

148 FERC ¶ 61,102
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.

AV Solar Ranch 1, LLC	Docket Nos.	ER12-2178-008
Baltimore Gas and Electric Company		ER10-2172-019
Cassia Gulch Wind Park, LLC		ER11-2016-014
CER Generation, LLC		ER10-2184-019
CER Generation II, LLC		ER10-2183-016
Commonwealth Edison Company		ER10-1048-016
Constellation Energy Commodities Group Maine, LLC		ER10-2192-019
Constellation Mystic Power, LLC		ER11-2056-013
Constellation NewEnergy, Inc.		ER10-2178-019
Constellation Power Source Generation, Inc.		ER10-2174-019
Cow Branch Wind Power, LLC		ER11-2014-016
CR Clearing, LLC		ER11-2013-016
Criterion Power Partners, LLC		ER10-3308-018
Exelon Framingham, LLC		ER10-1020-015
Exelon Generation Company, LLC		ER13-1536-002
Exelon New Boston, LLC		ER10-1078-015
Exelon West Medway, LLC		ER10-1080-015
Exelon Wind 4, LLC		ER11-2010-016
Exelon Wyman, LLC		ER10-1081-015
Handsome Lake Energy, LLC		ER10-2180-019
Harvest Windfarm, LLC		ER11-2011-015
High Mesa Energy, LLC		ER12-2528-007
Michigan Wind 1, LLC		ER11-2009-015
PECO Energy Company		ER10-1143-015
Tuana Springs Energy, LLC		ER11-2007-014
Wind Capital Holdings, LLC		ER11-2005-016

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, the Exelon MBR Entities¹ filed an updated market power analysis for the Northeast region in compliance with the regional reporting schedule adopted in Order No. 697² and pursuant to the Commission's orders granting the Exelon MBR Entities authority to sell electric energy, capacity, and ancillary services at market-based rates.³ The Exelon MBR Entities' filing also includes a notice of change in status.

¹ The Exelon MBR Entities are AV Solar Ranch 1, LLC, Baltimore Gas and Electric Company (Baltimore Gas and Electric), Cassia Gulch Wind Park, LLC (Cassia Gulch), CER Generation, LLC (CER Generation), CER Generation II, LLC (CER II), Commonwealth Edison Company (ComEd), Constellation Energy Commodities Group Maine, LLC, Constellation Mystic Power, LLC (Constellation Mystic), Constellation NewEnergy, Inc., Constellation Power Source Generation, Inc. (Constellation Power Source), CR Clearing, LLC (CR Clearing), Cow Branch Wind Power, LLC (Cow Branch), Criterion Power Partners, LLC (Criterion), Exelon Framingham, LLC (Exelon Framingham), Exelon Generation Company, LLC (ExGen), Exelon New Boston, LLC (Exelon New Boston), Exelon West Medway, LLC (Exelon West Medway), Exelon Wind 4, LLC (Exelon Wind 4), Exelon Wyman, LLC (Exelon Wyman), Handsome Lake Energy, LLC (Handsome Lake), Harvest Windfarm, LLC (Harvest Windfarm), High Mesa Energy, LLC (High Mesa), Michigan Wind 1, LLC (Michigan Wind), PECO Energy Company (PECO), Tuana Springs Energy, LLC (Tuana Springs), and Wind Capital Holdings, LLC (Wind Capital). We note that on March 11, 2014, the Commission issued an order accepting a notice of succession from Constellation Power Source changing its name to Constellation Power Source Generation, LLC. *See Constellation Power Source Generation, LLC*, Docket No. ER14-1169-000 (Mar. 11, 2014) (delegated letter order).

² *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).

³ *AV Solar Ranch 1, LLC*, 140 FERC ¶ 61,159 (2012); *Baltimore Gas and Electric Co.*, 91 FERC ¶ 61,270 (2000); *Cassia Gulch Wind Park, LLC*, Docket No. ER10-75-000

(continued...)

2. In this order, the Commission accepts the Exelon MBR Entities' updated market power analysis and notice of change in status, as amended, and concludes that the Exelon MBR Entities continue to satisfy the Commission's standards for market-based rate authority. Additionally, we grant the Project Companies'⁴ request for waiver of the

(Nov. 30, 2009) (delegated letter order); *CER Generation, LLC*, Docket No. ER10-662-000 (May 13, 2010) (delegated letter order); *CER Generation II, LLC*, Docket No. ER08-860-000 (May 27, 2008) (delegated letter order); *Commonwealth Edison Co.*, 82 FERC ¶ 61,317 (1998); *Constellation Power Source Maine, LLC*, Docket No. ER02-699-000 (Feb. 26, 2002) (delegated letter order); *Constellation Mystic Power, LLC*, Docket No. ER10-2281-000 (Oct. 27, 2010) (delegated letter order); *New Energy Ventures, Inc.*, 76 FERC ¶ 61,239 (1996); *Constellation Power Source, Inc.*, 79 FERC ¶ 61,167 (1997); *CR Clearing, LLC*, Docket No. ER07-1222-000 (Aug. 31, 2007) (delegated letter order); *Criterion Power Partners, LLC*, Docket No. ER10-1443-000 (Aug. 9, 2010) (delegated letter order); *Exelon Framingham, LLC*, Docket No. ER01-513-024 (Sept. 2, 2009) (delegated letter order); *Exelon Generation Co., L.L.C.*, 93 FERC ¶ 61,140 (2000), *reh'g denied*, 95 FERC ¶ 61,309 (2001); *Sithe Mystic LLC*, 94 FERC ¶ 61,051 (2001); *J.D. Wind 4, LLC*, 120 FERC ¶ 61,274 (2007); *Handsome Lake Energy, LLC*, Docket No. ER01-556-000 (Jan. 19, 2001) (delegated letter order); *Harvest Windfarm, LLC*, Docket No. ER07-1246-000 (Aug. 31, 2007) (delegated letter order); *High Mesa Energy, LLC*, Docket No. ER12-2528-000 (Oct. 16, 2012) (delegated letter order); *Noble Thumb Windpark I LLC*, 113 FERC ¶ 61,156 (2005); *PECO Energy Companies*, 94 FERC ¶ 61,259 (2001); *Wind Capital Holdings, LLC*, 120 FERC ¶ 61,276 (2007).

⁴ The Project Companies for purposes of this filing consist of: Cassia Gulch, CER Generation, CER II, Constellation Mystic, Constellation Power Source, CR Clearing, Cow Branch, Criterion, Exelon Framingham, ExGen, Exelon New Boston, Exelon West Medway, Exelon Wind 4, Exelon Wyman, Handsome Lake, Harvest Windfarm, High Mesa, Michigan Wind, Tuana Springs, and Wind Capital. We note that the Exelon MBR Entities also include in their December 30, 2013 filing Constellation Power, Inc., Exelon Solar Chicago LLC, and Holyoke Solar LLC as entities requesting waiver of the Commission's requirements to file an OATT, to establish and maintain an OASIS, and to comply with the Commission's Standards of Conduct. However, because these entities are not included as part of the Exelon MBR Entities and are not listed as parties to the instant filing, they are not covered by this order. To the extent that Constellation Power, Inc., Exelon Solar Chicago LLC, or Holyoke Solar LLC intended to file an updated market power analysis or a notice of change in status or to request waiver of the Commission's OATT, OASIS and Standard of Conduct requirements, it must do so in a separate filing.

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 Exelon MBR Entities indicate that they are wholly-owned subsidiaries of Exelon Corporation (Exelon), a public utility holding company. They also state that the Commission has authorized each of the Exelon MBR Entities to make sales at market-based rates and has designated each of them as a Category 2 seller in the Northeast region. The Exelon MBR 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.⁵ The Exelon MBR Entities state that they and their affiliates own or control generation, transmission, and/or inputs to electric power production in the Northeast region.⁶

4. The Exelon MBR Entities state that ExGen has a diverse generation portfolio consisting of approximately 45,227 megawatts (MW) of directly-owned and/or controlled capacity nationwide, including approximately 30,000 MW in the Northeast region. ExGen serves as a supplier of energy to, among others, utilities and municipalities to meet their native load obligations, and is a retail competitive energy provider. The Exelon MBR Entities further state that Baltimore Gas and Electric is a combination electric and natural gas utility engaged in the purchase, transmission and distribution of electricity and natural gas in Maryland, and provides retail electric and gas service to customers in Maryland. The Exelon MBR Entities state that Baltimore Gas and Electric neither owns nor operates any electric generating facilities. Additionally, the Exelon MBR Entities state that ComEd is engaged in the purchase, transmission, distribution, and sale of electricity in Illinois. The Exelon MBR Entities state that PECO is engaged in the purchase, transmission, distribution, and sale of electricity and natural gas in Pennsylvania. The Exelon MBR Entities indicate that Baltimore Gas and Electric,

⁵ See *Exelon Corp.*, 138 FERC ¶ 61,167, at P 52 (2012).

⁶ The Exelon MBR Entities represent that they list in Attachment B of the December 30, 2013 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.

ComEd, and PECO are members of PJM Interconnection, L.L.C. (PJM) and have made their transmission facilities available for service pursuant to PJM's OATT.

5. With regard to generation in the Northeast region, the Exelon MBR Entities state that Constellation Power Source owns and/or operates multiple generation facilities with a total capacity of approximately 972 MW in the PJM market, Criterion owns an approximately 70 MW generation facility located in western Maryland, and Handsome Lake owns an approximately 268 MW generating facility located in Venango County, Pennsylvania, all of which are located within the PJM market. The Exelon MBR Entities also state that Constellation Mystic owns approximately 2,702 MW of generation capacity and that Exelon Framingham owns and operates an approximately 33 MW generation facility in Framingham, Massachusetts, Exelon New Boston owns and operates an approximately 16 MW generation facility, Exelon West Medway owns approximately 117 MW, and Exelon Wyman owns a 5.89 percent interest in a 610 MW generation facility, all of which are located in the ISO New England Inc. (ISO-NE) market. The Exelon MBR Entities also state that the Project Companies own interconnection facilities that consist of discrete, radial interconnection facilities used solely to interconnect the Project Companies' respective generation facilities to the interstate transmission grid.

6. Additionally, the Project Companies request that the Commission waive the requirements under Order Nos. 888⁷ and 890⁸ and section 35.28 of the Commission's regulations⁹ to file an OATT, the requirements under Order No. 889¹⁰ and Part 37 of the

⁷ *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).

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 18 C.F.R. § 35.28 (2014).

Commission's regulations¹¹ to establish an OASIS, and the requirements under Order No. 889 and Part 358 of the Commission's regulations¹² to comply with the Standards of Conduct with respect to their interconnection facilities.

7. The Exelon MBR 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-NE market.

8. On May 16, 2014, the Exelon MBR Entities submitted an amendment to their updated market power analysis to include the output from certain affiliated small power production qualifying facilities in their market power screens and to include an updated transmission asset appendix listing the relevant interconnection facilities for which the Project Companies have requested waivers. The Exelon MBR Entities explain that the sensitivity analysis demonstrates that they pass both indicative horizontal market power screens, even when the qualifying facilities are included as uncommitted capacity and PJM's revised SIL values are taken into account.

II. Notice of Filings

9. Notice of the Exelon MBR Entities' filings was published in the *Federal Register*,¹³ with interventions or protests due on or before June 6, 2014. None was filed.

III. Discussion

A. Market-Based Rate Authorization

10. 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

¹⁰ *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).

¹¹ 18 C.F.R. pt. 37 (2014).

¹² 18 C.F.R. pt. 358 (2014).

¹³ 79 Fed. Reg. 821 (2014); 79 Fed. Reg. 30,114 (2014).

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

1. Horizontal Market Power

11. 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

12. The Exelon MBR Entities prepared the pivotal supplier and wholesale market share screens for the PJM, ISO-NE, and New York Independent System Operator, Inc. (NYISO) markets, the PJM East, 5004/5005 and AP South submarkets within PJM, and the Connecticut submarket within ISO-NE consistent with the requirements of Order No. 697.

13. We have reviewed the Exelon MBR Entities' pivotal supplier screens and wholesale market share screens and determined that the Exelon MBR Entities pass both screens in the PJM, ISO-NE, and NYISO markets, as well as the PJM East, 5004/5005, AP South and Connecticut submarkets. Accordingly, we find that the Exelon MBR Entities satisfy the Commission's requirements for market-based rate authority regarding horizontal market power in the PJM, ISO-NE, and NYISO markets, the PJM East, 5004/5005, and AP South submarkets within PJM, and the Connecticut submarket within ISO-NE.

14. Based on the Exelon MBR Entities' representations, we find that the Exelon MBR Entities' submittals satisfy the Commission's requirements for market-based rates regarding horizontal market power in the Northeast region.

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

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

¹⁵ *Id.* P 62.

¹⁶ *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.¹⁷ The Exelon MBR Entities state that PECO, Baltimore Gas and Electric, and ComEd (collectively, Franchised Public Utilities) distribute electricity to approximately 6.6 million customers in Illinois, Maryland, and Pennsylvania. The Exelon MBR 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 Exelon MBR Entities state that none of the other Exelon MBR Entities or 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 Exelon MBR Entities also state that they own no transmission in other relevant markets other than the equipment necessary to connect their generation to the grid.

16. 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 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

¹⁷ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408.

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

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

17. Regarding other barriers to entry, the Exelon MBR Entities state that they are affiliated with certain entities that own or control intrastate natural gas transportation, storage, or distribution facilities.²³ Furthermore, the Exelon MBR 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.

18. Finally, consistent with Order No. 697, the Exelon MBR 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

19. Based on the Exelon MBR Entities' representations, we find that the Exelon MBR 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

20. The Project Companies 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 Project Companies represent that the interconnection facilities are limited and discrete radial facilities used solely to interconnect the Project Companies' respective generation facilities to the transmission grid. The Project Companies represent that the interconnection facilities do not form an integrated transmission grid.

21. Order Nos. 888 and 890 and section 35.28 of the Commission's regulations require public utilities that own, operate, or control facilities used for the transmission of electric energy in interstate commerce to file an OATT. Order No. 889 and Part 37 of the

²³ The Exelon MBR Entities detail the interests of these affiliates in Attachment B of their December 30, 2013 filing. Given that the Exelon MBR 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 Exelon MBR Entities and their affiliates, and our authorizations herein are predicated on the Exelon MBR Entities complying with this commitment. *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

Commission's regulations require public utilities to establish and maintain an OASIS. 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

22. The Commission may grant requests for waiver of the obligation to file an OATT to public utilities that can show that they own, operate, or control only limited and discrete transmission facilities (facilities that do not form an integrated transmission

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.

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

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

24. Based on the statements in the Project Companies' application, we find that the Project Companies' interconnection facilities qualify as limited and discrete. The facilities will be used solely by the Project Companies to interconnect their facilities to the transmission grid. Accordingly, we will grant the Project Companies 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 one of the Project Companies receives

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)).

a request for transmission service, it must file with the Commission a *pro forma* OATT within 60 days of the date of the request.³⁵

25. The Commission will also grant the Project Companies 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 Project Companies' 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 Project Companies' waiver of the Standards of Conduct will remain in effect unless and until the Commission takes action on a complaint by an entity that one of the Project Companies has unfairly used its access to information to unfairly benefit itself or its affiliates.³⁷

C. Reporting Requirements

26. 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

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

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 Project Companies 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

(continued...)

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

27. The Exelon MBR 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

28. 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

(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>.

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.

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

29. The Exelon MBR Entities must file updated market power analyses for any region in which they are designated as Category 2 sellers in compliance with the regional 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 Exelon MBR Entities' updated market power analysis and change in status are hereby accepted for filing, as discussed in the body of this order.

(B) The Project Companies' 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 Exelon MBR 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.

⁴² 18 C.F.R. § 35.36(a) (2014).

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

⁴⁴ *Id.* P 882.

⁴⁵ *Id.* P 853.