

145 FERC ¶ 61,290
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Prairie Breeze Wind Energy LLC

Docket No. ER14-25-001

ORDER CONDITIONALLY GRANTING MARKET-BASED RATE
AUTHORIZATION AND REQUESTS FOR WAIVERS

(Issued December 30, 2013)

1. In this order, the Commission conditionally grants Prairie Breeze Wind Energy LLC (Prairie Breeze) authority to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates, effective November 22, 2013, as requested. Additionally, we grant Prairie Breeze's request for waiver of the Commission's requirements to file an Open Access Transmission Tariff (OATT), to establish and maintain an Open Access Same-Time Information System (OASIS), and to comply with the Commission's Standards of Conduct. We also grant Prairie Breeze's request for other waivers commonly granted to market-based rate sellers.
2. Additionally, we find that Prairie Breeze meets the criteria for a Category 1 seller in the Northeast, Northwest, Southeast, Southwest, Southwest Power Pool, and Central regions and is so designated.¹

¹ 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) (Clarification Order), *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 October 4, 2013, as amended on that same date, and on October 31, 2013, pursuant to section 205 of the Federal Power Act (FPA),² Prairie Breeze 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.³

4. Prairie Breeze states that it is developing and plans to construct, own and operate wind-powered electric generation facilities of up to 200.6 megawatts (MW) located near Petersburg, Nebraska, within the Nebraska Public Power District balancing authority area, and interconnected to the Nebraska Public Power District transmission system. The Nebraska Public Power District is located in the Southwest Power Pool region, where Prairie Breeze has no affiliates that own, or plan to own, generation facilities. Prairie Breeze represents that it has entered into a long-term power sale agreement under which Prairie Breeze will sell all of the power produced by the Prairie Breeze wind-powered electric generation facilities to Omaha Public Power District once operations of such facilities begin.

5. Prairie Breeze represents that it will build and own limited, radial electric interconnection facilities that will interconnect to the transmission system owned by Nebraska Public Power District and that will be necessary to effectuate Prairie Breeze's wholesale power sales from its wind-powered electric generation facilities. Prairie Breeze states that these interconnection facilities do not form an integrated transmission grid, are not designed or constructed to serve as transmission facilities, and are not intended to serve as transmission facilities for third-party transmission customers. Prairie Breeze states that it will own 34.5 kV collection lines and related facilities and a collection line substation and related transformers and facilities that will connect its wind-powered electric generation facilities to the transmission system owned by the Nebraska Public Power District.

² 16 U.S.C. § 824d (2012).

³ Prairie Breeze requests authorization to sell ancillary services in the markets administered by PJM Interconnection, L.L.C. (PJM), New York Independent System Operator, Inc., ISO New England Inc., California Independent System Operator Corp., and Midcontinent Independent System Operator, Inc. (MISO), as well as authorization to engage in the sale of certain ancillary services as a third-party provider in other markets.

6. Additionally, Prairie Breeze requests that the Commission waive the requirements under Order Nos. 888⁴ and 890⁵ and section 35.28 of the Commission's regulations⁶ to file an OATT, the requirements under Order No. 889⁷ and Part 37 of the Commission's regulations⁸ to establish an OASIS, and the requirements under Order Nos. 889, 2004,⁹

⁴ *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).

⁵ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

⁶ 18 C.F.R. § 35.28 (2013).

⁷ *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).

⁸ 18 C.F.R. pt. 37 (2013).

⁹ *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).

and 717,¹⁰ and Part 358 of the Commission's regulations¹¹ to comply with the Standards of Conduct with respect to its interconnection facilities.

7. Prairie Breeze states that it is an indirect, wholly-owned subsidiary of Invenergy Wind LLC, which is an indirect, partially-owned subsidiary of Invenergy Investment Company LLC (Invenergy Investment).¹² Prairie Breeze states that Invenergy Wind Holdings LLC, an indirect, wholly-owned subsidiary of Invenergy Investment, owns the majority controlling equity ownership interest in Invenergy Wind, Liberty Structured Holdings LLC¹³ owns a passive, non-controlling, minority equity ownership interest in Invenergy Wind, and Invenergy Wind Investment Corporation (Invenergy Wind Investment) directly owns a *de minimus* equity interest of less than one percent in Invenergy Wind. Prairie Breeze further states that Invenergy Wind Investment's ownership interest does not provide it with voting or consent rights in Invenergy Wind's management. Invenergy Wind is managed by its Board of Directors (Board), which is controlled by Invenergy Wind Holdings and comprised of persons appointed by Invenergy Wind Holdings.¹⁴

8. Prairie Breeze explains that as a passive owner, Liberty Holdings has limited consent rights with respect to certain major actions of Invenergy Wind and Prairie Breeze. Prairie Breeze adds that the passive membership interests held by Liberty Holdings do not permit it to exercise any day-to-day management, control or similar

¹⁰ *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).

¹¹ 18 C.F.R. pt. 358 (2013).

¹² Prairie Breeze states Invenergy Investment is a wholly-owned subsidiary of Polsky Energy Investments LLC, which is owned and controlled by an individual.

¹³ Prairie Breeze states that Liberty Mutual Holding Company Inc. is the indirect parent holding company of Liberty Holdings.

¹⁴ Prairie Breeze states that the persons appointed by Invenergy Wind Holdings are not affiliated with Liberty Holdings, and Liberty Holdings does not have the right to appoint, or consent to the appointment of, the Board members chosen by Invenergy Wind Holdings. Prairie adds that Liberty Holdings does not have the right to remove Board members appointed by Invenergy Wind Holdings.

rights over Invenergy Wind, Prairie Breeze, or the Prairie Breeze Commission-jurisdictional facilities.

9. Prairie Breeze represents that, through its relationship with Invenergy Investment, it is affiliated with various companies that own and operate generation and transmission facilities in the United States, including in the PJM and MISO markets. Prairie Breeze states that the Invenergy Investment affiliates of Prairie Breeze that own, or plan to own, interests in limited interconnection facilities have been granted OATT waivers.¹⁵

II. Notice of Filing

10. Notice of Prairie Breeze's filings was published in the *Federal Register*,¹⁶ with interventions and comments due on or before November 21, 2013. None was filed.

11. Notice of Prairie Breeze's request for blanket authorization under Part 34 of the Commission's regulations was separately published in the *Federal Register*,¹⁷ with interventions or protests due on or before October 29, 2013. None was filed.

III. Determination

12. As discussed below, we will conditionally grant Prairie Breeze's request for authorization to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates, and we will conditionally accept its market-based rate tariff,

¹⁵ Prairie Breeze Filing at 23-24. Prairie Breeze specifically states that the following affiliates were granted waivers of the Commission's open access transmission requirements: Bishop Hill Energy LLC and Bishop Hill Energy III LLC (collectively, the Bishop Hill Companies); Bishop Hill Interconnection LLC; California Ridge Wind Energy LLC (California Ridge); Grand Ridge Energy LLC, Grand Ridge Energy II LLC, Grand Ridge Energy III LLC, Grand Ridge Energy IV LLC, Grand Ridge Energy V LLC (collectively, the Grand Ridge Companies); Gratiot County Wind LLC and Gratiot County Wind II LLC (collectively, the Gratiot Companies); Hardee Power Partners Limited (Hardee Power); and Wolverine Creek Goshen Interconnection LLC (Wolverine Creek Goshen) and Wolverine Creek Energy LLC, as the managing member of Wolverine Creek Goshen (collectively, Wolverine). *Id.*

¹⁶ 78 Fed. Reg. 62,296 (2013); 78 Fed. Reg. 70,029 (2013).

¹⁷ 78 Fed. Reg. 62,300 (2013).

effective November 22, 2013, as requested.¹⁸ We will grant Prairie Breeze's request for certain waivers.

A. Market-Based Rate Authorization

13. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, horizontal and vertical market power.¹⁹

1. Horizontal Market Power

14. The Commission has adopted two indicative screens for assessing horizontal market power: the pivotal supplier screen and the wholesale market share screen.²⁰ 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.²¹

15. Prairie Breeze relies on Westar Energy, Inc.'s (Westar) recently accepted market power analysis²² to demonstrate that Prairie Breeze passes both the pivotal supplier and the wholesale market share screens for the Nebraska Public Power District balancing authority area. Prairie Breeze's pivotal supplier screen indicates that its uncommitted

¹⁸ Prairie Breeze expects to begin generating test power as early as November 22, 2013.

¹⁹ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 62, 399, 408, 440.

²⁰ *Id.* P 62.

²¹ *Id.* PP 33, 62-63.

²² *See Westar Energy, Inc.*, 144 FERC ¶ 61,098 (2013) (accepting Westar's updated market power analysis and concluding that Westar continues to satisfy the Commission's standards for market-based rate authority). Prairie Breeze relies on historical data for the Nebraska Public Power District balancing authority area for the study period of December 2009 through November 2010 for the Nebraska Public Power District balancing authority area contained in the Westar pivotal supplier and market share screens study. Prairie Breeze states that the use of more recent data (i.e., December 2010 through November 2011) would not result in significantly higher market shares because conditions would not change materially over one year. *See Clarification Order*, 121 FERC ¶ 61,260 at P 12.d.

capacity is less than the net uncommitted supply in the relevant market. With respect to the wholesale market share screens, Prairie Breeze passes in all seasons in the Nebraska Public Power District balancing authority area with market shares ranging from 7.21 to 8.74 percent. The Commission has reviewed Prairie Breeze's pivotal supplier and wholesale market share screens for the relevant market and has determined that Prairie Breeze passes the screens in that relevant market. Accordingly, we find that Prairie Breeze satisfies the Commission's requirements for market-based rates regarding horizontal market power.

2. Vertical Market Power

16. 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.²³

17. In this case, as discussed more fully below, the Commission will grant Prairie Breeze's request for waiver of the requirement to have an OATT on file for its interconnection facilities.²⁴ In addition, as noted above, the Bishop Hill Companies, Bishop Hill Interconnection LLC, California Ridge, the Grand Ridge Companies, the Gratiot Companies, Hardee Power, and Wolverine have been granted waiver of the Commission's open access requirements, including the requirement to file an OATT in connection with their ownership interests in their transmission facilities.

18. 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, intrastate natural gas storage or distribution

²³ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408.

²⁴ A generator lead line is a transmission facility. *See* 16 U.S.C. §§ 796(23), 824(a)-(b) (2012). Prairie Breeze 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 the fact that the facilities merely tie a generator to the grid 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).

²⁵ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 440.

facilities; sites for new 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).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

19. Regarding other barriers to entry, Prairie Breeze represents that neither it nor its affiliates own or control any intrastate natural gas transportation, storage or distribution facilities or companies that own or control such facilities, or coal resources or transportation facilities or companies that own or control such inputs. Additionally, Prairie Breeze states that neither it nor its affiliates own or control sites located within the Nebraska Public Power District balancing authority area that could be used to impose barriers to market entry by other wholesale power suppliers. Prairie Breeze commits to file any necessary quarterly site control reports with the Commission in accordance with Commission rules applicable to entities with market-based rate authority.²⁹

20. Finally, consistent with Order No. 697, Prairie Breeze affirmatively states that it and its affiliates have not erected barriers to entry and will not erect barriers in the relevant geographic market.

21. We note that Prairie Breeze limits its description of sites for generation capacity development to the relevant geographic market, which is not consistent with the requirements of 18 C.F.R. § 35.37(e)(2). Therefore, we direct Prairie Breeze to submit a compliance filing with a complete description of all of its and its affiliates' sites for generation capacity development, as required by section 35.37(e)(2) of the Commission's regulations.³⁰ We also note that Prairie Breeze failed to include Bishop Hill II LLC and

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.

²⁹ *E.g.*, *Alabama Electric Marketing, LLC*, Docket No. LA11-2-000 (Oct. 18, 2011) (delegated letter order).

³⁰ 18 C.F.R. § 35.37(e)(2) (2013).

Bishop Hill III LLC in the asset appendix. As a result, we further direct Prairie Breeze to submit a compliance filing to revise its asset appendix to include these affiliates.³¹ Based on Prairie Breeze's representations, and our determinations discussed below, we find that Prairie Breeze appears to otherwise satisfy the Commission's requirements for market-based rates regarding vertical market power. Upon receiving Prairie Breeze's complete description of sites for generation capacity development, the Commission will make a final determination as to whether Prairie Breeze 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. Prairie Breeze seeks waiver of the requirements to file an OATT, establish and maintain an OASIS, and abide by the Standards of Conduct with respect to the interconnection facilities that it owns. In support, Prairie Breeze represents that the interconnection facilities described in the instant application will be discrete, radial facilities used to accommodate connection to the Nebraska Public Power District transmission grid. Prairie Breeze represents that the interconnection facilities do not form an integrated transmission grid.

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.³² In prior orders, the Commission has enunciated the standards for exemption from some or all of the requirements of Order Nos. 888, 889, and 890.³³ The Commission has stated that the

³¹ 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 revisions may be filed the next time Prairie Breeze makes a market-based rate filing with the Commission.

³² 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.

³³ See, e.g., *Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232, at 61,941 (1996) (*Black Creek*); *Entergy Miss., Inc.*, 112 FERC ¶ 61,228, at P 22 (2005) (*Entergy*).

criteria for waiver of the requirements of Order No. 890 and Order No. 2004³⁴ are unchanged from those used to evaluate requests for waiver under Order Nos. 888 and 889.³⁵ Order No. 717 did not change those criteria.³⁶

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.³⁷

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 other circumstances are present that indicate that a waiver would not be justified.³⁸ The

³⁴ *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).

³⁵ *See Alcoa Power Generating Inc.*, 120 FERC ¶ 61,035, at P 3 (2007); *Alcoa Power Generating Inc.*, 108 FERC ¶ 61,243, at P 27 (2004).

³⁶ *See* Order No. 717, FERC Stats. & Regs. ¶ 31,280 at P 54.

³⁷ *Black Creek*, 77 FERC at 61,941.

³⁸ *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

(continued...)

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).³⁹

26. Based on the statements in Prairie Breeze's application, we find that its interconnection facilities qualify as limited and discrete. The facilities will be used solely by Prairie Breeze to interconnect its facilities to the transmission grid. Accordingly, we will grant Prairie Breeze 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 Prairie Breeze 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.⁴⁰

27. The Commission will also grant Prairie Breeze 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 Prairie Breeze'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.⁴¹ Likewise, Prairie Breeze's waiver of the Standards of Conduct will remain in effect unless and until the Commission takes action

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. Moreover, *Black Hills* did not affect waivers based on a public utility meeting the Small Business Administration's definition of a small public utility.

³⁹ *Entergy*, 112 FERC ¶ 61,228 at P 23 (citing *Central Minnesota Municipal Power Agency*, 79 FERC ¶ 61,260, at 62,127 (1997); *Easton Utils. Comm'n*, 83 FERC ¶ 61,334, at 62,343 (1998)).

⁴⁰ *Black Creek*, 77 FERC at 61,941.

⁴¹ *Entergy*, 112 FERC ¶ 61,228 at P 23 (citing *Central Minnesota Municipal Power Agency*, 79 FERC ¶ 61,260, at 62,127 (1997); *Easton Utils. Comm'n*, 83 FERC ¶ 61,334, at 62,343 (1998)).

on a complaint by an entity that Prairie Breeze has unfairly used its access to information to unfairly benefit itself or its affiliates.⁴²

2. Other Waivers, Approvals, and Authorizations

28. Prairie Breeze also 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 FPA⁴³ and Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability.

29. The Commission will grant the requested waivers and authorizations consistent with those granted to other entities with market-based rate authorizations.⁴⁴ Notwithstanding the waiver of the accounting and reporting requirements, the Commission expects Prairie Breeze to keep its accounting records in accordance with generally accepted accounting principles.

3. 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

⁴² *Id.* Prairie Breeze 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).

⁴³ 16 U.S.C. § 824c (2012).

⁴⁴ 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 in Part 34 of the Commission's regulations. *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).

(one year or longer) market-based power sales during the most recent calendar quarter.⁴⁵ Public utilities must file EQRs no later than 30 days after the end of the reporting quarter.⁴⁶

31. Additionally, Prairie Breeze 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.⁴⁷

32. In Order No. 697, the Commission created two categories of sellers.⁴⁸ 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

⁴⁵ *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>.

⁴⁶ 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.

⁴⁷ *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).

⁴⁸ 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.⁴⁹ Sellers that do not fall into Category 1 are designated as Category 2 sellers and are required to file updated market power analyses.⁵⁰

33. Prairie Breeze represents that it meets the criteria for Category 1 seller status in the Northeast, Northwest, Southeast, Southwest, Southwest Power Pool, and Central regions.

34. Prairie Breeze states that it is a Category 1 seller in the Southwest Power Pool region because the amount of generation that it and its affiliates own in this region will not exceed 500 MW. Additionally, Prairie Breeze states that it meets the definition of Category 1 seller in the Northeast, Northwest, Southeast, Southwest, and Central regions because it does not own any generation in those regions. Prairie Breeze further states that the only interconnection facilities in which it will own interests will be the limited equipment necessary to connect the Prairie Breeze project to the transmission facilities owned by Nebraska Public Power District in the Southwest Power Pool region. Prairie Breeze explains that while its affiliates own generation assets and limited interconnection facilities in other regions, Prairie Breeze does not own or control them and they are not located in the same region in which Prairie Breeze's generation assets and limited interconnection facilities will be located. Prairie Breeze also states that it is not affiliated with any franchised public utility, and that it does not raise any other vertical market power issues. Therefore, we designate Prairie Breeze a Category 1 seller in all regions. The Commission reserves the right to require an updated market power analysis at any time for any region.⁵¹

The Commission orders:

(A) Prairie Breeze's market-based rate tariff is hereby conditionally accepted for filing, effective November 22, 2013, as requested, as discussed in the body of this order.

(B) Prairie Breeze is hereby directed to revise its asset appendix to include Bishop Hill II LLC and Bishop Hill III LLC, as discussed in the body of this order.

⁴⁹ 18 C.F.R. § 35.36(a) (2013).

⁵⁰ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 850.

⁵¹ *See id.* P 853.

(C) Prairie Breeze is hereby directed to submit a compliance filing with a description of its and its affiliates' sites for generation capacity development, as required by section 35.37(e)(2) of the Commission's regulations, within 30 days of the date of this order.

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

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

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

(G) The Commission reserves the right to modify this order to require a further showing that neither the public nor private interests will be adversely affected by continued Commission approval of Prairie Breeze's issuance of securities or assumptions of liability.

(H) Prairie Breeze's request for waiver of the requirements to file an OATT, to establish and maintain an OASIS, and to comply with the Standards of Conduct is hereby granted, as discussed in the body of this order.

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