

148 FERC ¶ 61,101
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Calvert Cliffs Nuclear Power Plant, LLC	Docket Nos.	ER10-2179-022
Nine Mile Point Nuclear Station, LLC		ER10-2181-022
R.E. Ginna Nuclear Power Plant, LLC		ER10-2182-022

ORDER ACCEPTING UPDATED MARKET POWER ANALYSIS, NOTICE OF
CHANGE IN STATUS, AND REQUEST FOR WAIVERS

(Issued August 5, 2014)

1. On December 30, 2013, as amended on May 16, 2014, Calvert Cliffs Nuclear Power Plant, LLC (Calvert Cliffs), Nine Mile Point Nuclear Station, LLC (Nine Mile Point), and R.E. Ginna Nuclear Power Plant, LLC (R.E. Ginna) (collectively, the CENG Nuclear Entities) filed an updated market power analysis for the Northeast region in compliance with the regional reporting schedule adopted in Order No. 697¹ and pursuant to the Commission's orders granting the CENG Nuclear Entities authority to sell electric energy, capacity, and ancillary services at market-based rates.² The CENG Nuclear Entities' filing also includes a notice of change in status.

¹ *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 882-893, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010), *aff'd sub nom. Mont. Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011), *cert. denied*, 133 S. Ct. 26 (2012).

² *AmerGen Vermont, LLC*, 90 FERC ¶ 61,307, *reh'g denied*, *Baltimore Gas & Elec. Co.*, 91 FERC ¶ 61,270 (2000); *Nine Mile Point Nuclear Station, LLC*, 95 FERC

(continued...)

2. In this order, the Commission accepts the CENG Nuclear Entities' updated market power analysis and notice of change in status, as amended, and concludes that the CENG Nuclear Entities continue to satisfy the Commission's standards for market-based rate authority. Additionally, we grant the CENG Nuclear Entities' 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.

I. Background

3. The CENG Nuclear Entities indicate that they are wholly-owned subsidiaries of Constellation Energy Nuclear Group, LLC (CENG), a joint venture between EDF Inc. (EDF) and Exelon Corporation (Exelon) (through its wholly-owned subsidiary, Exelon Generation Company, LLC (ExGen)). They also state that the Commission has authorized each of the CENG Nuclear Entities to make sales at market-based rates³ and has designated each of them as a Category 2 seller in the Northeast region. The CENG Nuclear Entities state that the instant filing is their first updated market power analysis filing for the Northeast region following the March 12, 2012 Commission-approved merger of Exelon and Constellation Energy Group, Inc. (Constellation).⁴ The CENG Nuclear Entities state that they and their affiliates own or control generation, transmission, and/or inputs to electric power production in the Northeast region.⁵

4. The CENG Nuclear Entities state that Calvert Cliffs owns and operates an approximately 1,735 megawatts (MW) nuclear generation facility in Lusby, Maryland in the PJM Interconnection, L.L.C. (PJM) market. They also state that Nine Mile Point

¶ 61,202 (2001); *R.E. Ginna Nuclear Power Plant, LLC*, Docket No. ER04-485-000 (Mar. 24, 2004) (delegated letter order).

³ *Id.*

⁴ CENG Nuclear Entities December 30 Filing at 2 (citing *Exelon Corp.*, 138 FERC ¶ 61,167 (2012) and *Exelon Corp.*, Notice of Consummation, Docket No. EC11-83-000 (filed Mar. 19, 2012)).

⁵ The CENG Nuclear Entities represent that they list in Attachment B of the December 30 filing all affiliates that have market-based authority and identify all generation assets owned or controlled by the corporate family by balancing authority area and geographic region. They also state that they provide in Attachment B an appendix reflecting all electric transmission and natural gas intrastate pipelines and/or gas storage facilities owned or controlled by the corporate family.

owns 100 percent of an approximately 630 MW unit and 82 percent of an approximately 1,287 MW unit of a nuclear generation facility in Scriba, New York and that R.E. Ginna owns an approximately 581.5 MW nuclear generation facility in Ontario, New York, all of which are located in the New York Independent System Operator, Inc. (NYISO) market. They also state that the CENG Nuclear Entities own limited, discrete, radial interconnection facilities used solely to interconnect the CENG Nuclear Entities' respective generation facilities to the transmission grid.

5. Additionally, the CENG Nuclear Entities request that the Commission waive the requirements under Order Nos. 888⁶ and 890⁷ and section 35.28 of the Commission's regulations⁸ to file an OATT, the requirements under Order No. 889⁹ and Part 37 of the Commission's regulations¹⁰ to establish an OASIS, and the requirements under Order No. 889 and Part 358 of the Commission's regulations¹¹ to comply with the Standards of Conduct with respect to its interconnection facilities.

⁶ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

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

⁸ 18 C.F.R. § 35.28 (2013).

⁹ *Open Access Same-Time Information System and Standards of Conduct*, Order No. 889, FERC Stats. & Regs. ¶ 31,035 (1996), *order on reh'g*, Order No. 889-A, FERC Stats. & Regs. ¶ 31,049, *reh'g denied*, Order No. 889-B, 81 FERC ¶ 61,253 (1997).

¹⁰ 18 C.F.R. pt. 37 (2014).

¹¹ 18 C.F.R. pt. 358 (2014).

6. The CENG Nuclear Entities state that they also include in the instant filing a notice of change in status regarding a tolling agreement through which ExGen will acquire control for one year, beginning on January 1, 2014, over the approximately 661 MW Granite Ridge generating facility located in the ISO New England, Inc. market.

7. On May 16, 2014, the CENG Nuclear Entities submitted an amendment to their updated market power analysis to supply a sensitivity study of the Commission's market power screens and make clarifications and revisions. The CENG Nuclear Entities state that the sensitivity analysis includes the output from affiliated solar generating facilities¹² and incorporates the revised Simultaneous Transmission Import Limit (SIL) values for the PJM market that were filed by PJM after submission of the December 30, 2013 filing. Also, the CENG Nuclear Entities clarify that a 500 MW deduction of uncommitted capacity reflected in the horizontal market power analysis in the December 30, 2013 filing is for capacity that is subject to a long-term contract. Furthermore, the CENG Nuclear Entities include an updated transmission asset appendix listing the relevant interconnection facilities for which they requested waiver of the OATT requirements.

II. Notice of Filings

8. Notice of the CENG Nuclear Entities' filings was published in the *Federal Register*,¹³ with interventions or protests due on or before July 8, 2014. None was filed.

III. Discussion

A. Market-Based Rate Authorization

9. 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.¹⁴ As discussed below, we find that the CENG Nuclear Entities satisfy the Commission's standards for market-based rate authority in the Northeast region.

¹² The CENG Nuclear Entities state that they are affiliated with various entities that install, own, and operate small solar generating facilities on property controlled by their commercial, industrial, or governmental electric customers, and that each qualifies as a small power production qualifying facility pursuant to section 292.203(a) of the Commission's regulations.

¹³ 79 Fed. Reg. 822 (2014); 79 Fed. Reg. 35,748 (2014).

¹⁴ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 62, 399, 408, 440.

1. Horizontal Market Power

10. The Commission has adopted two indicative screens for assessing horizontal market power: the pivotal supplier screen and the wholesale market share screen.¹⁵ 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.¹⁶

11. The CENG Nuclear Entities prepared the pivotal supplier and wholesale market share screens for the PJM and NYISO markets, and the 5004/5005 and AP South submarkets within PJM, consistent with the requirements of Order No. 697.

12. We have reviewed the CENG Nuclear Entities' pivotal supplier screens and wholesale market share screens and determined that the CENG Nuclear Entities pass both screens in the PJM and NYISO markets as well as in the 5004/5005 and AP South submarkets. Accordingly, we find that the CENG Nuclear Entities satisfy the Commission's requirements for market-based rate authority regarding horizontal market power in the PJM and NYISO markets, and the 5004/5005 and AP South submarkets within PJM. Further, the CENG Nuclear Entities represent that their affiliates' control over the Granite Ridge generating facility does not change the conditions that the Commission relied upon in granting the CENG Nuclear Entities market-based rate authority.

13. Based on the CENG Nuclear Entities' representations, we find that the CENG Nuclear Entities satisfy the Commission's requirements for market-based rate authority regarding horizontal market power in the Northeast region.

2. Vertical Market Power

14. 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.¹⁷ The CENG Nuclear Entities state that they are affiliated with the PECO Energy Company, Baltimore Gas and Electric

¹⁵ *Id.* P 62.

¹⁶ *Id.* PP 33, 62-63.

¹⁷ *Id.* P 408.

Company, and Commonwealth Edison Company (collectively, Franchised Public Utilities), through which Exelon distributes electricity to approximately 6.6 million customers in Illinois, Maryland, and Pennsylvania. The CENG Nuclear Entities further state that the Franchised Public Utilities have each transferred operational control over their transmission systems to PJM, and transmission service over those facilities is provided by PJM pursuant to a Commission-approved OATT.¹⁸ Additionally, the CENG Nuclear Entities state that none of the CENG Nuclear Entities nor their affiliates own or control any transmission facilities in the Northeast region other than certain limited interconnection facilities necessary to interconnect their generating facilities to the electric grid. The CENG Nuclear Entities also state that they own no transmission in other relevant markets other than the equipment necessary to connect their generation to the grid.

15. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.¹⁹ The Commission requires a seller to provide a description of its ownership or control of, or affiliation with an entity that owns or controls, intrastate natural gas transportation, storage or distribution facilities; sites for generation capacity development; and physical coal supply sources and ownership of or control over who may access to transportation of coal supplies (collectively, inputs to electric power production).²⁰ 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.²¹ 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.²²

16. Regarding other barriers to entry, the CENG Nuclear Entities state that they are affiliated with certain entities that own or control intrastate natural gas transportation,

¹⁸ *Pennsylvania-New Jersey-Maryland Interconnection*, 81 FERC ¶ 61,257 (1997).

¹⁹ *Id.* P 440.

²⁰ Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

²¹ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

²² *Id.* P 446.

storage, or distribution facilities.²³ Furthermore, the CENG Nuclear Entities state that neither they nor their affiliates own or control any sites for generation capacity development, aside from sites previously reported pursuant to Order No. 697-D,²⁴ and sites on which their existing generation facilities are located.

17. Finally, consistent with Order No. 697, the CENG Nuclear Entities affirmatively state that they have not erected barriers to entry in the relevant markets, and will not erect barriers into the relevant markets.²⁵

18. Based on the CENG Nuclear Entities' representations, we find that the CENG Nuclear Entities' submittals satisfy the Commission's requirements for market-based rates regarding vertical market power in the Northeast region.

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

19. The CENG Nuclear Entities seek 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 they own. In support, the CENG Nuclear Entities represent that the interconnection facilities described in the instant application are limited and discrete radial facilities used solely to interconnect the CENG Nuclear Entities' respective generation facilities to the transmission grid. The CENG Nuclear Entities represent that the interconnection facilities do not form an integrated transmission grid.

20. 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.

²³ The CENG Nuclear Entities describe their interests in these affiliates in Attachment B of their December 30 filing. Given that the CENG Nuclear Entities do not identify any inputs to electric power production that they own, we interpret this to mean they own no such interests. *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

²⁴ Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 at P 22.

²⁵ We interpret this statement to apply to the CENG Nuclear Entities and their affiliates, and our authorizations herein are predicated on the CENG Nuclear Entities complying with this commitment. *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

Order Nos. 889,²⁶ 2004,²⁷ and 717²⁸ and Part 358 of the Commission's regulations 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 890.²⁹ 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 889.³⁰ Order No. 717 did not change those criteria.³¹

21. 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

²⁶ Order No. 889, FERC Stats. & Regs. ¶ 31,035 at 31,590.

²⁷ *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).

²⁸ *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 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).

²⁹ *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*).

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.

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

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

23. Based on the statements in the CENG Nuclear Entities' application, we find that their interconnection facilities qualify as limited and discrete. The facilities will be used solely by the CENG Nuclear Entities to interconnect their facilities to the transmission grid. Accordingly, we will grant the CENG Nuclear Entities 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 the CENG Nuclear Entities receive a request for transmission service, they must file with the Commission a *pro forma* OATT within 60 days of the date of the request.³⁵

³² *Black Creek*, 77 FERC ¶ 61,232 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.

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)).

³⁵ *Black Creek*, 77 FERC ¶ 61,232 at 61,941.

24. The Commission will also grant the CENG Nuclear Entities 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 the CENG Nuclear Entities' 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.³⁶ Likewise, the CENG Nuclear Entities' waiver of the Standards of Conduct will remain in effect unless and until the Commission takes action on a complaint by an entity that the CENG Nuclear Entities have unfairly used its access to information to unfairly benefit itself or its affiliates.³⁷

C. Reporting Requirements

25. 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.³⁸

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 *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)). The CENG Nuclear Entities must notify the Commission if there is a material change in facts that affect their 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).

³⁸ *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

(continued...)

Public utilities must file EQRs no later than 30 days after the end of the reporting quarter.³⁹

26. The CENG Nuclear Entities 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.⁴⁰

27. In Order No. 697, the Commission created two categories of sellers.⁴¹ 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.⁴² Sellers that do not fall into Category 1 are designated as Category 2 sellers and are required to file updated market power analyses.⁴³

28. The CENG Nuclear Entities must file updated market power analyses for any region in which they are designated as Category 2 sellers in compliance with the regional

Submission System Software, which may be downloaded from the Commission's website at <http://www.ferc.gov/docs-filing/eqr.asp>.

³⁹ The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2014). 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.

⁴⁰ *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 (2014).

⁴¹ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 848.

⁴² 18 C.F.R. § 35.36(a) (2014).

⁴³ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 850.

reporting schedule adopted in Order No. 697.⁴⁴ The Commission reserves the right to require an updated market power analysis at any time for any region.⁴⁵

The Commission orders:

(A) The CENG Nuclear Entities' updated market power analysis and change in status are hereby accepted for filing, as discussed in the body of this order.

(B) The CENG Nuclear Entities' 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.

(C) The CENG Nuclear Entities are hereby directed to file updated market power analyses according to the regional reporting schedule adopted in Order No. 697, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁴⁴ *Id.* P 882.

⁴⁵ *Id.* P 853.