

147 FERC ¶ 61,177
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Copper Mountain Solar 3, LLC

Docket No. ER14-1548-001

ORDER CONDITIONALLY ACCEPTING AND SUSPENDING MARKET-BASED
RATE TARIFF AND GRANTING REQUEST FOR WAIVERS

(Issued June 3, 2014)

1. In this order, the Commission conditionally accepts and suspends, for a nominal period, to become effective April 15, 2014, subject to refund and subject to the outcome of a pending proceeding in Docket No. ER13-630-000,¹ a proposed tariff filed by Copper Mountain Solar 3, LLC (Copper Mountain Solar). The proposed tariff would permit Copper Mountain Solar to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates. Our acceptance here is also subject to the compliance filing ordered herein. Additionally, as discussed below, we grant Copper Mountain Solar'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 Copper Mountain Solar's request for other waivers commonly granted to market-based rate sellers, except as noted herein.

2. Additionally, we find that Copper Mountain Solar meets the criteria for a Category 1 seller in the Northeast, Southeast, Central, Southwest Power Pool, and Northwest regions and is so designated. Further, we find that Copper Mountain Solar meets the criteria for a Category 2 seller in the Southwest region and is so designated. Copper

¹ Arizona Public Service Co., Updated Market Power Analysis, Docket No. ER13-630-000 (filed Dec. 27, 2012, as supplemented Mar. 19, 2013, Dec. 11, 2013, and Dec. 18, 2013).

Mountain Solar must file updated market power analyses for the Southwest region in compliance with the regional reporting schedule adopted in Order No. 697.²

I. Background

3. On March 21, 2014, as amended on April 4, 2014, pursuant to section 205 of the Federal Power Act (FPA),³ Copper Mountain Solar 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

4. Copper Mountain Solar states that it will own and operate a solar photovoltaic electric generation facility (Solar Facility) currently under construction near Boulder City, Nevada, with a nameplate capacity of 255 megawatts (MW). Copper Mountain Solar further states that the Solar Facility is located in the Los Angeles Department of Water and Power (LADWP) balancing authority area.⁵ Copper Mountain Solar states that it will sell the entire output of the Solar Facility pursuant to a 20-year power purchase agreement with the Southern California Public Power Authority.

5. Copper Mountain Solar represents that it and its affiliates own or control approximately 4,600 MW of electric generation capacity in the CAISO market, and that it owns or controls 700 MW of electric generation capacity in the Arizona Public Service balancing authority area, both of which are first-tier to the LADWP balancing authority area, which Copper Mountain Solar states is the relevant 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) (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).

³ 16 U.S.C. § 824d (2012).

⁴ Copper Mountain Solar requests authorization to sell ancillary services in the market administered by the California Independent System Operator Corp. (CAISO), as well as authorization to engage in the sale of certain ancillary services as a third-party provider in other markets.

⁵ March 21 Filing, Attachment A-1 at 1.

6. Copper Mountain Solar states that the Solar Facility will also consist of a 34.5/500 kilovolt (kV) substation and related generator interconnection facilities, including a 500 kV generator-tie line approximately 6 miles in length (together, the Generator Interconnection Line). Copper Mountain Solar states that the Solar Facility will be interconnected to the grid at the Marketplace Substation (Marketplace), which is located in the LADWP balancing authority area. Copper Mountain Solar states that the Generator Interconnection Line will be used solely to transmit the output of the Solar Facility to the transmission grid. Copper Mountain Solar requests that the Commission waive the requirements under Order Nos. 888,⁶ 889,⁷ 890,⁸ 2004,⁹

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 *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 *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).

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).

and 717,¹⁰ and section 35.28,¹¹ and Parts 37¹² and 358¹³ of the Commission's regulations with respect to the Generator Interconnection Line.

7. Copper Mountain Solar states that it is indirectly owned in equal shares by subsidiaries of Sempra Energy and Consolidated Edison, Inc. (Consolidated Edison). Copper Mountain Solar states that Sempra Energy provides, through various subsidiaries and affiliates, a wide spectrum of electric, natural gas, and energy-related products and services. Copper Mountain Solar states that Sempra Energy wholly owns Southern California Gas Company (SoCalGas) and San Diego Gas & Electric Company (SDG&E). Copper Mountain Solar states that Consolidated Edison, through various subsidiaries and affiliates, provides electric, natural gas and other energy related products and services.

II. Notice of Filings

8. Notice of Copper Mountain Solar's filings was published in the *Federal Register*,¹⁴ with interventions and comments due on or before April 25, 2014. None was filed.

9. Notice of Copper Mountain Solar's request for blanket authorization under Part 34 of the Commission's regulations was separately published in the *Federal Register*,¹⁵ with interventions or protests due on or before April 14, 2014. None was filed.

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. § 35.28 (2013).

¹² 18 C.F.R. pt. 37 (2013).

¹³ 18 C.F.R. pt. 358 (2013).

¹⁴ 79 Fed. Reg. 17,527; 79 Fed. Reg. 21,221 (2014).

¹⁵ 79 Fed. Reg. 18,024 (2014).

III. Discussion

10. As discussed below, we will conditionally accept and suspend, for a nominal period, Copper Mountain Solar's market-based rate tariff, to be effective April 15, 2014, subject to refund and subject to the outcome of a pending proceeding in Docket No. ER13-630-000.¹⁶ We will also grant Copper Mountain Solar's request for certain waivers.

A. Market-Based Rate Authorization

11. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, horizontal and vertical market power.¹⁷

1. Horizontal Market Power

12. The Commission has adopted two indicative screens for assessing horizontal market power: the pivotal supplier screen and the wholesale market share screen.¹⁸ 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.¹⁹

13. Copper Mountain Solar states that it relies on Arizona Public Service Company's market power analysis in Docket No. ER13-630-000 to demonstrate that Copper Mountain Solar passes both the pivotal supplier and the wholesale market share screens

¹⁶ We note that Copper Mountain Solar 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 Copper Mountain Solar 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).

¹⁷ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 62, 399, 408, 440.

¹⁸ *Id.* P 62.

¹⁹ *Id.* PP 33, 62-63.

for the LADWP balancing authority area. However, the screen analysis for Arizona Public Service Company, on which Copper Mountain Solar relies to support its argument that it does not possess horizontal market power, is pending before the Commission in Docket No. ER13-630-000. Therefore, the Commission will determine whether Copper Mountain Solar passes the indicative screens in the LADWP market upon completion of its review of Docket No. ER13-630-000. In this regard, we will direct Copper Mountain Solar to make a compliance filing in this docket (Docket No. ER14-1548-001) updating the record in this proceeding to reflect the results of the Commission's determination(s) with respect to the horizontal market power analysis in Docket No. ER13-630-000, within 30 days after an order has been issued in that proceeding.

14. Thus, our preliminary analysis indicates that Copper Mountain Solar's request for market-based rate authorization has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept the proposed market-based rate tariff for filing, suspend it for a nominal period, and make it effective April 15, 2014, subject to refund and subject to the outcome of the Arizona Public Service Company pending proceeding in Docket No. ER13-630-000.²⁰

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.²¹

16. In this case, as discussed more fully below, the Commission will grant Copper Mountain Solar's request for waiver of the requirement to have an OATT on file for its interconnection facilities.²² Copper Mountain Solar states that other than the Generator

²⁰ Copper Mountain Solar relies on historical data for the study period of December 2010 through November 2011 for the LADWP balancing authority area. Copper Mountain Solar states that the use of more recent data would not result in significantly higher market shares because conditions would not change materially and would, in fact, decrease Copper Mountain Solar's market shares. April 4 Filing at 1. *See* Clarification Order, 121 FERC ¶ 61,260 at P 12.d.

²¹ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408.

²² A generator lead line is a transmission facility. *See* 16 U.S.C. §§ 796(23), 824(a)-(b) (2012). Copper Mountain Solar 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,

(continued...)

Interconnection Line, neither it nor its affiliates own or control electric transmission facilities or inputs to electric power production in the relevant market. Copper Mountain Solar states that outside of the LADWP balancing authority area, operational control of SDG&E's transmission facilities is exercised by CAISO, and the use of these assets is governed by CAISO's Commission-approved OATT. Copper Mountain Solar states that two affiliates of Consolidated Edison, Consolidated Edison Company of New York and Orange & Rockland Utilities (Orange & Rockland), also own transmission facilities outside of the relevant market. Copper Mountain Solar states that these two transmission-owning companies have conveyed control of their transmission facilities to New York Independent System Operator, Inc. (NYISO). Copper Mountain Solar states that Rockland Electric Company (Rockland Electric), a subsidiary of Orange & Rockland, also owns transmission and that Rockland Electric has conveyed control of those facilities to the NYISO and PJM Interconnection, L.L.C. Copper Mountain Solar represents that all other transmission facilities owned by it and its affiliates are limited and discrete facilities necessary to interconnect their generating facilities to the electric grid.²³

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

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).

²³ March 21 Filing at 7. *See also* Attachment A-1 (noting *Mehoopany Wind Energy LLC*, 141 FERC ¶ 61,013 (2012); *Copper Mountain Solar 1, LLC*, 140 FERC ¶ 61,006 (2012); *Copper Mountain Solar 2, LLC*, 140 FERC ¶ 61,074 (2012); *Flat Ridge 2 Wind Energy LLC*, 139 FERC ¶ 61,160 (2012); *Mesquite Solar 1, LLC*, 138 FERC ¶ 61,074 (2012); *Cedar Creek Wind Energy, LLC*, 134 FERC ¶ 61,130 (2011); *BP Wind Energy North America Inc.*, 129 FERC ¶ 61,207 (2009); *Termoelectrica U.S., LLC*, 105 FERC ¶ 61,087 (2003)).

²⁴ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 440.

(collectively, inputs to electric power production).²⁵ 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.²⁶ 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.²⁷

18. Regarding other barriers to entry, Copper Mountain Solar represents that SDG&E and SoCalGas own intrastate natural gas pipelines and local distribution facilities in the CAISO market. Copper Mountain Solar states that Sempra Energy subsidiaries own other natural gas infrastructure facilities in the southeastern United States. Copper Mountain Solar states that Sempra Energy owns, directly or indirectly, interests in Southern Gas Transmission, which operates a 50-mile intrastate natural gas pipeline in Alabama; Mobile Gas Service Corp., a local distribution company serving customers in Alabama; Willmut Gas & Oil Company, a local distribution company serving customers in Mississippi; Bay Gas Storage Company, Ltd., which operates an intrastate natural gas storage facility that also provides natural gas transportation and storage services; and Sempra Midstream Services, Inc., a natural gas marketer. Copper Mountain Solar states that subsidiaries of Sempra Energy have developed a liquefied natural gas receipt terminal near Lake Charles, Louisiana, and an additional liquefied natural gas terminal north of Ensenada in Baja California, Mexico. Copper Mountain Solar adds that its affiliates have demonstrated control over certain sites for generation capacity.²⁸ Copper Mountain Solar states that except for the intrastate natural gas facilities identified in its filing and the generation sites discussed in its filing, neither Copper Mountain Solar nor any of its affiliates owns or controls any other inputs to electric power production.

²⁵ Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

²⁶ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

²⁷ *Id.* P 446.

²⁸ March 21 Filing at 10 & n.23 (noting land acquisition report filed in Docket No. LA13-3-000 on Oct. 30, 2013).

19. Finally, consistent with Order No. 697, Copper Mountain Solar affirmatively states that it has not erected barriers to entry into the relevant market and will not erect barriers in the relevant market.²⁹

20. Based on Copper Mountain Solar's representations, and our determinations discussed below, we find that Copper Mountain Solar satisfies the Commission's requirements for market-based rates regarding vertical market power.

B. Waiver Requests

1. OATT, OASIS, and Standards of Conduct

21. Copper Mountain Solar 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, Copper Mountain Solar represents that it will own and utilize the Generator Interconnection Line solely to interconnect the Solar Facility to the LADWP-operated grid at Marketplace. Copper Mountain Solar states that the Generator Interconnection Line does not comprise an integrated transmission system and it does not serve, and is not designed to serve, other customers.

22. 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.³⁰ 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

²⁹ We interpret this statement to apply to Copper Mountain Solar and its affiliates, and our authorizations herein are predicated on Copper Mountain Solar complying with this commitment. *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

³⁰ 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.

³¹ *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*).

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

23. 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

24. 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 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

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* did not affect waivers based on a public utility disposing of no more than 4 million MWh annually.

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

25. Based on the statements in Copper Mountain Solar's application, we find that its interconnection facilities qualify as limited and discrete. The facilities will be used solely by Copper Mountain Solar to interconnect the Solar Facility to the transmission grid. Accordingly, we will grant Copper Mountain Solar 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 with respect to the Generator Interconnection Line. However, if Copper Mountain Solar 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

26. The Commission will also grant Copper Mountain Solar 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 Copper Mountain Solar'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, Copper Mountain Solar'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 Copper Mountain Solar has unfairly used its access to information to unfairly benefit itself or its affiliates.³⁹

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.* Copper Mountain Solar 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).

2. Other Waivers and Authorizations

27. Copper Mountain Solar 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.

28. 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 Copper Mountain Solar to keep its accounting records in accordance with generally accepted accounting principles.

C. Reporting Requirements

29. 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

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. Part 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")).

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

30. Additionally, Copper Mountain Solar 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

31. 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

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).

⁴⁵ 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.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

32. Copper Mountain Solar requests Category 1 Seller status in the Northeast, Southeast, Central, Southwest Power Pool, and Northwest regions. Copper Mountain Solar represents that it does not control more than 500 MW of generation in aggregate in any of these regions. Copper Mountain Solar also represents that it does not operate or control any transmission facilities in these regions and, except as otherwise described in the filing, it is not affiliated with anyone that owns, operates or controls transmission facilities in the same region as its generation assets. Copper Mountain Solar further states that it is not affiliated with a franchised public utility in any region for which it is seeking Category 1 status, except for the Northeast region; however, Copper Mountain Solar states that does not own or control generation assets in the Northeast region. Copper Mountain Solar further states that there are no vertical market power concerns.

33. Based on Copper Mountain Solar's representations, we grant Copper Mountain Solar Category 1 seller status in the Northeast, Southeast, Central, Southwest Power Pool, and Northwest regions. Further, based on Copper Mountain Solar's representations, we find that Copper Mountain Solar meets the criteria for a Category 2 seller in the Southwest region. Copper Mountain Solar must file an updated market power analysis for the Southwest region in compliance with the regional reporting schedule adopted in Order No. 697.⁴⁸ The Commission also reserves the right to require such an analysis at any time for any region.⁴⁹

⁴⁶ 18 C.F.R. § 35.36(a) (2013).

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

⁴⁸ *Id.*

⁴⁹ *Id.* P 853.

The Commission orders:

(A) Copper Mountain Solar's market-based rate tariff is hereby conditionally accepted for filing and suspended for a nominal period, to become effective April 15, 2014, as requested, subject to refund and subject to the outcome of the proceeding in Docket No. ER13-630-000, as discussed in the body of this order.

(B) Copper Mountain Solar is hereby directed to submit a compliance filing, within 30 days from the date an order has been issued for the pending proceeding in Docket No. ER13-630-000, 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 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.

(E) Blanket authorization under Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability is hereby granted. Copper Mountain Solar 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 Copper Mountain Solar, 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 Copper Mountain Solar's issuance of securities or assumptions of liability.

(G) Copper Mountain Solar'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.

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