

150 FERC ¶ 61,074  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

LDVF1 TEP LLC

Docket Nos. ER15-297-000  
ER15-297-001

ORDER GRANTING MARKET-BASED RATE AUTHORIZATION AND  
REQUEST FOR WAIVERS

(Issued February 5, 2015)

1. In this order, the Commission grants LDVF1 TEP LLC (LDVF1) authority to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates, effective January 1, 2015. Also, as discussed below, we grant LDVF1'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 LDVF1's request for other waivers commonly granted to market-based rate sellers, except as noted herein.
2. Additionally, we find that LDVF1 meets the criteria for a Category 1 seller in all regions and is so designated.<sup>1</sup>

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<sup>1</sup> 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 31, 2014, as amended on December 8, 2014, pursuant to section 205 of the Federal Power Act (FPA),<sup>2</sup> LDVF1 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.<sup>3</sup>

4. LDVF1 states that it owns an approximately 7.4257 percent undivided interest in a 424.8 megawatt (MW) coal-fired power plant located near Springerville, Arizona (Springerville Facility) in the Tucson Electric Power Company's (Tucson Electric) balancing authority area. LDVF1 represents that it is a counterparty to a long-term leveraged lease agreement with Tucson Electric, pursuant to which Tucson Electric currently leases all of LDVF1's interest in the Springerville Facility. Upon expiration of the primary term of the lease on January 1, 2015, LDVF1 states that it might commence making wholesale sales of electric energy, capacity, and/or ancillary services in accordance with its interests in the Springerville Facility.

5. LDVF1 states that the Springerville Facility contains interconnection facilities consisting of limited and discrete facilities necessary to interconnect to the Tucson Electric transmission grid. LDVF1 states that these interconnection facilities consist of a 480-volt unit substation with various 480-volt unit substation busbars, and related materials and equipment. LDVF1 states that, except for the interconnection facilities located at the Springerville Facility, neither it nor its affiliates own, operate, or control any transmission facilities in the United States. LDVF1 represents that these interconnection facilities are limited and discrete and requests that the Commission

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<sup>2</sup> 16 U.S.C. § 824d (2012).

<sup>3</sup> LDVF1 requests authorization to sell ancillary services in the markets administered by the California Independent System Operator Corp. (CAISO) and Southwest Power Pool, Inc. LDVF1 also requests authorization to engage in the sale of certain ancillary services as a third-party provider in other markets.

waive the requirements under Order Nos. 888,<sup>4</sup> 889,<sup>5</sup> 890,<sup>6</sup> and their implementing regulations at section 35.28<sup>7</sup> and Part 37, and the requirements of Part 358.<sup>8</sup>

6. LDVF1 is indirectly wholly owned, via a series of Delaware investment vehicles, by funds (the Fortress Funds) managed by affiliates of Fortress Investment Group LLC. LDVF1 represents that it is affiliated, via the Fortress Fund's common upstream ownership interests, with certain generating facilities located in the CAISO balancing authority area (CAISO Facilities). LDVF1 states that the full output of the CAISO Facilities is fully committed via various long-term contracts.

## II. Notice of Filings

7. Notices of LDVF1's filings were published in the *Federal Register*,<sup>9</sup> with interventions and protests due on or before November 21, 2014 and December 29, 2014. On December 19, 2014, Tucson Electric filed a motion to intervene.

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<sup>4</sup> *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).

<sup>5</sup> *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).

<sup>6</sup> *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).

<sup>7</sup> 18 C.F.R. § 35.28 (2014).

<sup>8</sup> 18 C.F.R. pt. 358 (2014).

<sup>9</sup> 79 Fed. Reg. 67,427 (2014); 79 Fed. Reg. 75,136 (2014).

8. Notice of LDVF1's request for blanket authorization under Part 34 of the Commission's regulations was separately published in the *Federal Register*,<sup>10</sup> with interventions or protests due on or before November 28, 2014.

### **III. Discussion**

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), Tucson Electric's timely, unopposed motion to intervene serves to make it a party to this proceeding.

10. As discussed below, we will grant LDVF1'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 January 1, 2015, as requested.<sup>11</sup> We will also grant LDVF1'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.<sup>12</sup>

##### **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.<sup>13</sup> The Commission has stated that passage of both screens establishes a rebuttable presumption

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<sup>10</sup> 79 Fed. Reg. 68,437 (2014).

<sup>11</sup> We note that LDVF1 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 LDVF1 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).

<sup>12</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 62, 399, 408, 440.

<sup>13</sup> *Id.* P 62.

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.<sup>14</sup>

13. LDVF1 represents that it relies on Public Service Company of New Mexico's recently accepted market power analysis<sup>15</sup> to demonstrate that LDVF1 passes both the pivotal supplier and the wholesale market share screens for the Tucson Electric balancing authority area.

14. Based on LDVF1's representations, we find that LDVF1 satisfies the Commission's requirements for market-based rates 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.<sup>16</sup>

16. In this case, as discussed more fully below, the Commission will grant LDVF1's request for waiver of the requirement to have an OATT on file for the interconnection facilities used to interconnect the Springerville Facility to the Tucson Electric transmission grid. LDVF1 states that neither LDVF1 nor its affiliates own transmission facilities other than those limited and discrete interconnection facilities associated with the Springerville Facility.<sup>17</sup>

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

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<sup>14</sup> *Id.* PP 33, 62-63.

<sup>15</sup> *See Public Service Company of New Mexico*, Docket No. ER10-2302-000 (August 22, 2014) (delegated letter order).

<sup>16</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408.

<sup>17</sup> LDVF1 requests waiver of the Commission's open access requirements with respect to the interconnection facilities.

<sup>18</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 440.

(collectively, inputs to electric power production).<sup>19</sup> 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.<sup>20</sup> 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.<sup>21</sup>

18. Regarding other barriers to entry, LDVF1 states that neither it nor any of its affiliates owns or controls 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.

19. In addition, consistent with Order No. 697, LDVF1 affirmatively states that it and its affiliates have not erected, and will not erect, barriers to entry.

20. Based on LDVF1's representations, we find that LDVF1 satisfies the Commission's requirements for market-based rates regarding vertical market power.

## **B. Waiver Requests**

### **1. OATT, OASIS, and Standards of Conduct**

21. LDVF1 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 interconnection facilities. In support, LDVF1 represents that the interconnection facilities consist of discrete interconnection facilities used to interconnect the Springerville Facility to Tucson Electric's transmission grid. LDVF1 states that the interconnection facilities do not form an integrated transmission grid.

22. 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

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<sup>19</sup> Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

<sup>20</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

<sup>21</sup> *Id.* P 446.

OASIS. Order Nos. 889, 2004,<sup>22</sup> and 717,<sup>23</sup> and Part 358 of the Commission's regulations require public utilities to abide by certain Standards of Conduct.<sup>24</sup> 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.<sup>25</sup> 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.<sup>26</sup> Order No. 717 did not change those criteria.<sup>27</sup>

23. 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

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<sup>22</sup> *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).

<sup>23</sup> *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).

<sup>24</sup> 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.

<sup>25</sup> *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*).

<sup>26</sup> *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).

<sup>27</sup> *See* Order No. 717, FERC Stats. & Regs. ¶ 31,280 at PP 31-33.

of the request, and must comply with any additional requirements that are effective on the date of the request.<sup>28</sup>

24. 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.<sup>29</sup> The Commission has held that waiver of Order No. 889 will remain in effect until the Commission takes action in response to a complaint to the Commission that an entity evaluating its transmission needs could not get the information necessary to complete its evaluation (for OASIS waivers) or an entity complains that the public utility has unfairly used its access to information about transmission to benefit the utility or its affiliate (for Standards of Conduct waivers).<sup>30</sup>

25. Based on the statements in LDVF1's application, we find that its interconnection facilities qualify as limited and discrete. LDVF1 will use the facilities solely to interconnect the Springerville Facility to the transmission grid. Accordingly, we will grant LDVF1 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 facilities. However, if LDVF1 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.<sup>31</sup>

26. The Commission will also grant LDVF1 waiver of the requirements of Order No. 889 and Part 37 of the Commission's regulations with respect to OASIS and Order

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<sup>28</sup> *Black Creek*, 77 FERC at 61,941.

<sup>29</sup> *Id.* Although the Commission originally precluded waiver of the requirements for OASIS and the Standards of Conduct for a small public utility that is a member of a tight power pool, in *Black Hills Power, Inc.*, 135 FERC ¶ 61,058, at PP 2-3 (2011) (*Black Hills*), the Commission explained that membership in a tight power pool is no longer a factor in the determination for waiver of Standards of Conduct. Moreover, *Black Hills* did not affect waivers based on a public utility disposing of no more than 4 million megawatt-hours annually.

<sup>30</sup> *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*)).

<sup>31</sup> *Black Creek*, 77 FERC at 61,941.

Nos. 889, 2004, and 717 with respect to Standards of Conduct. We note that LDVF1'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.<sup>32</sup> Likewise, LDVF1'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 LDVF1 has unfairly used its access to information to unfairly benefit itself or its affiliates.<sup>33</sup>

## 2. Other Waivers and Authorizations

27. LDVF1 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 approval under section 204 of the FPA<sup>34</sup> and Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability.

28. The Commission will grant the requested waivers and authorizations consistent with those granted to other entities with market-based rate authorizations.<sup>35</sup>

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

<sup>33</sup> *Id.* LDVF1 must notify the Commission if there is a material change in facts that affects 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).

<sup>34</sup> 16 U.S.C. § 824c (2012).

<sup>35</sup> 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  
(continued...)

Notwithstanding the waiver of the accounting and reporting requirements, the Commission expects LDVF1 to keep its accounting records in accordance with generally accepted accounting principles.

### C. Reporting Requirements

29. An entity with market-based rate authorization must file an Electric Quarterly Report (EQR) with the Commission, consistent with Order Nos. 2001<sup>36</sup> and 768,<sup>37</sup> to fulfill its responsibility under section 205(c) of the FPA<sup>38</sup> to have rates on file in a convenient form and place.<sup>39</sup> LDVF1 must file EQRs electronically with the Commission consistent with the procedures set forth in Order No. 770.<sup>40</sup> Failure to timely and accurately file an EQR is a violation of the Commission's regulations for

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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”)).

<sup>36</sup> *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).

<sup>37</sup> *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).

<sup>38</sup> 16 U.S.C. § 824d(c) (2012).

<sup>39</sup> *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).

<sup>40</sup> Order No. 770, FERC Stats. & Regs. ¶ 31,338.

which LDVF1 may be subject to refund, civil penalties, and/or revocation of market-based rate authority.<sup>41</sup>

30. Additionally, LDVF1 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.<sup>42</sup>

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

32. LDVF1 requests Category 1 Seller status in all regions. LDVF1 represents that it satisfies the criteria for Category 1 Seller status because it: (i) does not own or control any generation capacity in excess of 500 MW in any region; (ii) does not own, operate or control transmission facilities other than individual generator interconnection facilities; (iii) is not affiliated with a franchised public utility in the same region as seller's generation assets; and (iv) does not raise other vertical market power issues.

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<sup>41</sup> 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.

<sup>42</sup> *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).

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

<sup>44</sup> 18 C.F.R. § 35.36(a) (2014).

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

33. Based on LDVF1's representations, we grant LDVF1 Category 1 seller status in all regions. The Commission reserves the right to require an updated analysis at any time for any region.<sup>46</sup>

The Commission orders:

(A) LDVF1's market-based rate tariff is hereby accepted for filing, effective January 1, 2015, 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, is 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. LDVF1 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 LDVF1, 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 LDVF1's issuance of securities or assumptions of liability.

(F) LDVF1'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.

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<sup>46</sup> *Id.* P 853.

(G) LDVF1 is hereby required to file EQRs in compliance with Order Nos. 2001 and 768. If the effective date of LDVF1's market-based rate tariff falls within a quarter of the year that has already expired, LDVF1'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.