) (2013).

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

34. Based on Applicants' representations, we find that, with the exception of Llano Estacado, Applicants meet the criteria for a Category 2 seller in the Central region and a Category 1 seller in all other regions. We find that Llano Estacado meets the criteria for a Category 2 seller in the Southwest Power Pool region and a Category 1 seller in all other regions. Each Applicant must file updated market power analyses for any region in which it is designated as a Category 2 seller in compliance with the regional reporting schedule adopted in Order No. 697. The Commission reserves the right to require an updated market power analysis at any time for any region.⁴²

The Commission orders:

(A) Applicants' market-based rate tariffs and tariff revisions are hereby accepted for filing, effective December 19, 2013, 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 to EAM Nelson, RS Cogen, and Entergy Power, as discussed in the body of this order.

(C) Waiver of Parts 41, 101, and 141 of the Commission's regulations, with the exception of sections 141.14 and 141.15, is hereby granted to EAM Nelson, RS Cogen, and Entergy Power, as discussed in the body of this order.

(D) Blanket authorization under Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability is hereby granted to EAM Nelson, RS Cogen, and Entergy Power, as discussed in the body of this order. EAM Nelson, RS Cogen, and Entergy Power are hereby authorized to issue securities and assume obligations or liabilities as guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within their corporate purposes, 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 EAM Nelson, RS Cogen, and Entergy Power's issuance of securities or assumptions of liability.

⁴² See Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 853.

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

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.