

147 FERC ¶ 61,143
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Sunshine Gas Producers, LLC

Docket No. ER14-1317-001

ORDER GRANTING MARKET-BASED RATE AUTHORIZATION AND REQUESTS
FOR WAIVERS

(Issued May 27, 2014)

1. In this order, the Commission grants Sunshine Gas Producers, LLC (Sunshine Gas) authority to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates, effective April 1, 2014, as requested. Additionally, we grant Sunshine Gas'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 Sunshine Gas's request for other waivers commonly granted to market-based rate sellers, except as noted herein.

2. Additionally, we find that Sunshine Gas meets the criteria for a Category 2 seller in the Southwest region and a Category 1 seller in the Central, Northeast, Northwest, Southeast, and Southwest Power Pool regions and is so designated. Sunshine Gas must file an updated market power analysis for the Southwest region in compliance with the regional reporting schedule adopted in Order No. 697.¹

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 February 12, 2014, as amended on March 28, 2014, pursuant to section 205 of the Federal Power Act (FPA),² Sunshine Gas filed an application for market-based rate authority with an accompanying tariff providing for the sale of electric energy, capacity, and certain ancillary services at market-based rates.³

4. Sunshine Gas states that it will own and operate a landfill gas generating facility currently under development in Sylmar, California (the Facility) located within the CAISO market.⁴ Once completed, the Facility will have gross nameplate capacity of 23.63 megawatts (MW). Sunshine Gas further states that all output from the Facility will be sold to Pacific Gas and Electric Company, pursuant to a long-term power purchase agreement. Sunshine Gas represents that it is affiliated with entities that own or control approximately 629 MW of capacity in the CAISO market, all of which is fully committed to third parties under long-term power purchase agreements. Sunshine Gas further indicates that neither it nor its affiliates own or control any generation in markets that are first-tier to the CAISO market.

5. Sunshine Gas represents that it does not own or control any transmission facilities other than the interconnection facilities necessary to interconnect the Facility to the grid. Sunshine Gas states that these interconnection facilities consist of a single circuit, approximately 200 foot, 66 kilovolt (kV) generation tie line and related transformer, metering, relay and telecommunication facilities. Sunshine Gas states that these interconnection facilities are limited and discrete radial facilities that do not form an integrated transmission grid and are used solely to interconnect the Facility to the grid.

² 16 U.S.C. § 824d (2012).

³ Sunshine Gas requests 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. (CAISO), Midcontinent Independent System Operator, Inc., and Southwest Power Pool, Inc., as well as authorization to engage in the sale of certain ancillary services as a third-party provider in other markets.

⁴ According to Sunshine Gas, the Facility is expected to be in service by summer 2014.

6. Additionally, Sunshine Gas requests that the Commission waive the requirements under Order Nos. 888⁵ and 890⁶ and section 35.28 of the Commission's regulations⁷ to file an OATT, the requirements under Order No. 889⁸ and Part 37 of the Commission's regulations⁹ to establish an OASIS, and the requirements under Order No. 889 and Part 358 of the Commission's regulations¹⁰ to comply with the Standards of Conduct with respect to its interconnection facilities.

7. Sunshine Gas states that it is a Michigan limited liability company owned by DTE Biomass Energy, Inc. (DTE Biomass) and by funds managed and controlled exclusively by EIF Management, LLC (EIF Management and collectively with such funds, EIF). Sunshine Gas indicates that DTE Biomass is the managing partner of Sunshine Gas, and is an indirect, wholly-owned subsidiary of DTE Energy Company (DTE Energy), a public utility holding company. Sunshine Gas further states that DTE Biomass is a wholly-owned subsidiary of DTE Energy Resources, LLC, which is wholly owned by DTE Energy. Additionally, Sunshine Gas indicates that DTE Electric Company (DTE

⁵ *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).

⁶ *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).

⁷ 18 C.F.R. § 35.28 (2013).

⁸ *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).

⁹ 18 C.F.R. pt. 37 (2013).

¹⁰ 18 C.F.R. pt. 358 (2013).

Electric), formerly known as The Detroit Edison Company, is a wholly-owned subsidiary of DTE Energy.

8. Sunshine Gas further states that EIF Management¹¹ has the exclusive management interest in certain private equity investment funds (EIF Funds) that invest in power projects in the United States. Sunshine Gas explains that the limited partnership interests of investors in the EIF Funds involve no exercise of control by any such unaffiliated investor over EIF Management, the EIF Funds, or any public utility in which the EIF Funds holds an interest. Additionally, Sunshine Gas indicates that EIF Management is privately owned and controlled by a group of individuals, none of whom directly or indirectly controls or is affiliated with any electric generator or public utility other than through the EIF Funds. Sunshine Gas further states that neither EIF nor the EIF Funds owns or controls any electric facilities or essential inputs to electric generation located in the United States. Sunshine Gas states that neither EIF Management nor the EIF Funds is a public utility; however, it notes that the EIF Funds invest in certain energy-related business entities, a number of which are public utilities.

II. Notice of Filing

9. Notice of Sunshine Gas's filings was published in the *Federal Register*,¹² with interventions and comments due on or before April 18, 2014. None was filed.

10. Notice of Sunshine Gas's request for blanket authorization under Part 34 of the Commission's regulations was separately published in the *Federal Register*,¹³ with interventions or protests due on or before March 12, 2014. None was filed.

¹¹ On March 31, 2014, Sunshine Gas and several other EIF Management affiliates submitted a Notice of Non-Material Change in Status (Notice), indicating that effective February 28, 2014, private equity funds managed and controlled exclusively by EIF Management indirectly acquired 100 percent of the voting equity interests in Starfish Pipeline Company, LLC. EIF Management, Notice of Non-Material Change in Status, Docket No. ER14-1317-002, at 3 (filed Mar. 31, 2014). The Notice will be addressed in a separate order in Docket No. ER14-1317-002.

¹² 79 Fed. Reg. 10,138 (2014); 79 Fed. Reg. 19,325 (2014).

¹³ 79 Fed. Reg. 12,193 (2014).

III. Determination

11. As discussed below, we will grant Sunshine Gas's request for authorization to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates,¹⁴ and we will accept its market-based rate tariff, effective April 1, 2014, as requested. We will grant Sunshine Gas's request for certain waivers.

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.¹⁵

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.¹⁶ 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.¹⁷

14. Sunshine Gas and its affiliates' generation capacity in the CAISO market is fully committed to third parties under long-term power purchase agreements and Sunshine Gas and its affiliates do not own or control any generation in markets that are first-tier to the CAISO market. Thus, Sunshine Gas has no uncommitted capacity in the relevant

¹⁴ We note that Sunshine Gas is not being granted authority to make third-party sales of operating reserves to a public utility that is purchasing ancillary services to satisfy its own open access transmission tariff requirements to offer ancillary services to its own customers. If Sunshine Gas seeks such authority, it must make the required showing and receive Commission authorization prior to making such sales. *See Third-Party Provision of Ancillary Services; Accounting and Financial Reporting for New Electric Storage Technologies*, Order No. 784, FERC Stats. & Regs. ¶ 31,349, at PP 200-202 (2013), *order on clarification*, Order No. 784-A, 146 FERC ¶ 61,114 (2014).

¹⁵ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 62, 399, 408, 440.

¹⁶ *Id.* P 62.

¹⁷ *Id.* PP 33, 62-63.

geographic market. Accordingly, we find that Sunshine Gas satisfies the Commission's requirements for market-based rates regarding horizontal market power.¹⁸

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.¹⁹

16. In this case, as discussed more fully below, the Commission will grant Sunshine Gas's request for waiver of the requirement to have an OATT on file for its interconnection facilities.²⁰ In addition, Sunshine Gas's affiliate, DTE Electric Company, has been granted waiver of the Commission's open access requirements, including the requirement to file an OATT in connection with its ownership interests in its transmission facilities.²¹

¹⁸ We note that Sunshine Gas submitted horizontal market power screens for the CAISO balancing authority areas, but these screens were not prepared consistent with the requirements of Order No. 697. Therefore, these screens did not factor into the determination that Sunshine Gas satisfies the Commission's requirements regarding horizontal market power.

¹⁹ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408.

²⁰ A generator lead line is a transmission facility. See 16 U.S.C. §§ 796(23), 824(a)-(b) (2012). Sunshine Gas 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).

²¹ Sunshine Gas February 12, 2014 Filing at 12 (citing *High Island Offshore System, L.L.C.*, 116 FERC ¶ 61,047 (2006) (granting DTE Electric waiver of the Standards of Conduct) and *The Detroit Edison Co.*, 136 FERC ¶ 61,210 (2011) (granting continued waiver of Order Nos. 888, 889, and 890, and of section 35.28, Part 37 and the Standards of Conduct requirements of Part 358 of the Commission's regulations)).

17. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.²² 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 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).²³ 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.²⁴ 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.²⁵

18. Regarding other barriers to entry, Sunshine Gas represents that it is affiliated with certain entities that own or control intrastate natural gas transportation, storage, or distribution facilities or coal resources or transportation facilities.²⁶ Additionally, Sunshine Gas states that neither it nor its affiliates own or control sites for generation capacity development other than the sites on which their existing or retired generation facilities are located. Furthermore, Sunshine Gas 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.

²² Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 440.

²³ Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

²⁴ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

²⁵ *Id.* P 446.

²⁶ Sunshine Gas details the interests of these affiliates in Appendix D to its February 12, 2014 filing. Given that Sunshine Gas does not identify any inputs to electric power production that it owns, we interpret this to mean it owns no such interests. *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

19. Finally, consistent with Order No. 697, Sunshine Gas affirmatively states that it has not and will not erect barriers to entry in the relevant geographic market.²⁷

B. Waiver Requests

1. Waiver of Order Nos. 888, 889, and 890

20. Sunshine Gas 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, Sunshine Gas represents that the interconnection facilities described in the instant application are limited and discrete radial facilities used solely to accommodate connection to the transmission grid. Sunshine Gas represents that the interconnection facilities do not form an integrated transmission grid.

21. 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. 889,²⁸ 2004,²⁹ and 717³⁰ and Part 358 of the Commission's regulations

²⁷ We interpret this statement to apply to Sunshine Gas and its affiliates, and our authorizations herein are predicated on Sunshine Gas complying with this commitment. See Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

²⁸ Order No. 889, FERC Stats. & Regs. ¶ 31,035 at 31,590.

²⁹ *Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs. ¶ 31,155, at P 16 (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).

³⁰ *Standards of Conduct for Transmission Providers*, Order No. 717, FERC Stats. & Regs. ¶ 31,280, at P 313 (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*

(continued...)

require public utilities to abide by certain Standards of Conduct. In prior orders, the Commission has enunciated the standards for exemption from some or all of the requirements of Order Nos. 888, 889, and 890.³¹ The Commission has stated that the criteria for waiver of the requirements of Order No. 890 and Order No. 2004 are unchanged from those used to evaluate requests for waiver under Order Nos. 888 and 889.³² Order No. 717 did not change those criteria.³³

22. The Commission may grant requests for waiver of the obligation to file an OATT to public utilities that can show that they own, operate, or control only limited and discrete transmission facilities (facilities that do not form an integrated transmission grid), until such time as the public utility receives a request for transmission service. Should the public utility receive such a request, the Commission has determined that the public utility must file with the Commission a *pro forma* tariff within 60 days of the date of the request, and must comply with any additional requirements that are effective on the date of the request.³⁴

23. The Commission has also determined that waiver of the requirement to establish an OASIS and abide by the Standards of Conduct would be appropriate for a public utility if the applicant: (1) owns, operates, or controls only limited and discrete transmission facilities (rather than an integrated transmission grid); or (2) is a small public utility that owns, operates, or controls an integrated transmission grid, unless other circumstances are present that indicate that a waiver would not be justified.³⁵ The

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).

³¹ 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*).

³² 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).

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

³⁴ *Black Creek*, 77 FERC at 61,941.

³⁵ *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) (*Black Hills*), 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*

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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).³⁶

24. Based on the statements in Sunshine Gas's application, we find that its interconnection facilities qualify as limited and discrete. The facilities will be used solely by Sunshine Gas to interconnect its facilities to the transmission grid. Accordingly, we will grant Sunshine Gas 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 Sunshine Gas 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.³⁷

25. The Commission will also grant Sunshine Gas 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 Sunshine Gas'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.³⁸ Likewise, Sunshine Gas's waiver of the Standards of Conduct will remain in effect unless and until the Commission takes action on a complaint by an entity that Sunshine Gas has unfairly used its access to information to unfairly benefit itself or its affiliates.³⁹

did not affect waivers based on a public utility disposing of no more than 4 million megawatt hours (MWh) annually.

³⁶ *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)).

³⁷ *Black Creek*, 77 FERC at 61,941.

³⁸ *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)).

³⁹ *Id.* Sunshine Gas 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*

(continued...)

2. Other Waivers, Approvals, and Authorizations

26. Sunshine Gas also requests 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 FPA⁴⁰ and Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability.

27. The Commission will grant the requested waivers and authorizations consistent with those granted to other entities with market-based rate authorizations.⁴¹ Notwithstanding the waiver of the accounting and reporting requirements, the Commission expects Sunshine Gas to keep its accounting records in accordance with generally accepted accounting principles.

in Facts Underlying Waiver of Order No. 889 and Part 358 of the Commission's Regulations, 127 FERC ¶ 61,141, at P 5 (2009).

⁴⁰ 16 U.S.C. § 824c (2012).

⁴¹ 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). However, waiver of the provisions of Part 101 that apply to hydropower licensees is not granted with respect to licensed hydropower projects. Hydropower licensees are required to comply with the requirements of the Uniform System of Accounts pursuant to 18 C.F.R. pt. 101 to the extent necessary to carry out their responsibilities under Part I of the FPA. We further note that a licensee's status as a market-based rate seller under Part II of the FPA does not exempt it from its accounting responsibilities as a licensee under Part I of the FPA. *See Seneca Gen., LLC*, 145 FERC ¶ 61,096, at P 23, n.20 (2013) (citing *Trafalgar Power, Inc.*, 87 FERC ¶ 61,207, at 61,798 (1999) (noting that "all licensees are required to comply with the requirements of the Uniform System of Accounts to the extent necessary to carry out their responsibilities under [s]ections 4(b), 10(d) and 14 of the FPA")).

3. Reporting Requirements

28. Consistent with the procedures the Commission adopted in Order No. 2001, an entity with market-based rate authorization must electronically file an Electric Quarterly Report (EQR) with the Commission containing: (1) a summary of the contractual terms and conditions in every effective service agreement for market-based power sales; and (2) transaction information for effective short-term (less than one year) and long-term (one year or longer) market-based power sales during the most recent calendar quarter.⁴² Public utilities must file EQRs no later than 30 days after the end of the reporting quarter.⁴³

29. Additionally, Sunshine Gas 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.⁴⁴

⁴² *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>.

⁴³ 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.

⁴⁴ *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).

30. In Order No. 697, the Commission created two categories of sellers.⁴⁵ Category 1 sellers are not required to file regularly scheduled updated market power analyses. Category 1 sellers are wholesale power marketers and wholesale power producers that own or control 500 MW or less of generation in aggregate per region; that do not own, operate, or control transmission facilities other than limited equipment necessary to connect individual generation facilities to the transmission grid (or have been granted waiver of the requirements of Order No. 888); that are not affiliated with anyone that owns, operates, or controls transmission facilities in the same region as the seller's generation assets; that are not affiliated with a franchised public utility in the same region as the seller's generation assets; and that do not raise other vertical market power issues.⁴⁶ Sellers that do not fall into Category 1 are designated as Category 2 sellers and are required to file updated market power analyses.⁴⁷

31. Sunshine Gas represents that it meets the criteria for Category 2 seller status in the Southwest region and Category 1 seller status in the Central, Northeast, Northwest, Southeast, and Southwest Power Pool regions.

32. Sunshine Gas states that it meets the criteria for a Category 1 seller in the Central, Northeast, Northwest, Southeast, and Southwest Power Pool regions because it does not own any generation in those regions. Sunshine Gas further states that the only interconnection facilities in which it will own interests will be the limited equipment necessary to connect the Facility to the transmission grid in the Southwest region. Sunshine Gas explains that while its affiliates own generation assets and limited interconnection facilities in other regions, Sunshine Gas does not own or control them, and they are not located in the same region in which Sunshine Gas's generation assets and limited interconnection facilities will be located. Sunshine Gas also states that it is not affiliated with any franchised public utility in the same region as its generation assets, and that it does not raise any other vertical market power issues.

33. Based on Sunshine Gas's representations, we designate Sunshine Gas as a Category 2 seller in the Southwest region and a Category 1 seller in the Central, Northeast, Northwest, Southeast, and Southwest Power Pool regions. Sunshine Gas must file an updated market power analysis for the Southwest region in compliance with the

⁴⁵ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 848.

⁴⁶ 18 C.F.R. § 35.36(a) (2013).

⁴⁷ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 850.

regional reporting schedule adopted in Order No. 697.⁴⁸ The Commission reserves the right to require an updated market power analysis at any time for any region.⁴⁹

The Commission orders:

(A) Sunshine Gas's market-based rate tariff is hereby accepted for filing, effective April 1, 2014, as requested, as discussed in the body of this order.

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

(C) Waiver of Part 101 of the Commission's regulations is hereby granted, with the exception that waiver of the provisions of Part 101 that apply to hydropower licensees is not granted with respect to licensed hydropower projects. Waiver of Parts 41 and 141 of the Commission's regulations is hereby granted, with the exception of sections 141.14 and 141.15.

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

(F) Sunshine Gas'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.

⁴⁸ *Id.*

⁴⁹ *See id.* P 853.

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

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.