

151 FERC ¶ 61,022
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.

Prairie Breeze Wind Energy II LLC

Docket No. ER15-1041-001

ORDER GRANTING MARKET-BASED RATE AUTHORIZATION AND
REQUEST FOR WAIVERS

(Issued April 14, 2015)

1. In this order, we grant Prairie Breeze Wind Energy II LLC (Prairie Breeze II) authority to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates, effective April 15, 2015, as requested. Also, as discussed below, we grant Prairie Breeze II'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 Prairie Breeze II's request for other waivers commonly granted to market-based rate sellers, except as noted herein.
2. Additionally, we find that Prairie Breeze II 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

¹ See *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, at PP 848-850, *clarified*, 121 FERC ¶ 61,260 (2007) (Clarification Order), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g*, Order No. 697-D, 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 February 13, 2015, as amended that same date, pursuant to section 205 of the Federal Power Act (FPA),² Prairie Breeze II 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. Prairie Breeze II states that it will own and operate a 73.39 megawatt (MW) wind-powered energy facility that is currently being constructed near Petersburg, Nebraska (the Facility) in the SPP market. Prairie Breeze II states that the output of the Facility will be sold to Lincoln Electric System pursuant to a long-term power sale agreement.

5. Prairie Breeze II states that it will own interests in limited electric interconnection facilities that are necessary to effectuate Prairie Breeze II's wholesale power sales from the Facility. It states that, through interconnection facilities in which Prairie Breeze II will own interests, the Facility will be interconnected to the transmission facilities and system owned by Nebraska Public Power District, which is operated by SPP. Prairie Breeze II explains that, in order to connect the Facility to the Nebraska Public Power District transmission system, Prairie Breeze II will need access to certain interconnection facilities owned by its affiliate, Prairie Breeze Wind Energy LLC (Prairie Breeze). These consist of 34.5 kilovolt (kV) collection lines and related facilities and a 230 kV collection line substation, transformers and related disconnect switches and facilities that connect to the transmission system owned by Nebraska Public Power District. Prairie Breeze II states that Prairie Breeze and Prairie Breeze II plan to enter a co-tenancy agreement with respect to the joint use and/or ownership by Prairie Breeze and Prairie Breeze II of certain of the interconnection facilities currently owned by Prairie Breeze (the Shared Interconnection Facilities). Prairie Breeze II states that on or after the operative date of the co-tenancy agreement it will have the right to acquire an undivided ownership interest in the Shared Interconnection Facilities. In addition, Prairie Breeze II states that it will also solely own certain interconnection facilities (i.e., 34.5 kV collection lines and related equipment) for its own use that will connect to, but not be part of, the Shared Interconnection Facilities.

² 16 U.S.C. § 824d (2012).

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

6. Prairie Breeze II 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

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).

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).

358¹¹ of the Commission's regulations with respect to the limited interconnection facilities.¹²

7. Prairie Breeze II states that it is wholly owned by IWFNA Development Holdings LLC, which is wholly owned by Invenergy Wind Development North America LLC. Prairie Breeze II further states that Invenergy Wind Development North America LLC is wholly owned by Invenergy Wind LLC. Prairie Breeze II also states that Invenergy Wind Holdings LLC owns the majority equity interests in Invenergy Wind LLC and is wholly owned by Invenergy Investment Company LLC, which is wholly owned by Polsky Energy Investments LLC. Prairie Breeze II further states that Polsky Energy Investments LLC is wholly owned by Polsky Energy Holdings LLC.

8. Prairie Breeze II states that its affiliates own generation outside the SPP market and, with the exception of Prairie Breeze, none of its affiliates owns a 10 percent or greater voting interest in or controls any electric generation facilities within the SPP market.

II. Notice of Filing

9. Notice of Prairie Breeze II's filing, as amended, was published in the *Federal Register*,¹³ with interventions and protests due on or before March 6, 2015. None was filed.

10. Notice of Prairie Breeze II'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 March 10, 2015. None was filed.

¹¹ 18 C.F.R. pt. 358 (2014).

¹² Subsequent to the filing of this application, the Commission issued Order No. 807, which will become effective June 30, 2015. In Order No. 807, the Commission amended its regulations to waive the OATT requirements of section 35.28, the OASIS requirements of Part 37, and the Standards of Conduct requirements of Part 358, under certain conditions, for entities that own interconnection facilities. *Open Access and Priority Rights on Interconnection Customer's Interconnection Facilities*, Order No. 807, 80 Fed Reg. 17654 (Apr. 1, 2015), FERC Stats. & Regs. ¶ 31,367 (2015).

¹³ 80 Fed. Reg. 9709 (2015).

¹⁴ 80 Fed. Reg. 9713 (2015).

III. Discussion

11. As discussed below, we will grant Prairie Breeze II'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 April 15, 2015, as requested.¹⁵ We will also grant Prairie Breeze II's request for certain waivers.

A. Market-Based Rate Authorization

12. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, horizontal and vertical market power.¹⁶

1. Horizontal Market Power

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

14. Prairie Breeze II represents that it will own 73.39 MW of generation capacity in the SPP market. Its affiliate, Prairie Breeze, owns 200.6 MW of generation capacity in the SPP market. Additionally, Prairie Breeze is affiliated with companies that own generation capacity in the MISO market and the Public Service of Colorado balancing authority area, which are first-tier to the SPP market. Prairie Breeze II relies on Westar

¹⁵ We note that Prairie Breeze II 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 Prairie Breeze II 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.

Energy, Inc.'s (Westar) recently accepted market power analysis¹⁹ to demonstrate that Prairie Breeze II passes both the pivotal supplier and the wholesale market share screens for the SPP market, with market shares ranging from 4.47 to 6.42 percent.

15. Accordingly, we find that Prairie Breeze II satisfies the Commission's requirements for market-based rate authority regarding horizontal market power.

2. Vertical Market Power

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

17. In this case, as discussed more fully below, the Commission will grant Prairie Breeze II's request for waiver of the requirement to have an OATT on file for the interconnection facilities.²¹ Prairie Breeze II 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 its affiliates have been granted waiver of the Commission's requirements to file an OATT.

¹⁹ See *Westar Energy, Inc.*, Docket No. ER14-724-000 (February 28, 2014) (delegated letter order). Prairie Breeze II relies on historical data for the SPP market for the study period of December 2011 through November 2012 for the SPP market contained in the Westar pivotal supplier and market share screens study. Prairie Breeze II states that the use of more recent data (i.e., December 2012 through November 2013) would not result in significantly higher market shares because conditions would not change materially over one year. See Clarification Order, 121 FERC ¶ 61,260 at P 12.d.

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). Prairie Breeze II 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).

18. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.²² The Commission requires a seller to provide a description of its ownership or control of, or affiliation with an entity that owns or controls, intrastate natural gas transportation, storage or distribution facilities; sites for generation capacity development; and physical coal supply sources and ownership of or control over who may access transportation of coal supplies (collectively, inputs to electric power production).²³ The Commission also requires sellers to make an affirmative statement that they have not erected barriers to entry into the relevant market and will not erect barriers to entry into the relevant market.²⁴ The Commission adopted a rebuttable presumption that the ownership or control of, or affiliation with any entity that owns or controls, inputs to electric power production does not allow a seller to raise entry barriers but will allow intervenors to demonstrate otherwise.²⁵

19. Regarding other barriers to entry, Prairie Breeze II states that it owns or has rights to the land on which Prairie Breeze II is building the Facility and that its affiliates own or have rights to land in various parts of the United States for generation capacity development. Further, Prairie Breeze II 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, Prairie Breeze II 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 Prairie Breeze II's representations, we find that Prairie Breeze II satisfies the Commission's requirements for market-based rates regarding vertical market power.

B. Waiver Requests

1. OATT, OASIS, and Standards of Conduct

22. Prairie Breeze II 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

²² Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 440.

²³ Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

²⁴ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

²⁵ *Id.* P 446.

transmission facilities. In support, Prairie Breeze II states that its transmission facilities are used only to interconnect Prairie Breeze II to the transmission grid. Prairie Breeze II states that the generator interconnection 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 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.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

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.³⁰

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

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.

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 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 Prairie Breeze II's application, we find that the transmission facilities qualify as limited and discrete. Prairie Breeze II will use the facilities solely to interconnect the Facility to the transmission grid. Accordingly, we will grant Prairie Breeze II 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 Prairie Breeze II 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

27. The Commission will also grant Prairie Breeze II 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 Prairie Breeze II'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, Prairie Breeze II's waiver of the

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 4 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.

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 Prairie Breeze II has unfairly used its access to information to unfairly benefit itself or its affiliates.³⁵

2. Other Waivers and Authorizations

28. Prairie Breeze II 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 Notwithstanding the waiver of the accounting and reporting requirements, the

³⁵ *Id.* Prairie Breeze II 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"))).

Commission expects Prairie Breeze II 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. 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 Prairie Breeze II 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 Prairie Breeze II 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 Market Transparency Provisions of Section 220 of the Federal 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.

31. Additionally, Prairie Breeze II 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. Prairie Breeze II requests Category 1 seller status in the Northwest, Northeast, Southwest, Southeast, Southwest Power Pool and Central regions. Prairie Breeze II represents that it and its affiliates do not own or control more than 500 MW of generation in the Southwest Power Pool region. Prairie Breeze II represents that, with the exception of the interconnection facilities discussed above, it will not own operate or control any transmission facilities in these regions and is not affiliated with anyone that owns, operates or controls transmission facilities in the same region as its generation assets. Prairie Breeze II further represents that it is not affiliated with a franchised public utility in the Southwest Power Pool region. Prairie Breeze II states that there are no vertical market power concerns.

34. Based on Prairie Breeze II's representations, we grant Prairie Breeze II 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

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.

power analysis from any market-based rate seller at any time, including for those sellers that fall within Category 1.⁴⁸

The Commission orders:

(A) Prairie Breeze II's market-based rate tariff is hereby accepted for filing, effective April 15, 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. Prairie Breeze II 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 Prairie Breeze II, 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 Prairie Breeze II's issuance of securities or assumptions of liability.

(F) Prairie Breeze II'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.

⁴⁸ *Id.* P 853.

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