

149 FERC ¶ 61,223
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Invenergy Nelson LLC

Docket No. ER15-103-001

ORDER GRANTING MARKET-BASED RATE AUTHORIZATION AND REQUEST
FOR WAIVERS

(Issued December 12, 2014)

1. In this order, we grant Invenergy Nelson LLC (Invenergy Nelson) authority to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates, effective December 15, 2014, as requested. Additionally, we grant Invenergy Nelson'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 Invenergy Nelson's request for other waivers commonly granted to market-based rate sellers, except as noted herein.
2. Additionally, we find that Invenergy Nelson meets the criteria for a Category 2 seller in the Northeast region and Category 1 seller in all other regions and is so designated. Invenergy Nelson must file an updated market power analysis 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), *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).

I. Background

3. On October 15, 2014, pursuant to section 205 of the Federal Power Act (FPA),² Invenergy Nelson filed an application for market-based rate authority with an accompanying tariff providing for the sale of electric energy, capacity, and certain ancillary services at market-based rates.³

4. Invenergy Nelson states that it is constructing and will own and operate a 738 megawatt (MW) natural gas-fired generation facility located in the PJM market. Invenergy Nelson further states that it will also own interests in radial electric interconnection facilities that will consist of a 345 kilovolt (kV) switchyard, transformers, disconnect switches, circuits, an approximately one mile 345 kV generator-tie line, and related facilities in order to connect with the transmission system owned by Commonwealth Edison Company (Commonwealth Edison). Invenergy Nelson states that these interconnection facilities are limited and discrete facilities that serve only to interconnect generating facilities to Commonwealth Edison.

5. Additionally, Invenergy Nelson requests that the Commission waive the requirements under Order Nos. 888⁴ and 890⁵ and section 35.28 of the Commission's

² 16 U.S.C. § 824d (2012).

³ Invenergy Nelson requests authorization to sell ancillary services in the markets administered by PJM Interconnection, L.L.C. (PJM), New York Independent System Operator, Inc., ISO New England Inc., California Independent System Operator Corp., Midcontinent Independent System Operator, Inc., and Southwest Power Pool, Inc. Invenergy Nelson also requests authorization to engage in the sale of certain ancillary services as a third-party provider in other markets. Invenergy Nelson filed a supplement to its application on October 15, 2014, the same day as its initial application.

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 *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

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regulations⁶ to file an OATT, the requirements under Order No. 889⁷ and Part 37 of the Commission's regulations⁸ to establish an OASIS, and the requirements under Order Nos. 889, 2004,⁹ and 717,¹⁰ and Part 358 of the Commission's regulations¹¹ to comply with the Standards of Conduct with respect to its interconnection facilities.

6. Invenergy Nelson states that it is an indirect, wholly-owned subsidiary of Invenergy Investment Company LLC (Invenergy Investment), and a direct, wholly-owned subsidiary of Invenergy Nelson Holdings LLC, which is a direct, wholly-owned subsidiary of Invenergy Thermal Financing II LLC (Invenergy Thermal Financing). Invenergy Nelson states that Invenergy Thermal Financing is directly owned by Invenergy Thermal LLC (Invenergy Thermal) and Thermal Investment Corporation,

(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 18 C.F.R. § 35.28 (2014).

⁷ *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).

⁸ 18 C.F.R. pt. 37 (2014).

⁹ *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).

¹⁰ *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).

¹¹ 18 C.F.R. pt. 358 (2014).

which is a direct, wholly-owned subsidiary of Invenergy Thermal. Invenergy Nelson states that Invenergy Thermal is a direct, wholly-owned subsidiary of Invenergy Thermal Operating I LLC, which is a directly, wholly-owned subsidiary of Invenergy Clean Power LLC, which is a direct, wholly-owned subsidiary of Invenergy Investment. Invenergy Nelson states that Invenergy Investment is a direct, wholly-owned subsidiary of Polsky Energy Investments LLC, which is a direct, wholly-owned subsidiary of Polsky Energy Holdings LLC (Polsky Energy Holdings), which is owned by individuals.¹² Invenergy Nelson further states that the only transmission facilities it and its affiliates own or control are limited interconnection facilities necessary to connect their associated generation to the transmission grid and that Invenergy Nelson and its affiliates have either been granted waiver of the Commission's requirements to file an OATT or have a request for waiver of the requirement to file an OATT pending before the Commission.

II. Notice of Filing

7. Notice of Invenergy Nelson's filings was published in the *Federal Register*,¹³ with interventions and comments due on or before November 5, 2014. None was filed.

8. Notice of Invenergy Nelson's request for blanket authorization under Part 34 of the Commission's regulations was separately published in the *Federal Register*,¹⁴ with interventions or protests due on or before November 5, 2014. None was filed.

III. Discussion

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

¹² We note that Invenergy Nelson describes all of Polsky Energy Holdings' affiliates, but it does not describe any other energy holdings of the individual who owns more than 10 percent of Polsky Energy Holdings. 18 C.F.R. § 35.36(a)(9) (2014). We interpret this to mean that that individual does not have any relevant interests in the energy industry other than those disclosed in Invenergy Nelson's application.

¹³ 79 Fed. Reg. 63,111 (2014).

¹⁴ 79 Fed. Reg. 63,392 (2014).

¹⁵ We note that Invenergy Nelson is not being granted authority to make third-party sales of operating reserves to a public utility that is purchasing ancillary services to

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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 power.¹⁶

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

12. Invenergy Nelson has provided the pivotal supplier and wholesale market share screens for the PJM market, where it and its affiliates own generation, consistent with the requirements of Order No. 697.¹⁹

13. Invenergy Nelson's horizontal market power screens demonstrate that Invenergy Nelson passes both the pivotal supplier and wholesale market share screens in the PJM market. We find that Invenergy Nelson satisfies the Commission's requirements for market-based rate authority regarding horizontal market power.

satisfy its own open access transmission tariff requirements to offer ancillary services to its own customers. If Invenergy Nelson 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).

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

¹⁷ *Id.* P 62.

¹⁸ *Id.* PP 33, 62-63.

¹⁹ Invenergy Nelson states that it relies on previous data for the PJM market submitted by AlphaGen Power LLC on December 16, 2013 in Docket No. ER14-630-000, which was accepted by delegated letter order on February 26, 2014. *AlphaGen Power LLC*, Docket No. ER14-630-000 (Feb. 26, 2014) (delegated letter order).

2. Vertical Market Power

14. In cases where a public utility, or any of its affiliates, owns, operates, or controls transmission facilities, the Commission requires that there be a Commission-approved OATT on file or that the seller has received waiver of the OATT requirement before granting a seller market-based rate authorization.²⁰

15. In this case, as discussed more fully below, the Commission will grant Invenergy Nelson's request for waiver of the requirement to have an OATT on file for its interconnection facilities.²¹ Invenergy Nelson states that all transmission facilities owned by it and its affiliates are limited and discrete facilities necessary to interconnect their generation facilities to the electric grid and that such facilities have either been granted waiver of the Commission's requirements to file an OATT or have a request for waiver of the requirement to file an OATT pending before the Commission.

16. 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

²⁰ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408.

²¹ A generator lead line is a transmission facility. *See* 16 U.S.C. §§ 796(23), 824(a)-(b) (2012). Invenergy Nelson 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).

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.

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

17. Regarding other barriers to entry, Invenergy Nelson represents that it and its affiliates do not own or control intrastate natural gas transportation, storage, or distribution facilities. Invenergy Nelson also represents that it and its affiliates do not own or control sites located within the PJM Market or any other relevant market that could be used to impose barriers to market entry by other wholesale power suppliers. Invenergy Nelson states that other than the land at the Invenergy Nelson site, descriptions of the sites for the development of new generation have been submitted to the Commission by Invenergy Nelson's affiliates with market-base rate authority. Furthermore, Invenergy Nelson commits to file any necessary quarterly site control reports with the Commission in accordance with Commission rules applicable to entities with market-based rate authority.

18. Finally, consistent with Order No. 697, Invenergy Nelson affirmatively states that it and its affiliates have not and will not erect barriers to entry in the relevant geographic market.

19. Based on Invenergy Nelson's representations, we find Invenergy Nelson satisfies the Commission's requirements for market-based rates regarding vertical market power.

B. Waiver Requests

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

20. Invenergy Nelson 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, Invenergy Nelson represents that the interconnection facilities described in the instant application are limited and discrete facilities used solely to accommodate connection to the transmission grid. Invenergy Nelson represents that the interconnection facilities do not form an integrated transmission network.

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

²⁵ *Id.* P 446.

Order Nos. 889, 2004, and 717 and Part 358 of the Commission's regulations require public utilities to abide by certain Standards of Conduct.²⁶ In prior orders, the Commission has enunciated the standards for exemption from some or all of the requirements of Order Nos. 888, 889, and 890.²⁷ 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 889.²⁸ Order No. 717 did not change those criteria.²⁹

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 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.³⁰

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.³¹ The

²⁶ 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.

²⁷ 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*).

²⁸ 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).

²⁹ See Order No. 717, FERC Stats. & Regs. ¶ 31,280 at PP 31-33.

³⁰ *Black Creek*, 77 FERC ¶ 61,232 at 61,941.

³¹ *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*

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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).³²

24. Based on the statements in Invenergy Nelson's application, we find that its interconnection facilities qualify as limited and discrete. The facilities will be used solely by Invenergy Nelson to connect its future generating facilities to the grid. Accordingly, we will grant Invenergy Nelson 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 Invenergy Nelson 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.³³

25. The Commission will also grant Invenergy Nelson 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 Invenergy Nelson'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.³⁴ Likewise, Invenergy Nelson's waiver of the

did not affect waivers based on a public utility disposing of no more than 4 million megawatt hours (MWh) annually.

³² *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*)).

³³ *Black Creek*, 77 FERC ¶ 61,232 at 61,941.

³⁴ *Entergy*, 112 FERC ¶ 61,228 at P 23 (citing *Central Minnesota*, 79 FERC ¶ 61,260 at 62,127; *Easton*, 83 FERC ¶ 61,334 at 62,343).

Standards of Conduct will remain in effect unless and until the Commission takes action on a complaint by an entity that Invenergy Nelson has unfairly used its access to information to unfairly benefit itself or its affiliates.³⁵

2. Other Waivers, Approvals, and Authorizations

26. Invenergy Nelson 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 FPA³⁶ and Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability.

27. The Commission will grant the requested waivers and authorizations consistent with those granted to other entities with market-based rate authorizations.³⁷

³⁵*Id.* Invenergy Nelson 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).

³⁶ 16 U.S.C. § 824c (2012).

³⁷ 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")).

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

3. Reporting Requirements

28. An entity with market-based rate authorization must file an Electric Quarterly Report (EQR) with the Commission, consistent with Order Nos. 2001³⁸ and 768,³⁹ to fulfill its responsibility under FPA section 205(c)⁴⁰ to have rates on file in a convenient form and place.⁴¹ Invenergy Nelson must file EQRs electronically with the Commission consistent with the procedures set forth in Order No. 770.⁴² Failure to timely and accurately file an EQR is a violation of the Commission's regulations for which Invenergy Nelson may be subject to refund, civil penalties, and/or revocation of market-based rate authority.⁴³

³⁸ *Revised Public Utility Filing Requirements*, Order No. 2001, FERC Stats. & Regs. ¶ 31,127, *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reh'g denied*, Order No. 2001-B, 100 FERC ¶ 61,342, *order directing filing*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002), *order directing filing*, Order No. 2001-D, 102 FERC ¶ 61,334, *order refining filing requirements*, Order No. 2001-E, 105 FERC ¶ 61,352 (2003), *order on clarification*, Order No. 2001-F, 106 FERC ¶ 61,060 (2004), *order revising filing requirements*, Order No. 2001-G, 120 FERC ¶ 61,270, *order on reh'g and clarification*, Order No. 2001-H, 121 FERC ¶ 61,289 (2007), *order revising filing requirements*, Order No. 2001-I, FERC Stats. & Regs. ¶ 31,282 (2008).

³⁹ *Electricity Mkt. 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).

⁴⁰ 16 U.S.C. § 824d(c) (2012).

⁴¹ *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).

⁴² Order No. 770, FERC Stats. & Regs. ¶ 31,338.

⁴³ 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.

29. Additionally, Invenergy Nelson 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.⁴⁴

30. In Order No. 697, the Commission created two categories of sellers.⁴⁵ 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.⁴⁶ Sellers that do not fall into Category 1 are designated as Category 2 sellers and are required to file updated market power analyses.⁴⁷

31. Invenergy Nelson represents that it meets the criteria for Category 2 seller status in the Northeast region because it owns more than 500 MW of generation capacity in the Northeast region. Invenergy Nelson represents that it meets the criteria for Category 1 seller status in all other regions because it does not own, operate, or control more than 500 MW of generation capacity or any transmission facilities in any other region. Invenergy Nelson states that it is not affiliated with a franchised public utility in the regions in which it is seeking Category 1 status and that it does not present any other vertical market power concerns.

32. Based on Invenergy Nelson's representations, we designate Invenergy Nelson as a Category 2 seller in the Northeast region and a Category 1 seller in all other regions. Invenergy Nelson must file an updated market power analysis for the Northeast region in compliance with the regional reporting schedule adopted in Order No. 697.⁴⁸ The

⁴⁴ *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).

⁴⁵ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 848.

⁴⁶ 18 C.F.R. § 35.36(a) (2014).

⁴⁷ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 850.

⁴⁸ *Id.*

Commission reserves the right to require an updated market power analysis at any time for any region.⁴⁹

The Commission orders:

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

(B) Waiver of the provisions of Subparts B and C of Part 35 of the Commission's regulations, with the exception of sections 35.12(a), 35.13(b), 35.15, and 35.16, are hereby granted.

(C) Waiver of Part 101 of the Commission's regulations is hereby granted, with the exception that waiver of the provisions of Part 101 that apply to hydropower licensees is not granted with respect to licensed hydropower projects. Waiver of Parts 41 and 141 of the Commission's regulations is hereby granted, with the exception of sections 141.14 and 141.15.

(D) Blanket authorization under Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability is hereby granted. Invenergy Nelson 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 Invenergy Nelson, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

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

(F) Invenergy Nelson'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.

⁴⁹ See *id.* P 853.

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