

148 FERC ¶ 61,104
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.

Fourmile Wind Energy, LLC

Docket No. ER14-2145-000

ORDER GRANTING MARKET-BASED RATE AUTHORIZATION AND
REQUEST FOR WAIVERS

(Issued August 5, 2014)

1. In this order, we grant Fourmile Wind Energy, LLC (Fourmile Wind) authority to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates effective August 7, 2014, as requested. Also, as discussed below, we grant Fourmile Wind 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 Fourmile Wind's request for other waivers commonly granted to market-based rate sellers, except as noted herein.
2. Additionally, we find that Fourmile Wind meets the criteria for a Category 1 seller in the Central, Northwest, Southeast, Southwest, and Southwest Power Pool regions and is so designated. Further, we find that Fourmile Wind meets the criteria for a Category 2 seller in the Northeast region and is so designated. Fourmile Wind must file updated market power analyses for the Northeast region in compliance with the regional reporting schedule adopted in Order No. 697.¹

¹ See *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, at PP 848-850, *clarified*, 121 FERC ¶ 61,260 (2007) (Clarification Order), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g*, Order No. 697-D,

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I. Background

3. On June 6, 2014, pursuant to section 205 of the Federal Power Act (FPA),² Fourmile 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 Fourmile Wind states that it is developing and will own and operate an approximately 40 megawatt (MW) (nameplate) wind-powered electric generation facility (Facility) located in Garrett County, Maryland. According to Fourmile Wind, the entire output of the Facility will be sold into PJM's market. Fourmile Wind states that it currently anticipates that the sale of the test power from the Facility will begin on September 1, 2014, and the Facility's commercial operation is expected to begin in the fall of 2014. Fourmile Wind represents that the Facility will be a qualifying facility (QF) under the Public Utility Regulatory Policies Act of 1978 and that it will file a QF self-certification prior to its commercial operation date.

4. Fourmile Wind states that the Facility will be interconnected via wind power collection systems and a 34.5 kilovolt (kV) to 138 kV generation step-up substation (Interconnection Customer Interconnection Facilities) to the point of interconnection with the transmission system owned by the Potomac Edison Company (Potomac Edison) and operated by PJM. Fourmile Wind adds that the point of interconnection is at the Potomac Edison 138 kV switching substation, which is located adjacent to the generation step-up substation. Fourmile Wind requests that the Commission waive the requirements under Order Nos. 888,⁴ 889,⁵ and 890,⁶ and section 35.28,⁷ and Parts 37⁸ and 358⁹ of the

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 16 U.S.C. § 824d (2012).

³ Fourmile Wind requests authorization to sell ancillary services in the markets administered by PJM Interconnection, L.L.C. (PJM), New York Independent System Operator, Inc. (NYISO), Midcontinent Independent System Operator, Inc. (MISO), ISO New England Inc. (ISO-NE), California Independent System Operator Corp., and Southwest Power Pool, Inc., as well as authorization to engage in the sale of certain ancillary services as a third-party provider in other markets.

⁴ *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

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Commission's regulations with respect to the Interconnection Customer Interconnection Facilities.¹⁰

5. Fourmile Wind states that it is a wholly-owned subsidiary of Exelon Wind, LLC. (Exelon Wind), which is an indirect wholly-owned subsidiary of Exelon Generating Company, LLC (ExGen). ExGen is an indirect wholly-owned subsidiary of Exelon Corporation (Exelon). Exelon is a holding company within the meaning of the Public Utility Holding Company Act of 2005.¹¹

6. Furthermore, Fourmile Wind represents that ExGen and its subsidiaries own and control approximately 46,000 MW of capacity nationwide. Fourmile Wind states that ExGen serves as a supplier of energy to, among others, utilities and municipalities to meet their native load obligations. Fourmile Wind adds that, through various

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).

⁵ *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).

⁶ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

⁷ 18 C.F.R. § 35.28 (2014).

⁸ 18 C.F.R. pt. 37 (2014).

⁹ 18 C.F.R. pt. 358 (2014).

¹⁰ Fourmile Wind represents in its Asset Appendix that there are several pending requests for waiver of the Commission's open access requirements in regards to limited equipment necessary to connect individual generating facilities to the transmission grid.

¹¹ Public Utility Holding Company Act of 2005, 42 U.S.C. §§ 16451-16463 (2012).

subsidiaries, ExGen is also a retail competitive energy provider. Fourmile Wind states that the Commission granted ExGen market-based rate authority.¹²

7. Fourmile Wind represents that it and its affiliates own or control approximately 26,400 MW in the PJM market. In addition, Fourmile Wind represents it is affiliated with additional generation in markets that are first-tier to the PJM market. Specifically, Fourmile Wind's affiliates own or control approximately 1,930 MW of generation in the NYISO market and approximately 2,394 MW of generation in the MISO market.

8. Fourmile Wind represents that Exelon's indirect wholly-owned subsidiaries, Commonwealth Edison Company (ComEd), PECO Energy Company (PECO), and Baltimore Gas and Electric Company (BGE), are franchised public utilities that own electric distribution systems through which they deliver electricity to approximately 6.6 million customers in Illinois, Pennsylvania, and Maryland. Fourmile Wind states that ComEd, PECO, and BGE do not own any electric generation facilities and serve as default service providers for those electric customers that do not choose competitive suppliers or whose competitive supplier failed to deliver electric supply. Fourmile Wind states that ComEd, PECO, and BGE have each been granted market-based rate authority by the Commission.¹³ Fourmile Wind further states that ComEd, PECO, and BGE own transmission facilities, but have transferred operational control over such facilities to PJM. In addition, Fourmile Wind reports that PECO and BGE distribute natural gas to customers in the Pennsylvania counties surrounding the City of Philadelphia and central Maryland, respectively, and operate liquefied natural gas facilities and propane-air facilities associated with their respective distribution activities that do not offer services to third parties.

II. Notice of Filings

9. Notice of Fourmile Wind's filing was published in the *Federal Register*, 79 Fed. Reg. 33,916 (2014) with interventions and comments due on or before June 27, 2014. None was filed.

10. Notice of Fourmile Wind's request for blanket authorization under Part 34 of the Commission's regulations was separately published in the *Federal Register*, 79 Fed.

¹² *Exelon Generation Co.*, 93 FERC ¶ 61,140 (2000), *reh'g denied*, 95 FERC ¶ 61,309 (2001).

¹³ *Exelon Cos.*, 94 FERC ¶ 61,259 (2001); *Green Power Partners I LLC*, 88 FERC ¶ 61,005 (1999); *Commonwealth Edison Co.*, 82 FERC ¶ 61,317 (1998).

Reg. 36,508 (2014) with interventions or protests due on or before July 10, 2014. None was filed.

III. Discussion

11. As discussed below, we will grant Fourmile 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 August 7, 2014, as requested.¹⁴ We will also grant Fourmile Wind's request for certain waivers.

A. Market-Based Rate Authorization

12. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, horizontal and vertical market power.¹⁵

1. Horizontal Market Power

13. The Commission has adopted two indicative screens for assessing horizontal market power: the pivotal supplier screen and the wholesale market share screen.¹⁶ The Commission has stated that passage of both screens establishes a rebuttable presumption that the applicant does not possess horizontal market power, while failure of either screen creates a rebuttable presumption that the applicant has horizontal market power.¹⁷

¹⁴ We note that Fourmile 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 Fourmile 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).

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

¹⁶ *Id.* P 62.

¹⁷ *Id.* PP 33, 62-63.

14. Fourmile Wind states that it relies on the Exelon Study in Docket No. ER12-2178-008, *et al.*¹⁸ to demonstrate that Fourmile Wind passes both the pivotal supplier and the wholesale market share screens for the PJM market.

15. Fourmile Wind demonstrates that it passes the pivotal supplier and market share screens for the PJM market. Accordingly, we find that Fourmile Wind satisfies the Commission's requirements for market-based rate authority regarding horizontal market power.

2. Vertical Market Power

16. In cases where a public utility, or any of its affiliates, owns, operates, or controls transmission facilities, the Commission requires that there be a Commission-approved OATT on file or that the seller has received waiver of the OATT requirement before granting a seller market-based rate authorization.¹⁹

17. In this case, as discussed more fully below, the Commission will grant Fourmile Wind's request for waiver of the requirement to have an OATT on file for its Interconnection Customer Interconnection Facilities.²⁰ Fourmile Wind states that, except for the transmission facilities owned by ComEd, PECO, and BGE and operated by PJM under PJM's OATT, neither it nor its affiliates own, operate, or control any transmission facilities in the United States, other than limited equipment necessary to connect individual generating facilities to the grid.²¹

¹⁸ AV Solar Ranch 1, LLC, Updated Market Power Analysis, Docket No. ER12-2178-008, *et al.* (filed Dec. 30, 2013, as amended May 16, 2014) (Exelon Study). We are accepting this filing in an order being issued concurrently with the instant order. *AV Solar Ranch 1, LLC*, 148 FERC ¶ 61,102 (2014).

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). Fourmile 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 Fourmile Wind requests waiver of the Commission's open access requirements with respect to the Interconnection Customer Interconnection Facilities.

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. Fourmile Wind states that its affiliation with certain sites for new generation capacity development reported to the Commission and the natural gas distribution facilities owned by PECO and BGE do not raise any vertical market power concerns because the Commission has adopted a rebuttable presumption that ownership or control of such inputs to electric power production does not allow an entity selling electricity at market-based rates to erect barriers to entry. Fourmile Wind states that, except for the sites and natural gas distribution facilities owned by PECO and BGE, neither it nor any of its affiliates own or control any inputs to electric power production including intrastate natural gas transportation, intrastate natural gas storage or distribution facilities, sites for generation capacity development, physical coal supply sources, and ownership of or control over who may access transportation of coal supplies.

20. Finally, consistent with Order No. 697, Fourmile Wind affirmatively states that it and its affiliates have not erected barriers to entry into the relevant market and will not erect barriers in the relevant market.

21. Based on Fourmile Wind's representations, we find that Fourmile Wind satisfies the Commission's requirements for market-based rates regarding vertical market power.

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.

B. Waiver Requests

1. OATT, OASIS, and Standards of Conduct

22. Fourmile 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 of its request for waiver, Fourmile Wind states that the Interconnection Customer Interconnection Facilities constitute limited and discrete radial interconnection facilities used solely to interconnect the Facility to the PJM-controlled transmission grid.

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, 2004,²⁶ and 717²⁷ 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

²⁶ *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).

²⁷ *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).

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 ¶ 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 MWh 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 Fourmile Wind's application, we find that its interconnection facilities qualify as limited and discrete. The facilities will be used solely by Fourmile Wind to interconnect the Facility to the transmission grid. Accordingly, we will grant Fourmile 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 Customer Interconnection Facilities. However, if Fourmile 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.³⁵

27. The Commission will also grant Fourmile 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 Fourmile 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.³⁶ Likewise, Fourmile 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 Fourmile Wind has unfairly used its access to information to unfairly benefit itself or its affiliates.³⁷

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.

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)). Fourmile 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. Fourmile 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 FPA³⁸ 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.³⁹ Notwithstanding the waiver of the accounting and reporting requirements, the Commission expects Fourmile Wind to keep its accounting records in accordance with generally accepted accounting principles.

³⁸ 16 U.S.C. § 824c (2012).

³⁹ 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")).

30. We direct Fourmile Wind to submit a compliance filing containing revisions to the limitations and exemptions section of its market-based rate tariff to include a citation to this order.⁴⁰

C. Reporting Requirements

31. 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.⁴¹ Public utilities must file EQRs no later than 30 days after the end of the reporting quarter.⁴²

⁴⁰ See Order No. 697, FERC Stats. & Regs. ¶ 31,252 at App. C, *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 384. See also *Niagara Mohawk Power Corp.*, 121 FERC ¶ 61,275, at P 8 (2007). This tariff revision may be filed no later than the next time Fourmile Wind makes a market-based rate filing with the Commission.

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 (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.

32. Additionally, Fourmile 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

33. 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 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

34. Fourmile Wind states that its affiliates own or control more than 500 MW of generation in the Northeast region where it is located, and, therefore, it qualifies as a Category 2 seller in the Northeast region. Fourmile Wind further states that it does not own any generation outside of the Northeast region. Fourmile Wind further represents that it does not own, operate, or control transmission facilities other than the limited equipment necessary to connect individual generating facilities to the transmission grid. Fourmile Wind also states that it is not affiliated with a franchised public utility in the same region in which generation assets are owned or controlled by Fourmile Wind. Finally, Fourmile Wind states that it does not raise other vertical market power issues.

35. Based on Fourmile Wind's representations, we grant Fourmile Wind Category 1 seller status in the Central, Northwest, Southeast, Southwest, and Southwest Power Pool regions. Fourmile Wind states that because it and its affiliates control more than 500 MW of generation in the Northeast region, Fourmile Wind is a Category 2 Seller in

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 (2014).

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

⁴⁵ 18 C.F.R. § 35.36(a) (2014).

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

the Northeast region. Based on Fourmile Wind's representations, we find that Fourmile Wind meets the criteria for a Category 2 seller in the Northeast region. Fourmile Wind must file an updated market power analysis for the Northeast region in compliance with the regional reporting schedule adopted in Order No. 697.⁴⁷ The Commission also reserves the right to require an updated market power analysis at any time for any region.⁴⁸

The Commission orders:

- (A) Fourmile Wind's market-based rate tariff is hereby excepted for filing, effective August 7, 2014, as requested, as discussed in the body of this order.
- (B) Fourmile Wind is hereby directed to revise the limitations and exemptions section of its market-based rate tariff, as discussed in the body of this order.
- (C) Waiver of the provisions of Subparts B and C of Part 35 of the Commission's regulations, with the exception of sections 35.12(a), 35.13(b), 35.15, and 35.16, is hereby granted.
- (D) Waiver of Part 101 of the Commission's regulations is hereby granted, with the exception that waiver of the provisions of Part 101 that apply to hydropower licensees is not granted with respect to licensed hydropower projects. Waiver of Parts 41 and 141 of the Commission's regulations is hereby granted, with the exception of sections 141.14 and 141.15.
- (E) Blanket authorization under Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability is hereby granted. Fourmile 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 Fourmile Wind, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

⁴⁷ *Id.*

⁴⁸ *Id.* P 853.

(F) The Commission reserves the right to modify this order to require a further showing that neither the public nor private interests will be adversely affected by continued Commission approval of Fourmile Wind's issuance of securities or assumptions of liability.

(G) Fourmile 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.

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

Nathaniel J. Davis, Sr.,
Deputy Secretary.