

150 FERC ¶ 61,188
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.

Alterna Springerville LLC

Docket Nos. ER15-114-000
ER15-114-001

ORDER GRANTING MARKET-BASED RATE AUTHORIZATION AND REQUEST
FOR WAIVERS

(Issued March 17, 2015)

1. In this order, we grant Alterna Springerville LLC (Alterna) authority to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates, effective January 1, 2015, as requested. Additionally, we grant Alterna'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 Alterna's request for other waivers commonly granted to market-based rate sellers, except as noted herein.
2. Additionally, we find that Alterna meets the criteria for a Category 1 seller in all regions and is so designated.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 16, 2014, as amended on December 8, 2014 and January 16, 2015, pursuant to section 205 of the Federal Power Act (FPA),² Alterna 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. Alterna states that it owns a 43 percent undivided interest in the Springerville Generation Station Unit 1 (Springerville Facility), a 425 megawatt (MW) coal-fired power plant located near Springerville, Arizona in the Tucson Electric Power Company (Tucson Electric Power) balancing authority area. Alterna states that it and Tucson Electric Power were parties to a long-term lease that expired on January 1, 2015, pursuant to which Tucson Electric Power leased all of Alterna's interest in the Springerville Facility. Alterna states that upon expiration of the lease, Alterna might commence making wholesale sales of electric energy, capacity, and/or ancillary services in accordance with its interests in the Springerville Facility.

5. Alterna states that the Springerville Facility includes interconnection facilities that are limited and discrete facilities necessary to interconnect to the Tucson Electric Power transmission grid. Alterna states that these interconnection facilities consist of a 7.2 kilovolt generator tie line that is approximately 2,600 feet long. Alterna 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. Alterna represents that these interconnection facilities are limited and discrete and requests that the Commission grant waiver of the requirements to file an OATT, to establish and maintain an OASIS, and to comply with the Commission's Standards of

² 16 U.S.C. § 824d (2012).

³ Alterna requests authorization to sell ancillary services in the markets administered by 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.

Conduct found in Order Nos. 888,⁴ 889,⁵ and 890⁶ and in section 35.28⁷ and Parts 37⁸ and 358 of the Commission's regulations.⁹

6. Alterna states that it is indirectly wholly owned by Alterna Core Capital Assets Fund, L.P. (Fund), a Delaware limited partnership formed by Alterna Capital Partners, a private-equity firm. Alterna states that the Fund is wholly owned by individuals. Alterna represents that the Fund indirectly owns an undivided interest in the Merom Generating Station (Merom Facility), a 1,070 MW coal-fired, dual unit steam-electric generation station located in Sullivan County, Indiana. Alterna further states that the Merom Facility is operated by Hoosier Energy Rural Electric Cooperative, Inc.

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 (2009), *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).

II. Notice of Filing

7. Notices of Alterna's filings were published in the *Federal Register*,¹⁰ with interventions and protests due on or before January 26, 2015. On December 19, 2014, Tucson Electric Power filed a motion to intervene.

8. Notice of Alterna's request for blanket authorization under Part 34 of the Commission's regulations was separately published in the *Federal Register*,¹¹ with interventions and protests due on or before November 12, 2014. None was filed.

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 Power's timely, unopposed motion to intervene serves to make it a party to this proceeding.

10. As discussed below, we will grant Alterna's request for authorization to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates,¹² and we will accept its market-based rate tariff, effective January 1, 2015, as requested. We will also grant Alterna's request for certain waivers.

¹⁰ 79 Fed. Reg. 63,390 (2014); 79 Fed. Reg. 74,717 (2014); 80 Fed. Reg. 3,960 (2015).

¹¹ 79 Fed. Reg. 64,382 (2014).

¹² We note that Alterna 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 Alterna 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).

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.¹³

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.¹⁴ 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.¹⁵

13. Alterna represents that it relies on Public Service Company of New Mexico's recently accepted market power analysis¹⁶ to demonstrate that Alterna passes both the pivotal supplier and wholesale market share screens in the Tucson Electric Power balancing authority area.

14. We find that Alterna satisfies the Commission's requirements for market-based rate authority regarding horizontal market power in the Tucson Electric Power balancing authority area when the Commission-accepted SIL values are applied.¹⁷

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

¹³ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 62, 399, 408, 440.

¹⁴ *Id.* P 62.

¹⁵ *Id.* PP 33, 62-63.

¹⁶ *Public Serv. Co. of New Mexico*, Docket No. ER10-2302-004 (Aug. 22, 2014) (delegated letter order).

¹⁷ *Tucson Electric Power Co.*, 150 FERC ¶ 61,152, at P 30 (2015) (“[t]he Commission will use the following SIL values when reviewing updated market power analyses for the Tucson Electric [Power] balancing authority area for the December 2010 – November 2011 study period”).

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 Alterna's request for waiver of the requirement to have an OATT on file for its interconnection facilities.¹⁹ As stated above, neither Alterna nor its affiliates own transmission facilities in the United States other than those limited and discrete interconnection facilities associated with the Springerville Facility.

17. 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, 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).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

¹⁸ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408.

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

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.

18. Regarding other barriers to entry, Alterna states that it and its affiliates do not 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.

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

20. Based on Alterna's representations, and our determinations discussed below, we find that Alterna satisfies the Commission's requirements for market-based rates regarding vertical market power.

B. Waiver Requests

1. Waiver of OATT, OASIS, and Standards of Conduct

21. As explained above, Alterna 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, Alterna represents that the interconnection facilities are limited and discrete facilities used solely to interconnect the Springerville Facility to the transmission grid. In addition, Alterna states that operational control over the interconnection facilities is and will continue to be exercised by Tucson Electric Power.

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 prior to providing transmission service. Order No. 889 and Part 37 of the Commission's regulations require public

utilities to establish and maintain an OASIS. Order Nos. 889, 2004,²⁴ and 717²⁵ 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 waiver of, or exemption from, some or all of the requirements of Order Nos. 888 and 889.²⁷ The Commission has stated that the criteria for waiver of the requirements of Order Nos. 890 and 2004 have not changed from those used to evaluate requests for waiver under Order Nos. 888 and 889.²⁸ Order No. 717 did not change those criteria.²⁹

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* OATT within 60 days of the

²⁴ *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).

²⁵ *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).

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.

date of the request, and must comply with any additional requirements that are effective on the date of the request.³⁰

24. The Commission has also determined that waiver of the requirements 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 (other than part of 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 waiver would not be justified.³¹

25. 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).³²

26. Based on the statements in Alterna's application, we find that its interconnection facilities are limited and discrete and do not constitute an integrated transmission system for purposes of the waiver analysis considered in this order. Accordingly, we will grant Alterna's request for waiver of the requirements set forth in Order Nos. 888 and 890, and in section 35.28 of the Commission's regulations to have an OATT on file. However, if Alterna 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

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* did not affect waivers based on a public utility disposing of no more than four million megawatt hours 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.

27. We will also grant Alterna waiver of the requirements of Order No. 889 and Part 37 of the Commission's regulations with respect to the requirement to establish and maintain an OASIS and of the requirements of Order Nos. 889, 2004, and 717 and Part 358 with respect to abiding by the Standards of Conduct. We note that Alterna'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 alleging that an entity evaluating its transmission needs could not get the information necessary to complete its evaluation.³⁴ Likewise, Alterna's waiver of the Standards of Conduct will remain in effect unless and until the Commission takes action on a complaint by an entity alleging that Alterna has unfairly used its access to information to unfairly benefit itself or its affiliates.³⁵

2. Other Waivers and Authorizations

28. Alterna 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.

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

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).

³⁵ *Id.* Alterna 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).

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

(continued...)

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

3. Reporting Requirements

30. 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 Alterna must file EQRs electronically with the Commission consistent

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")).

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).

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 Alterna may be subject to refund, civil penalties, and/or revocation of market-based rate authority.⁴³

31. Additionally, Alterna 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

32. 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

33. Alterna represents that it meets the criteria for Category 1 seller status in all regions. Alterna represents that it does not own or control generation capacity in excess of 500 MW in any region. Alterna states that it does not own, operate or control, and is

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.

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.

not affiliated with any entity that owns, operates or controls transmission facilities other than the limited facilities that are necessary to interconnect their generation facilities to the grid. Alterna further represents that it is not affiliated with a franchised public utility in the same region as Alterna's generation assets and does not present any other vertical market power concerns.

34. Based on Alterna's representations, we designate Alterna as a Category 1 seller in all regions. The Commission reserves the right to require an updated market power analysis at any time for any region.⁴⁸

The Commission orders:

(A) Alterna'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) Alterna'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.

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

⁴⁸ See *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 Alterna's issuance of securities or assumptions of liability.

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