

151 FERC ¶ 61,169
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Red Horse Wind 2, LLC

Docket No. ER15-1066-001

ORDER GRANTING MARKET-BASED RATE AUTHORITY AND REQUEST FOR
WAIVERS

(Issued May 21, 2015)

1. In this order, we grant Red Horse Wind 2, LLC (Red Horse Wind 2) authority to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates, effective April 20, 2015, as requested. Also, as discussed below, we grant Red Horse Wind 2'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 Red Horse Wind 2's request for other waivers commonly granted to market-based rate sellers, except as noted herein.

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

I. Background

3. On February 18, 2015, as amended March 27, 2015, April 17, 2015, and May 4, 2015, pursuant to section 205 of the Federal Power Act (FPA),² Red Horse Wind 2 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. Red Horse Wind 2 states that it is developing and will own and operate a 71 megawatt (MW) wind-powered and solar-powered electric generation facility located in Cochise County, Arizona (Facility). The Facility is interconnected via a 345 kilovolt (kV), 150-foot transmission line (Interconnection Facilities) to Tucson Electric Power Company's electric transmission system within the Tucson Electric Power balancing authority area.

5. Red Horse Wind 2 states that it expects to begin sales of electric energy for testing purposes on or about April 19, 2015. Red Horse Wind 2 also states that the full output of the Facility is committed under a 20-year power purchase agreement with Tucson Electric Power Company.

¹ See *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, at PP 848-850, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010), *aff'd sub nom. Mont. Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011), *cert. denied*, 133 S. Ct. 26 (2012).

² 16 U.S.C. § 824d (2012).

³ Red Horse Wind 2 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., and Southwest Power Pool, Inc. Red Horse Wind 2 also requests authorization to engage in the sale of certain ancillary services as a third-party provider in other markets.

6. Red Horse Wind 2 requests that the Commission grant it waiver of Order Nos. 888,⁴ 889,⁵ 890,⁶ and section 35.28,⁷ and Parts 37⁸ and 358⁹ of the Commission's regulations with respect to the Interconnection Facilities.¹⁰

7. Red Horse Wind 2 states that it is a wholly owned subsidiary of DESRI RH2 Holdings, L.L.C. (DESRI Holdings). The managing member of DESRI Holdings is DESRI Wind Development Holdings, L.L.C. (DESRI Wind), which owns all of the managing interests in DESRI Holdings. DESRI Wind is a wholly owned subsidiary of

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 18 C.F.R. § 35.28 (2014).

⁸ 18 C.F.R. pt. 37 (2014).

⁹ 18 C.F.R. pt. 358 (2014).

¹⁰ 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, FERC Stats. & Regs. ¶ 31,367 (2015).

DESRI Wind Development Holdings, L.L.C. The managing member of DESRI Wind Development Holdings, L.L.C. is DESRI VI Wind Acquisition Holdings, L.L.C. The managing member of DESRI Wind Development Holdings, L.L.C. is DESRI Management Services, L.L.C. (DESRI Management), which is a wholly owned subsidiary of D. E. Shaw Renewable Investments, LLC (DESRI). DESRI is a wholly owned subsidiary of D. E. Shaw & Co., L.P. (DESCO LP). D. E. Shaw & Co., Inc. (DESCO Inc.) is the general partner of DESCO LP. Red Horse Wind 2 identifies an individual as the chairman, president, and sole stockholder of DESCO Inc.

II. Notice of Filings

8. Notice of Red Horse Wind 2's February 18, 2015 filing, as amended March 27, 2015, April 17, 2015, and May 4, 2015, was published in the *Federal Register*,¹¹ with interventions and protests due on or before May 11, 2015. None was filed.

9. Notice of Red Horse Wind 2's request for blanket authorization under Part 34 of the Commission's regulations was separately published in the *Federal Register*,¹² with interventions or protests due on or before March 11, 2015. None was filed.

III. Discussion

10. As discussed below, we will grant Red Horse Wind 2'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 20, 2015, as requested.¹³ We will also grant Red Horse Wind 2's request for certain waivers.

¹¹ 80 Fed. Reg. 9708; 80 Fed. Reg. 18,225; 80 Fed. Reg. 22,732; 80 Fed. Reg. 26,921 (2015).

¹² 80 Fed. Reg. 10,476 (2015).

¹³ We note that Red Horse Wind 2 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 Red Horse Wind 2 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.¹⁴

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.¹⁵ 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.¹⁶

13. Red Horse Wind 2 represents that its generation capacity in the Tucson Electric Power balancing authority area is fully committed under a 20-year power purchase agreement. Further, Red Horse Wind 2 is not affiliated with any other generation capacity located in the Tucson Electric Power balancing authority area. Additionally, Red Horse Wind 2 is not affiliated with any uncommitted generation capacity in any markets first-tier to the Tucson Electric Power balancing authority area. Accordingly, we find that Red Horse Wind 2 satisfies the Commission's requirements for market-based rates regarding horizontal market power.

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.¹⁷

15. In this case, as discussed more fully below, the Commission will grant Red Horse Wind 2's request for waiver of the requirement to have an OATT on file for the Interconnection Facilities.¹⁸ Red Horse Wind 2 represents that it and its affiliates do not

¹⁴ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 62, 399, 408, 440.

¹⁵ *Id.* P 62.

¹⁶ *Id.* PP 33, 62-63.

¹⁷ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408.

¹⁸ A generator lead line is a transmission facility. *See* 16 U.S.C. §§ 796(23), 824(a)-(b) (2012). Red Horse Wind 2 is subject to the requirement under Order Nos. 888 (*continued ...*)

own transmission facilities other than those limited, radial facilities that are necessary to interconnect generation facilities.

16. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.¹⁹ 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).²⁰ 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.²¹ 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.²²

17. Regarding other barriers to entry, Red Horse Wind 2 states that neither Red Horse Wind 2 nor any of its affiliates owns or controls intrastate natural gas transportation, storage, or distribution facilities, or sources of coal supplies or equipment for transporting coal supplies. Red Horse Wind 2's filing includes sites for new generating capacity.²³

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).

¹⁹ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 440.

²⁰ Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

²¹ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

²² *Id.* P 446.

²³ Red Horse Wind 2's May 4, 2015 Filing at 1.

18. Finally, Red Horse Wind 2 affirmatively states that it and its affiliates have not erected, and will not erect, barriers to entry.

19. Based on Red Horse Wind 2's representations, we find that Red Horse Wind 2 satisfies the Commission's requirements for market-based rates regarding vertical market power.

B. Waiver Requests

1. OATT, OASIS, and Standards of Conduct

20. Red Horse Wind 2 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. In support, Red Horse Wind 2 represents that it does not own or control transmission facilities other than the planned Interconnection Facilities, which are discrete, radial interconnection facilities used to interconnect the Facility to the grid.²⁴ Red Horse Wind 2 states that the Interconnection Facilities will be limited and discrete transmission facilities that do not form an integrated transmission grid.

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. Order Nos. 889, 2004,²⁵ and 717²⁶ and Part 358 of the Commission's regulations require

²⁴ Red Horse Wind 2 states that the interconnection facilities will be used to interconnect the Facility to the "TEC" market. However, elsewhere in the filing Red Horse Wind 2 states that the Interconnection Facilities will be used to connect the Facility with the electric transmission system owned and operated by Tucson Electric Power Company within the Tucson Electric Power balancing authority area. The reference to "TEC" appears to be a typographical error.

²⁵ *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); *see also Standards of Conduct for Transmission Providers*, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,611 (2007); Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,630 (2008) .

public utilities to abide by certain Standards of Conduct.²⁷ In prior orders, the Commission has enunciated the standards for exemption from some or all of the requirements of Order Nos. 888, 889, and 890.²⁸ 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 889.²⁹ Order No. 717 did not change those criteria.³⁰

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.³¹

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

²⁶ *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).

²⁷ 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.

²⁸ *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*).

²⁹ *See Alcoa Power Generating Inc. (Long Sault Division)*, 120 FERC ¶ 61,035, at P 3 (2007); *Alcoa Power Generating Inc.*, 108 FERC ¶ 61,243, at P 27 (2004).

³⁰ *See* Order No. 717, FERC Stats. & Regs. ¶ 31,280 at PP 31-33.

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

circumstances are present that indicate that a waiver would not be justified.³² 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).³³

24. Based on the statements in Red Horse Wind 2's application, we find that the Interconnection Facilities qualify as limited and discrete. Red Horse Wind 2 will use the facilities solely to interconnect the Facility to the transmission grid. Accordingly, we will grant Red Horse Wind 2 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 Red Horse Wind 2 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.³⁴

25. The Commission will also grant Red Horse Wind 2 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 Red Horse Wind 2'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.³⁵ Likewise, Red Horse Wind 2's waiver of the Standards of Conduct will remain in effect until the Commission takes action on a

³² *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.

³³ *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*)).

³⁴ *Black Creek*, 77 FERC ¶ 61,232 at 61,941.

³⁵ *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).

complaint by an entity that Red Horse Wind 2 has unfairly used its access to information to unfairly benefit itself or its affiliates.³⁶

2. Other Waivers and Authorizations

26. Red Horse Wind 2 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 FPA³⁷ 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.³⁸ Notwithstanding the waiver of the accounting and reporting requirements, the

³⁶ *Id.* Red Horse Wind 2 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).

³⁷ 16 U.S.C. § 824c (2012).

³⁸ 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 Red Horse Wind 2 to keep its accounting records in accordance with generally accepted accounting principles.

C. Reporting Requirements

28. An entity with market-based rate authorization must file an Electric Quarterly Report (EQR) with the Commission, consistent with Order Nos. 2001³⁹ and 768,⁴⁰ to fulfill its responsibility under FPA section 205(c)⁴¹ to have rates on file in a convenient form and place.⁴² Red Horse Wind 2 must file EQRs electronically with the Commission consistent with the procedures set forth in Order No. 770.⁴³ Failure to timely and accurately file an EQR is a violation of the Commission's regulations for which Red Horse Wind 2 may be subject to refund, civil penalties, and/or revocation of market-based rate authority.⁴⁴

³⁹ *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).

⁴⁰ *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).

⁴¹ 16 U.S.C. § 824d(c) (2012).

⁴² *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).

⁴³ Order No. 770, FERC Stats. & Regs. ¶ 31,338.

⁴⁴ 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, Red Horse Wind 2 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.⁴⁵

30. In Order No. 697, the Commission created two categories of sellers.⁴⁶ 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.⁴⁷ Sellers that do not fall into Category 1 are designated as Category 2 sellers and are required to file updated market power analyses.⁴⁸

31. Red Horse Wind 2 represents that it meets the criteria for Category 1 seller status in all regions. Red Horse Wind 2 represents that it and its affiliates do not own or control generation capacity in excess of 500 MW in any region. Red Horse Wind 2 states that it does not own, operate or control, and is 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. Red Horse Wind 2 further represents that it is not affiliated with a franchised public utility in the same region as Red Horse Wind 2's generation assets and does not present any other vertical market power concerns.

32. Based on Red Horse Wind 2's representations, we designate Red Horse Wind 2 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.⁴⁹

⁴⁵ *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).

⁴⁶ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 848.

⁴⁷ 18 C.F.R. § 35.36(a) (2014).

⁴⁸ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 850.

⁴⁹ *Id.* P 853.

The Commission orders:

(A) Red Horse Wind 2's market-based rate tariff is hereby accepted for filing, effective April 20, 2015, 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. Red Horse Wind 2 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 Red Horse Wind 2, 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 Red Horse Wind 2's issuance of securities or assumptions of liability.

(F) Red Horse Wind 2'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.

(G) Red Horse Wind 2 is hereby required to file EQRs in compliance with Order Nos. 2001 and 768. If the effective date of Red Horse Wind 2's market-based rate tariff falls within a quarter of the year that has already expired, Red Horse Wind 2's EQRs for the expired quarter are due within 30 days of the date of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.