

145 FERC ¶ 61,265
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Ebensburg Power Company

Docket No. ER13-1422-005

ORDER GRANTING MARKET-BASED RATE AUTHORIZATION
AND REQUESTS FOR WAIVERS

(Issued December 23, 2013)

1. In this order, the Commission grants Ebensburg Power Company (Ebensburg) authority to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates within the PJM Interconnection, L.L.C. (PJM) market, effective May 12, 2013, as requested.¹ Also, as discussed below, we grant Ebensburg's request for waiver of the requirements to file an Open Access Transmission Tariff (OATT), the requirements to establish an Open Access Same-Time Information System (OASIS), and the requirements to comply with the Standards of Conduct. We also grant Ebensburg's request for other waivers commonly granted to market-based rate sellers.
2. Additionally, we find that Ebensburg meets the criteria for a Category 2 seller in the Northeast region and is so designated. Ebensburg must file an updated market power analysis for the Northeast region in compliance with the regional reporting schedule adopted in Order No. 697.²

¹ Ebensburg does not seek market-based rate authority outside the PJM market.

² 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. Mont. Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011), *cert. denied*, 133 S. Ct. 26 (2012).

I. Background

3. On May 3, 2013, as amended on May 21, 2013, May 29, 2013, August 14, 2013, October 2, 2013, and October 24, 2013, pursuant to section 205 of the Federal Power Act (FPA),³ Ebensburg 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.⁴ Ebensburg requests that the Commission accept the tariff effective May 12, 2013.

4. Ebensburg states that it is a 55 megawatt (MW) cogeneration power facility that burns waste coal to produce steam and electricity. Ebensburg further states that the facility began commercial operation in May 1991, and is located in Pennsylvania within the PJM market. Ebensburg adds that the facility is connected to Pennsylvania Electric Company (PENELEC) via a 115 kilovolt (kV), three-mile radial generator interconnection line at the PENELEC Cambria Slope substation.

5. Ebensburg represents that, other than the Ebensburg facility and the radial generator interconnection line, Ebensburg does not own or control any other electric generation or transmission facilities in the United States. However, Ebensburg represents that it is affiliated with entities that own generation or transmission facilities in the Southwest, Northeast, Southeast, and Central regions of the United States.⁵

6. Ebensburg is requesting waiver for its radial generator interconnection line of the requirements under Order Nos. 888⁶ and 890⁷ and section 35.28 of the Commission's

³ 16 U.S.C. § 824d (2012).

⁴ Ebensburg requests authorization to sell ancillary services in the market administered by PJM.

⁵ See Ebensburg October 24, 2013 Filing at Appendix B-1.

⁶ *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).

⁷ *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...)

regulations⁸ to file an OATT, the requirement under Order No. 889⁹ and Part 37 of the Commission's regulations¹⁰ to establish an OASIS, and the requirements under Order Nos. 889, 2004,¹¹ and 717,¹² and Part 358 of the Commission's regulations¹³ to comply with certain Standards of Conduct.

7. Ebensburg explains that it is a Pennsylvania general partnership owned 49/99ths by Babcock & Wilcox Ebensburg Power, Inc. (Babcock & Wilcox Ebensburg Power), an indirect wholly-owned subsidiary of Babcock & Wilcox Power Generation Group, Inc. (Babcock & Wilcox Power Generation), whose ultimate parent is the Babcock & Wilcox Company, and 50/99ths by Ebensburg Investors Limited Partnership (Ebensburg

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).

⁸ 18 C.F.R. § 35.28 (2013).

⁹ *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).

¹⁰ 18 C.F.R. Part 37 (2013).

¹¹ *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).

¹² *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).

¹³ 18 C.F.R. Part. 358 (2013).

Investors Limited Partnership). Ebensburg states that Ebensburg Investors Limited Partnership is a partnership owned 1 percent by Babcock & Wilcox Ebensburg Power and 99 percent by ESI Ebensburg Inc., a wholly-owned subsidiary of ESI Energy, LLC, in turn a wholly-owned subsidiary of NextEra Energy Resources, LLC whose ultimate parent is NextEra Energy, Inc. (NextEra Energy). Ebensburg represents that, through NextEra Energy, it is affiliated with over 500 MW of additional generation in the Northeast region.

8. Ebensburg states that Babcock & Wilcox Power Generation is a publicly-traded company, which designs, engineers, manufactures, sells, and constructs steam generating and environmental control systems and equipment and provides facilities management services to electric utility, pulp and paper, chemical and process, and other industrial customers worldwide. Furthermore, Ebensburg represents that Babcock & Wilcox Power Generation does not own or control any other generation or transmission assets in North America with the exception of Ebensburg.

II. Notice of Filing

9. Notices of Ebensburg's May 3, 2013, May 21, 2013, May 29, 2013, August 14, 2013, October 2, 2013, and October 24, 2013 filings were published in the *Federal Register*,¹⁴ with interventions and comments due on or before November 14, 2013.¹⁵ None was filed.

10. Notice of Ebensburg's request for blanket authorization under Part 34 was separately published in the *Federal Register*, 78 Fed. Reg. 28,833 (2013), with interventions or protests due on or before May 28, 2013. None was filed.

III. Discussion

11. As discussed below, we will grant Ebensburg's request for authorization to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates within the PJM market and we will accept its market-based rate tariff effective May 12, 2013, as requested. We will also grant Ebensburg's requests for certain waivers.

¹⁴ 78 Fed. Reg. 27,961 (2013); 78 Fed. Reg. 32,384 (2013); 78 Fed. Reg. 34,369 (2013); 78 Fed. Reg. 34,369 (2013); 78 Fed. Reg. 51,719 (2013); 78 Fed. Reg. 62,298; 78 Fed. Reg. 65,635 (2013).

¹⁵ We note that on October 25, 2013, the Commission issued an errata notice shortening the final comment period to November 4, 2013.

A. Market-Based Rate Authorization

12. 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.¹⁶

1. Horizontal Market Power

13. The Commission has adopted two indicative screens for assessing horizontal market power: the pivotal supplier screen and the wholesale market share screen.¹⁷ 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.¹⁸

14. Ebensburg relies on NRG Power Marketing LLC's recently accepted market power analysis to demonstrate that Ebensburg passes both the pivotal supplier and the wholesale market share screens for the PJM market.¹⁹ Accordingly, we find that Ebensburg 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.²⁰

16. Ebensburg represents that it is affiliated with Sagebrush Partners, which owns and controls transmission facilities located in California. Ebensburg also states that its affiliate, Florida Power & Light Company, owns and operates transmission facilities located in Florida. Ebensburg adds that its affiliate, New Hampshire Transmission, LLC,

¹⁶ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 62, 399, 408, 440.

¹⁷ *Id.* P 62.

¹⁸ *Id.* PP 33, 62-63.

¹⁹ *See* Ebensburg October 24, 2013 Filing at 5 (citing *NRG Power Marketing LLC*, Docket No. ER10-1569-001 (March 1, 2013) (delegated letter order)).

²⁰ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408.

has a Local Network Transmission Tariff on file with the Commission associated with its ownership of the Seabrook Substation that is under the operational control of ISO New England Inc. We note that each of these facilities either has a Commission-approved OATT on file or has received an OATT waiver.²¹ In this case, as discussed more fully below, the Commission will grant Ebensburg's request for waiver of the requirement to have an OATT on file for its radial generator interconnection line.²²

17. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.²³ The Commission requires a seller to provide a description of its ownership or control of, or affiliation with an entity that owns or controls, intrastate natural gas transportation, storage or distribution facilities; sites for generation capacity development; and physical coal supply sources and ownership of or control over who may access transportation of coal supplies (collectively, inputs to electric power production).²⁴

18. 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.²⁵ The Commission adopted a rebuttable presumption that

²¹ See *Ashtabula Wind, LLC*, 127 FERC ¶ 61,215 (2009); *Ashtabula Wind, LLC*, 134 FERC ¶ 61,056 (2011); *Crystal Lake Wind, LLC*, 127 FERC ¶ 61,213 (2009); *Florida Power & Light Company*, 92 FERC ¶ 61,241 (2000); *FPL Energy Oliver Wind, LLC*, 123 FERC ¶ 1,246 (2008); *Langdon Wind, LLC*, 127 FERC ¶ 61,212 (2009); *New England Power Pool*, 83 FERC ¶ 61,045 (1998), *reh'g denied*, 95 FERC ¶ 61,074 (2001); *Peetz Logan Interconnect, LLC*, 136 FERC ¶ 61,075 (2011); *Peetz Table Wind Energy, LLC*, 123 FERC ¶ 61,192 (2008); *Sagebrush, a California Partnership*, 130 FERC ¶ 61,093 (2010), *order on reh'g*, 132 FERC ¶ 61,234 (2010); *Sky River LLC*, 136 FERC ¶ 61,162 (2011); and *Story Wind, LLC*, 128 FERC ¶ 61,080 (2009).

²² A generator lead line is a transmission facility. See 16 U.S.C. §§ 796(23), 824(a)-(b) (2012). Ebensburg is subject to the requirement under Order Nos. 888 and 890 to file an OATT, or seek a waiver of the requirement to file an OATT unless and until it receives a request for transmission service. See *Milford Wind Corridor, LLC*, 129 FERC ¶ 61,149, at P 24 (2009) (noting that designation as a "generator lead line" does not render a line exempt from the Commission's regulation of transmission facilities). See also *Evergreen Wind Power III, LLC*, 135 FERC ¶ 61,030 (2011).

²³ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 440.

²⁴ Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

²⁵ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

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.²⁶

19. Regarding other barriers to entry, Ebensburg represents that, with one exception, neither it nor any of its affiliates owns or controls any intrastate natural gas transportation, storage, or distribution facilities, or physical coal supply sources.²⁷ Ebensburg represents that neither it nor any of its affiliates owns or controls facilities used in the transportation of coal supplies such as railroad cars or barges. Ebensburg also states that neither it nor its affiliates own or control sites for generation capacity development in the relevant market, other than those for which they are currently planning to build new generation facilities. Ebensburg further notes that while its affiliates have site control to develop new generation in the PJM market, Ebensburg represents that these sites do not allow Ebensburg or its affiliates to exercise vertical market power in the region.

20. Finally, consistent with Order No. 697, Ebensburg affirmatively states that it has not and will not erect barriers to entry into the relevant market.²⁸

21. Based on Ebensburg's representations, we find that Ebensburg 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

22. As explained above, Ebensburg seeks waiver of the requirements under Order Nos. 888, 889, and 890. In support of its request for waiver, Ebensburg represents that the three-mile, 115 kV radial generator interconnection line connects the Ebensburg facility to PENELEC.

²⁶ *Id.* P 446.

²⁷ Ebensburg states that its affiliate owns and operates a 1,000 foot intrastate natural gas pipeline, exempt from Commission jurisdiction, located within the boundaries of the Electric Reliability Council of Texas. Ebensburg October 24, 2013 Filing at 6.

²⁸ We interpret this statement to apply to Ebensburg and its affiliates, and our authorizations herein are predicated on Ebensburg complying with this commitment. *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

23. Order Nos. 888 and 890 and section 35.28 of the Commission's regulations require public utilities that own, operate, or control facilities used for the transmission of electric energy in interstate commerce to file an OATT. Order No. 889 and Part 37 of the Commission's regulations require public utilities to establish and maintain an OASIS. Order Nos. 889, 2004, and 717 and Part 358 of the Commission's regulations require public utilities to abide by certain standards of conduct.²⁹ In prior orders, the Commission has enunciated the standards for exemption from some or all of the requirements of Order Nos. 888 and 889.³⁰ The criteria for waiver of these requirements are unchanged by Order Nos. 890, 2004, and 717.³¹

24. 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.³²

25. 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.³³ The Commission has held that waiver of Order No. 889

²⁹ 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.

³⁰ 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*).

³¹ See *Alcoa Power Generating Inc.*, 120 FERC ¶ 61,035, at P 3 (2007); Order No. 717, FERC Stats. & Regs. ¶ 31,280 at PP 31-33.

³² *Black Creek*, 77 FERC at 61,941.

³³ *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 PP 2-3 (2011), the Commission explained that membership in a tight power pool is no longer a factor in the determination for waiver of Standards of Conduct. However, *Black Hills* did not affect

(continued...)

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

26. public utility has unfairly used its access to information about transmission to benefit the utility or its affiliate (for Standards of Conduct waivers).³⁴

27. Based on the statements in Ebensburg's application, we find that the radial generator interconnection line qualifies as limited and discrete. Accordingly, we will grant Ebensburg 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.³⁵ However, if Ebensburg 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. We note that Ebensburg failed to include the radial generator interconnection line in the asset appendix. As a result, we direct Ebensburg to submit a compliance filing to revise its asset appendix to include its electric transmission assets.³⁶

28. The Commission will also grant Ebensburg waiver from the requirements of Order No. 889 with respect to OASIS and Order Nos. 889, 2004, and 717 and Part 358 with respect to the Standards of Conduct. We note that Ebensburg'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

waivers based on a public utility meeting the Small Business Administration's definition of a small public utility.

³⁴ *Entergy*, 112 FERC ¶ 61,228 at P 23 (citing *Cent. Minn. Mun. Power Agency*, 79 FERC ¶ 61,260, at 62,127 (1997); *Easton Utilities Comm'n*, 83 FERC ¶ 61,334, at 62,343 (1998)).

³⁵ Our grant of the waiver is based on our understanding that the Ebensburg facility is designed and constructed solely for the purpose of interconnecting with the transmission system, does not form an integrated transmission system and does not serve, and is not designed to serve, other customers.

³⁶ *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at App. B, *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 378. These tariff revisions may be filed the next time Ebensburg makes a market-based rate filing with the Commission.

not get the information necessary to complete its evaluation.³⁷ Likewise, Ebensburg's waiver of the Standards of Conduct will remain in effect until the Commission takes action on a complaint by an entity that Ebensburg has unfairly used its access to information to unfairly benefit itself or its affiliate.³⁸

2. Other Waivers, Approvals, and Authorizations

29. Ebensburg 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 FPA³⁹ and Part 34 for all future issuances of securities and assumptions of liability.

30. The Commission will grant the requested waivers and authorizations consistent with those granted other entities with market-based rate authorizations.⁴⁰ Notwithstanding the waiver of the accounting and reporting requirements, the Commission expects Ebensburg to keep its accounting records in accordance with generally accepted accounting principles.

C. Reporting Requirements

31. Consistent with the procedures the Commission adopted in Order No. 2001, an entity with market-based rate authorization must electronically file an Electric Quarterly

³⁷ *Entergy*, 112 FERC ¶ 61,228 at P 23 (citing *Cent. Minn. Mun. Power Agency*, 79 FERC ¶ 61,260, at 62,127 (1997); *Easton Utilities Comm'n*, 83 FERC ¶ 61,334, at 62,343 (1998)).

³⁸ *Id.* Ebensburg 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).

³⁹ 16 U.S.C. § 824c (2012).

⁴⁰ 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 PP 984-985 (regarding waiver of Parts 41, 101, and 141), 999-1000 (regarding blanket approval under Part 34).

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.⁴¹ Public utilities must file EQRs no later than 30 days after the end of the reporting quarter.⁴²

32. Additionally, Ebensburg 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.⁴³

33. In Order No. 697, the Commission created two categories of sellers.⁴⁴ 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

⁴¹ *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>.

⁴² 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.

⁴³ *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).

⁴⁴ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 848.

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.⁴⁵ Sellers that do not fall into Category 1 are designated as Category 2 sellers and are required to file updated market power analyses.⁴⁶

34. Ebensburg states that it and its affiliates own or operate over 500 MW of capacity in the PJM market. Therefore, we find that Ebensburg meets the criteria for a Category 2 seller in the Northeast region. Ebensburg must file an updated market power analysis for the Northeast region in compliance with the regional reporting schedule adopted in Order No. 697.⁴⁷ The Commission also reserves the right to require such an analysis at any time for any region.⁴⁸

The Commission orders:

(A) Ebensburg's market-based rate tariff is hereby accepted, effective May 12, 2013, as requested, as discussed in the body of this order.

(B) Ebensburg is hereby directed to revise its asset appendix to include its electric transmission assets, as discussed in the body of this order.

(C) 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.

(D) 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.

(E) Blanket authorization under Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability is hereby granted. Ebensburg 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

⁴⁵ 18 C.F.R. § 35.36(a) (2013).

⁴⁶ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 850.

⁴⁷ *Id.* P 882.

⁴⁸ *Id.* P 853.

such issue or assumption is for some lawful object within the corporate purposes of Ebensburg, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(F) 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 Ebensburg's issuance of securities or assumptions of liability.

(G) 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, is hereby granted as discussed in the body of this order.

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