

148 FERC ¶ 61,052
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Broken Bow Wind II, LLC

Docket No. ER14-1776-002

ORDER GRANTING MARKET-BASED RATE AUTHORIZATION AND
REQUEST FOR WAIVERS

(Issued July 21, 2014)

1. In this order, the Commission grants Broken Bow Wind II, LLC (Broken Bow Wind) authority to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates, effective July 1, 2014. Also, as discussed below, we grant Broken Bow Wind'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 Broken Bow Wind's request for other waivers commonly granted to market-based rate sellers, except as noted herein.

2. Additionally, we find that Broken Bow Wind meets the criteria for a Category 1 seller in the Northwest, Northeast, Southwest, Southeast, and Central regions and is so designated. Further, we find that Broken Bow Wind meets the criteria for a Category 2 seller in the Southwest Power Pool region and is so designated. Broken Bow Wind must file updated market power analyses for the Southwest Power Pool 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), *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. &

(continued...)

I. Background

3. On April 25, 2014, as amended on May 21, 2014 and May 23, 2014, pursuant to section 205 of the Federal Power Act (FPA),² Broken Bow Wind 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. Broken Bow Wind states that it will own and operate a 75 megawatt (MW) wind energy project comprised of 43 wind turbines, a collection system, and associated interconnection facilities (Interconnection Facilities)⁴ that will interconnect at the Broken Bow Wind substation to transmission facilities owned by the Nebraska Public Power District (NPPD) in the SPP market. Broken Bow Wind states that it will sell the full output of the facility to NPPD pursuant to a long-term contract.

5. Broken Bow Wind states that the Interconnection Facilities will consist of a 115 kilovolt-34.5 kilovolt transformer, breakers, disconnects and associated buswork, along with metering, relay and protection equipment in the Broken Bow Wind substation. Broken Bow Wind requests that the Commission waive the requirements under Order Nos. 888,⁵ 889,⁶ 890,⁷ 2004,⁸ and 717,⁹ and section 35.28,¹⁰ and Parts 37¹¹ and 358¹² of the Commission's regulations with respect to the Interconnection Facilities.

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).

² 16 U.S.C. § 824d (2012).

³ Broken Bow Wind requests authorization to sell ancillary services in the market administered by Southwest Power Pool, Inc. (SPP), as well as authorization to engage in the sale of certain ancillary services as a third-party provider in other markets.

⁴ Broken Bow Wind states that a portion of its Interconnection Facilities at the Broken Bow Wind substation will be owned by Broken Bow Wind as a tenant-in-common with an unaffiliated entity that owns an existing wind project that is also interconnected at the Broken Bow Wind substation. Broken Bow Wind states that it will separately seek any necessary authorizations relating to the ownership and use of the shared interconnection facilities consistent with the requirements of the FPA and the Commission's regulations.

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),

(continued...)

6. Broken Bow Wind states that it is a wholly-owned indirect subsidiary of Sempra Energy, a public utility holding company based in San Diego, California. Broken Bow

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 *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).

⁷ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

⁸ *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).

⁹ *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).

¹⁰ 18 C.F.R. § 35.28 (2013).

¹¹ 18 C.F.R. Pt 37 (2013).

¹² 18 C.F.R. Pt 358 (2013).

Wind states that Sempra Energy provides, through various subsidiaries and affiliates, a wide spectrum of electric, natural gas, and energy-related products and services. Broken Bow Wind also states that Sempra Energy wholly owns Southern California Gas Company (SoCalGas) and San Diego Gas & Electric Company (SDG&E).

7. Broken Bow Wind represents that its affiliate Flat Ridge 2 Wind Energy, LLC (Flat Ridge Wind) owns and operates an approximately 471 MW wind-powered electric generating facility in the SPP market. Broken Bow Wind represents that the output from that facility is fully committed to an unaffiliated power purchaser on a long-term basis. Broken Bow Wind states that it is also affiliated with entities that own, operate or control generation and transmission facilities outside of the SPP market.

II. Notice of Filings

8. Notice of Broken Bow Wind's filings was published in the *Federal Register*,¹³ with interventions and comments due on or before June 6, 2014. None was filed.

9. Notice of Broken Bow Wind's request for blanket authorization under Part 34 of the Commission's regulations was separately published in the *Federal Register*,¹⁴ with interventions or protests due on or before May 19, 2014. None was filed.

III. Discussion

10. As discussed below, we will grant Broken Bow Wind's request for authorization to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates and we will accept its market-based rate tariff, effective July 1, 2014, as requested.¹⁵ We will also grant Broken Bow Wind's request for certain waivers.

¹³ 79 Fed. Reg. 25,124; 79 Fed. Reg. 31,933; 79 Fed. Reg. 32,267 (2014).

¹⁴ 79 Fed. Reg. 25,129 (2014).

¹⁵ We note that Broken Bow Wind 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 Broken Bow Wind 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).

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.¹⁶

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.¹⁷ The Commission has stated that passage of both screens establishes a rebuttable presumption that the applicant does not possess horizontal market power, while failure of either screen creates a rebuttable presumption that the applicant has horizontal market power.¹⁸

13. Broken Bow Wind represents that it and its affiliates will own or control 545 MW of generation in the SPP market. However, Broken Bow Wind represents that all of the capacity from the Broken Bow Wind and Flat Ridge Wind facilities is fully committed under long-term power purchase agreements, and therefore Broken Bow Wind and its affiliates do not have any uncommitted capacity in the SPP market. Broken Bow Wind further represents that its affiliate, Cedar Creek II, LLC (Cedar Creek), owns a 250 MW generation facility in the Public Service Company of Colorado balancing authority area, which is first-tier to the SPP market. Broken Bow Wind represents that the output from Cedar Creek's facility is also fully committed pursuant to a long-term contract. Because Broken Bow Wind and its affiliates have no uncommitted capacity in the SPP market or any first-tier market, Broken Bow Wind states that it therefore lacks horizontal market power in the SPP market.

14. Based on Broken Bow Wind's representations, we find that Broken Bow Wind satisfies the Commission's requirements for market-based rates regarding horizontal market power.

2. Vertical Market Power

15. In cases where a public utility, or any of its affiliates, owns, operates, or controls transmission facilities, the Commission requires that there be a Commission-approved

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

¹⁷ *Id.* P 62.

¹⁸ *Id.* PP 33, 62-63.

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 Broken Bow Wind's request for waiver of the requirement to have an OATT on file for the Interconnection Facilities.²⁰

17. Broken Bow Wind states that, other than generator interconnection facilities, neither it nor its affiliates own or control electric transmission facilities in the SPP market. It states that, outside of the SPP market, operational control of SDG&E's transmission facilities is exercised by the California Independent System Operator Corp. (CAISO), and the use of these assets is governed by CAISO's Commission-approved OATT. Broken Bow Wind states that all other transmission facilities owned by Broken Bow Wind and its affiliates are limited and discrete facilities necessary to interconnect their generating facilities to the electric grid.²¹

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). Broken Bow Wind 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 April 25 Filing at 6-7. *See also* May 21 Filing at Attachment A (noting *Copper Mountain Solar 3, LLC*, 147 FERC ¶ 61,177 (2014); *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)). Broken Bow Wind notes that its affiliate, SEP II, LLC, has requested waivers associated with its generator tie line facilities. *See SEP II, LLC*, Application for Market-Based Rate Authorization and Request for Waivers, Docket No. ER14-1775-000 (filed Apr. 25, 2014).

18. 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

19. Regarding other barriers to entry, Broken Bow Wind represents that SDG&E and SoCalGas own intrastate natural gas pipelines and local distribution facilities in the CAISO market. Broken Bow Wind 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. Broken Bow Wind states that subsidiaries of Sempra Energy have developed a liquefied natural gas (LNG) receipt terminal near Lake Charles, Louisiana, and a take-away interstate pipeline for that terminal, and an additional LNG terminal north of Ensenada in Baja California, Mexico. In addition, Broken Bow Wind states that its affiliates have demonstrated control over certain sites for generation capacity development.²⁶ Broken Bow Wind states that except for the intrastate natural gas

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 April 25 Filing at 9 (noting land acquisition report filed in Docket No. LA13-3-000 on Oct. 30, 2013).

facilities identified in its filing and the generation sites discussed in its filing, neither Broken Bow Wind nor any of its affiliates owns or controls any inputs to electric power production.

20. Finally, consistent with Order No. 697, Broken Bow Wind affirmatively states that it has not erected barriers to entry into the relevant market and will not erect barriers in the relevant market.²⁷

21. Based on Broken Bow Wind's representations, and our determinations discussed below, we find that Broken Bow Wind satisfies the Commission's requirements for market-based rates regarding vertical market power.

B. Waiver Requests

1. OATT, OASIS, and Standards of Conduct

22. Broken Bow Wind 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, Broken Bow Wind represents that it will own and utilize the Interconnection Facilities to interconnect its facility to the SPP-operated grid. Broken Bow Wind states that the Interconnection Facilities do not comprise an integrated transmission system and do not serve, and are not designed to serve, other customers.

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.²⁸ In prior orders, the Commission has enunciated the standards for exemption from some or all of the requirements of Order Nos. 888, 889, and 890.²⁹ The Commission has stated that the

²⁷ We interpret this statement to apply to Broken Bow Wind and its affiliates, and our authorizations herein are predicated on Broken Bow Wind 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; Order No. 2004, FERC Stats. & Regs. ¶ 31,155 at P 16; Order No. 717, FERC Stats. & Regs. ¶ 31,280 at P 313.

²⁹ 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. 2004 are unchanged from those used to evaluate requests for waiver under Order Nos. 888 and 889.³⁰ Order No. 717 did not change those criteria.³¹

24. The Commission may grant requests for waiver of the obligation to file an OATT to public utilities that can show that they own, operate, or control only limited and discrete transmission facilities (facilities that do not form an integrated transmission grid), until such time as the public utility receives a request for transmission service. Should the public utility receive such a request, the Commission has determined that the public utility must file with the Commission a *pro forma* tariff within 60 days of the date of the request, and must comply with any additional requirements that are effective on the date of the request.³²

25. The Commission has also determined that waiver of the requirement to establish an OASIS and abide by the Standards of Conduct would be appropriate for a public utility if the applicant: (1) owns, operates, or controls only limited and discrete transmission facilities (rather than an integrated transmission grid); or (2) is a small public utility that owns, operates, or controls an integrated transmission grid, unless other circumstances are present that indicate that a waiver would not be justified.³³ 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 evaluation (for OASIS waivers) or an entity complains that the public utility has unfairly

³⁰ 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).

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

³² *Black Creek*, 77 FERC at 61,941.

³³ *Id.* Although the Commission originally precluded waiver of the requirements for OASIS and the Standards of Conduct for a small public utility that is a member of a tight power pool, in *Black Hills Power, Inc.*, 135 FERC ¶ 61,058, at PP 2-3 (2011) (*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 megawatt-hours annually.

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

26. Based on the statements in Broken Bow Wind's application, we find that its interconnection facilities qualify as limited and discrete. Broken Bow Wind will use its portion of the facilities solely to interconnect its facility to the transmission grid. Accordingly, we will grant Broken Bow Wind 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 Interconnection Facilities.³⁵ However, if Broken Bow Wind 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.³⁶

27. The Commission will also grant Broken Bow Wind 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 Broken Bow Wind'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.³⁷ Likewise, Broken Bow Wind'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 Broken Bow Wind has unfairly used its access to information to unfairly benefit itself or its affiliates.³⁸

³⁴ *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) (*Easton*)).

³⁵ We note that our waivers granted herein do not cover the portion of the facilities owned by the unaffiliated tenant-in-common.

³⁶ *Black Creek*, 77 FERC ¶ 61,232 at 61,941.

³⁷ *Entergy*, 112 FERC ¶ 61,228 at P 23 (citing *Central Minnesota Municipal Power Agency*, 79 FERC ¶ 61,260, at 62,127 (1997); *Easton*, 83 FERC ¶ 61,334, at 62,343).

³⁸ *Id.* Broken Bow Wind 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

28. Broken Bow Wind 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 FPA³⁹ 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.⁴⁰ Notwithstanding the waiver of the accounting and reporting requirements, the Commission expects Broken Bow Wind to keep its accounting records in accordance with generally accepted accounting principles.

C. Reporting Requirements

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

³⁹ 16 U.S.C. § 824c (2012).

⁴⁰ We note that the Commission has examined and approved the continued applicability of the waiver of its accounting and reporting requirements in Parts 41, 101, and 141 of the Commission's regulations, as well as the continued applicability of the blanket authorization for the issuance of securities and the assumption of liabilities 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")).

Report (EQR) with the Commission containing: (1) a summary of the contractual terms and conditions in every effective service agreement for market-based power sales; and (2) transaction information for effective short-term (less than one year) and long-term (one year or longer) market-based power sales during the most recent calendar quarter.⁴¹ Public utilities must file EQRs no later than 30 days after the end of the reporting quarter.⁴²

31. Additionally, Broken Bow Wind must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.⁴³

32. In Order No. 697, the Commission created two categories of sellers.⁴⁴ Category 1 sellers are not required to file regularly scheduled updated market power analyses. Category 1 sellers are wholesale power marketers and wholesale power producers that

⁴¹ *Revised Public Utility Filing Requirements*, Order No. 2001, FERC Stats. & Regs. ¶ 31,127, *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reh'g denied*, Order No. 2001-B, 100 FERC ¶ 61,342, *order directing filing*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002), *order directing filing*, Order No. 2001-D, 102 FERC ¶ 61,334, *order refining filing requirements*, Order No. 2001-E, 105 FERC ¶ 61,352 (2003), *order on clarification*, Order No. 2001-F, 106 FERC ¶ 61,060 (2004), *order revising filing requirements*, Order No. 2001-G, 120 FERC ¶ 61,270, *order on reh'g and clarification*, Order No. 2001-H, 121 FERC ¶ 61,289 (2007), *order revising filing requirements*, Order No. 2001-I, FERC Stats. & Regs. ¶ 31,282 (2008). Attachments B and C of Order No. 2001 describe the required data sets for contractual and transaction information. Public utilities must submit EQRs to the Commission using the EQR Submission System Software, which may be downloaded from the Commission's website at <http://www.ferc.gov/docs-filing/eqr.asp>.

⁴² The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2013). Failure to file an EQR (without an appropriate request for extension), or failure to report an agreement in an EQR, may result in forfeiture of market-based rate authority requiring filing of a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

⁴³ *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005); 18 C.F.R. § 35.42 (2013).

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

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

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

34. Based on Broken Bow Wind's representations, we grant Broken Bow Wind Category 1 seller status in the Northwest, Northeast, Southwest, Southeast and Central regions. Broken Bow Wind states that because it and its affiliates control more than 500 MW of generation in the SPP region, Broken Bow Wind is a Category 2 Seller in the SPP region. Based on Broken Bow Wind's representations, we find that Broken Bow Wind meets the criteria for a Category 2 seller in the SPP region. Broken Bow Wind must file an updated market power analysis for the SPP region in compliance with the regional reporting schedule adopted in Order No. 697.⁴⁷ The Commission also reserves the right to require such an analysis at any time for any region.⁴⁸

⁴⁵ 18 C.F.R. § 35.36(a) (2013).

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

⁴⁷ *Id.*

⁴⁸ *Id.* P 853.

The Commission orders:

(A) Broken Bow Wind's market-based rate tariff is hereby accepted for filing, effective July 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. Broken Bow Wind 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 Broken Bow Wind, 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 Broken Bow Wind's issuance of securities or assumptions of liability.

(F) Broken Bow Wind'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.

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