

149 FERC ¶ 61,045
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Avalon Solar Partners, LLC

Docket No. ER14-2666-001

ORDER GRANTING MARKET-BASED RATE AUTHORIZATION AND
REQUEST FOR WAIVERS

(Issued October 15, 2014)

1. In this order, the Commission grants Avalon Solar Partners, LLC (Avalon) authority to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates, effective October 15, 2014, as requested. Also, as discussed below, we grant Avalon's request for waiver of the Commission's requirements to file an Open Access Transmission Tariff (OATT), to establish and maintain an Open Access Same-Time Information System (OASIS), and to comply with the Commission's Standards of Conduct. We also grant Avalon's request for other waivers commonly granted to market-based rate sellers, except as noted herein.

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

I. Background

3. On August 18, 2014, as amended on September 15, 2014, September 18, 2014, and September 22, 2014, pursuant to section 205 of the Federal Power Act (FPA),²

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

Avalon filed an application for market-based rate authority with an accompanying tariff providing for the sale of electric energy, capacity, and ancillary services at market-based rates.³

4. Avalon states that it will own and operate a 29 megawatt (MW) photovoltaic solar energy facility that is currently being constructed in Sahaurita, Arizona (the Facility) in the Tucson Electric Power Company (Tucson Electric) balancing authority area. Avalon states that all of the output of the Facility will be sold to Tucson Electric pursuant to a power purchase agreement. Avalon represents that the Facility will connect to Tucson Electric's substation by a tie line that is less than 100 feet long and that is owned and operated by Avalon. Avalon states that other than operating the limited interconnection facilities necessary to connect the Facility to the transmission grid, Avalon does not and will not own or operate any transmission facilities.

5. Avalon requests that the Commission waive the requirements under Order Nos. 888,⁴ 889,⁵ 890,⁶ 2004,⁷ and 717,⁸ and section 35.28,⁹ and Parts 37¹⁰ and 358¹¹ of the Commission's regulations with respect to the limited interconnection facilities.

³ Avalon requests authorization to engage in the sale of certain ancillary services as a third-party provider.

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 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).

6. Avalon states that it is wholly owned by CRE-Avalon Arizona LLC, which is wholly owned by Centaurus Renewable Energy LLC. Avalon further states that Centaurus Renewable Energy LLC is wholly owned by Centaurus Capital LP.

7. Avalon states that its affiliates own generation outside the Tucson Electric balancing authority area and that none of its affiliates own a 10 percent or greater voting interest in or controls any electric generation facilities in or near the Tucson Electric balancing authority area.

II. Notice of Filing

8. Notice of Avalon's filings were published in the *Federal Register*,¹² with interventions and comments due on or before October 6, 2014. None was filed.

9. Notice of Avalon's request for blanket authorization under Part 34 of the Commission's regulations was separately published in the *Federal Register*,¹³ with interventions or protests due on or before September 8, 2014. None was filed.

⁷ *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).

⁸ *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).

⁹ 18 C.F.R. § 35.28 (2014).

¹⁰ 18 C.F.R. pt. 37 (2014).

¹¹ 18 C.F.R. pt. 358 (2014).

¹² 79 Fed. Reg. 50,642; 79 Fed. Reg. 56,575 (2014).

¹³ 79 Fed. Reg. 50,645 (2014).

III. Discussion

10. As discussed below, we will grant Avalon'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 October 15, 2014, as requested.¹⁴ We will also grant Avalon's request for certain waivers.

A. Market-Based Rate Authorization

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

1. Horizontal Market Power

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

13. Avalon represents that it will own 29 MW of generation capacity in the Tucson Electric balancing authority area. However, Avalon represents that all of the capacity from the Facility is fully committed under long-term power purchase agreements, and therefore Avalon does not have any uncommitted capacity in the Tucson Electric balancing authority area. Avalon further represents that none of its affiliates own or control generation in the Tucson Electric balancing authority area or any first-tier

¹⁴ We note that Avalon 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 Avalon 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.

markets. Because Avalon and its affiliates have no uncommitted capacity in the Tucson Electric balancing authority area or any first-tier market, Avalon states that it therefore lacks horizontal market power in the Tucson Electric balancing authority area.

14. Based on Avalon's representations, we find that Avalon satisfies the Commission's requirements for market-based rate authority regarding horizontal market power.

2. Vertical Market Power

15. In cases where a public utility, or any of its affiliates, owns, operates, or controls transmission facilities, the Commission requires that there be a Commission-approved OATT on file or that the seller has received waiver of the OATT requirement before granting a seller market-based rate authorization.¹⁸

16. In this case, as discussed more fully below, the Commission will grant Avalon's request for waiver of the requirement to have an OATT on file for the interconnection facilities.¹⁹

17. Avalon states that, other than generator interconnection facilities, neither it nor any of its affiliates owns or controls electric transmission facilities in the Tucson Electric balancing authority area. Avalon states that all other transmission facilities owned by Avalon and its affiliates are limited and discrete facilities necessary to interconnect their generating facilities to the electric grid.

18. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.²⁰ 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

¹⁸ *Id.* P 408.

¹⁹ A generator lead line is a transmission facility. *See* 16 U.S.C. §§ 796(23), 824(a)-(b) (2012). Avalon 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).

²⁰ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 440.

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).²¹ 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.²² 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.²³

19. Regarding other barriers to entry, Avalon states that it owns land adjacent to the Avalon generation facilities for future generation capacity development. Further, Avalon states that neither it nor any of its affiliates owns or controls any other inputs to electric power production including intrastate natural gas transportation, intrastate natural gas storage or distribution facilities, physical coal supply sources, and ownership of or control over the transportation of coal supplies.

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

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

B. Waiver Requests

1. OATT, OASIS, and Standards of Conduct

22. Avalon seeks waiver of the requirements to file an OATT, establish and maintain an OASIS, and abide by the Standards of Conduct with respect to its transmission facilities. In support, Avalon states that its transmission facilities are used only to interconnect Avalon to the transmission grid. Avalon states that the generator tie line does not comprise an integrated transmission system and does not serve, and is not designed to serve, other customers.

23. Order Nos. 888 and 890 and section 35.28 of the Commission's regulations require public utilities that own, operate, or control facilities used for the transmission of

²¹ Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

²² Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

²³ *Id.* P 446.

electric energy in interstate commerce to file an OATT. Order No. 889 and Part 37 of the Commission's regulations require public utilities to establish and maintain an OASIS. Order Nos. 889, 2004, and 717 and Part 358 of the Commission's regulations require public utilities to abide by certain Standards of Conduct.²⁴ In prior orders, the Commission has enunciated the standards for exemption from some or all of the requirements of Order Nos. 888, 889, and 890.²⁵ 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 889.²⁶ Order No. 717 did not change those criteria.²⁷

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.²⁸

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.²⁹ The

²⁴ 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.

²⁵ 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*).

²⁶ 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).

²⁷ See Order No. 717, FERC Stats. & Regs. ¶ 31,280 at PP 31-33.

²⁸ *Black Creek*, 77 FERC ¶ 61,232 at 61,941.

²⁹ *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
(continued ...)

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).³⁰

26. Based on the statements in Avalon's application, we find that the transmission facilities qualify as limited and discrete. Avalon will use the facilities solely to interconnect its facility to the transmission grid. Accordingly, we will grant Avalon 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 transmission facilities. However, if Avalon 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.³¹

27. The Commission will also grant Avalon 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 Avalon'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

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.

³⁰ *Entergy*, 112 FERC ¶ 61,228 at P 23 (citing *Central Minnesota Municipal Power Agency*, 79 FERC ¶ 61,260, at 62,127 (1997) (*Central Minnesota*); *Easton Utils. Comm'n*, 83 FERC ¶ 61,334, at 62,343 (1998) (*Easton*)).

³¹ *Black Creek*, 77 FERC ¶ 61,232 at 61,941.

evaluation.³² Likewise, Avalon'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 Avalon has unfairly used its access to information to unfairly benefit itself or its affiliates.³³

2. Other Waivers and Authorizations

28. Avalon 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 FPA³⁴ 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.³⁵

³² *Entergy*, 112 FERC ¶ 61,228 at P 23 (citing *Central Minnesota*, 79 FERC ¶ 61,260 at 62,127 (1997); *Easton*, 83 FERC ¶ 61,334 at 62,343).

³³ *Id.* Avalon 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).

³⁴ 16 U.S.C. § 824c (2012).

³⁵ 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 (continued ...)"))

Notwithstanding the waiver of the accounting and reporting requirements, the Commission expects Avalon to keep its accounting records in accordance with generally accepted accounting principles.

C. Reporting Requirements

30. An entity with market-based rate authorization must file an Electric Quarterly Report (EQR) with the Commission, consistent with Order Nos. 2001³⁶ and 768,³⁷ to fulfill its responsibility under FPA section 205(c)³⁸ to have rates on file in a convenient form and place.³⁹ Avalon must file EQRs electronically with the Commission consistent with the procedures set forth in Order No. 770.⁴⁰ Failure to timely and accurately file an

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”).

³⁶ *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).

³⁷ *Electricity Market Transparency Provisions of Section 220 of the Fed. Power Act*, Order No. 768, FERC Stats. & Regs. ¶ 31,336 (2012), *order on reh’g*, Order No. 768-A, 143 FERC ¶ 61,054 (2013).

³⁸ 16 U.S.C. § 824d(c) (2012).

³⁹ *See Revisions to Electric Quarterly Report Filing Process*, Order No. 770, FERC Stats. & Regs. ¶ 31,338, at P 3 (2012) (citing Order No. 2001, FERC Stats. & Regs. ¶ 31,127 at P 31).

⁴⁰ Order No. 770, FERC Stats. & Regs. ¶ 31,338.

EQR is a violation of the Commission's regulations for which Avalon may be subject to refund, civil penalties, and/or revocation of market-based rate authority.⁴¹

31. Additionally, Avalon 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.⁴²

32. In Order No. 697, the Commission created two categories of sellers.⁴³ 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.⁴⁴ Sellers that do not fall into Category 1 are designated as Category 2 sellers and are required to file updated market power analyses.⁴⁵

33. Avalon requests Category 1 seller status in the Northwest, Northeast, Southwest, Southeast, Southwest Power Pool and Central regions. Avalon represents that it and its affiliates do not own or control more than 500 MW of generation in any of these regions. Avalon also represents that it does not own, operate or control any transmission facilities in these regions, other than limited equipment necessary to connect its individual generating facilities to the transmission grid, and is not affiliated with anyone that owns, operates or controls transmission facilities in the same region as its generation assets.

⁴¹ The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2014). Forfeiture of market-based rate authority may require a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

⁴² *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).

⁴³ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 848.

⁴⁴ 18 C.F.R. § 35.36(a) (2014).

⁴⁵ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 850.

Avalon further represents that it is not affiliated with a franchised public utility in the Southwest region. Avalon states that there are no vertical market power concerns.

34. Based on Avalon's representations, we grant Avalon Category 1 seller status in the Northwest, Northeast, Southwest, Southeast, Southwest Power Pool and Central regions. The Commission reserves the right to require an updated market power analysis from any market-based rate seller at any time, including for those sellers that fall within Category 1.⁴⁶

35. Finally, we direct Avalon to submit a compliance filing to revise its asset appendix to include its electric transmission assets (i.e., its tie line) and its generation assets (i.e., its 29 MW Facility).⁴⁷

The Commission orders:

(A) Avalon's market-based rate tariff is hereby accepted for filing, effective October 15, 2014, as requested, as discussed in the body of this order.

(B) Avalon is hereby directed to revise its asset appendix to include its electric transmission assets and generation assets, 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. Avalon 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

⁴⁶ *Id.* P 853.

⁴⁷ *See id.* at Appendix B, *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 378. These tariff revisions may be filed the next time Avalon makes a market-based rate filing with the Commission.

Avalon, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

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

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