

151 FERC ¶ 61,203  
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.

Tonopah Solar Energy, LLC

Docket No. ER15-697-001

ORDER GRANTING MARKET-BASED RATE AUTHORIZATION AND REQUEST  
FOR WAIVERS AND PROVIDING CLARIFICATION

(Issued June 5, 2015)

1. In this order, we grant Tonopah Solar Energy, LLC (Tonopah) authority to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates, effective February 21, 2015, as requested. Also, as discussed below, we grant Tonopah'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 Tonopah's request for other waivers commonly granted to market-based rate sellers, except as noted herein. Additionally, we find that Tonopah meets the criteria for a Category 1 seller in all regions and is so designated.<sup>1</sup> Finally, we provide clarification on how applicants should calculate ownership interests in downstream, partially owned entities for purposes of identifying affiliates.

**I. Background**

2. On December 22, 2014, as amended on February 13, 2015 (February 13 Amendment) and April 8, 2015, pursuant to section 205 of the Federal Power Act (FPA),<sup>2</sup> Tonopah filed an application for market-based rate authority with an

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

<sup>2</sup> 16 U.S.C. § 824d (2012).

accompanying tariff providing for the sale of electric energy, capacity, and ancillary services at market-based rates.<sup>3</sup>

3. Tonopah states that it is constructing and will own and operate a 125 megawatt (MW) concentrating thermal generation project and associated facilities and equipment that will be located in Nye County, Nevada (Project). Tonopah further states that it will own an approximately nine mile, 230 kilovolt transmission line consisting of limited, discrete facilities constructed for the purpose of delivering the output of the Project to the transmission facilities and system owned and operated by Nevada Power Company d/b/a NV Energy (Nevada Power).

4. Additionally, Tonopah requests that the Commission waive the requirements under Order Nos. 888<sup>4</sup> and 890<sup>5</sup> and section 35.28 of the Commission's regulations<sup>6</sup> to file an OATT, the requirements under Order No. 889<sup>7</sup> and Part 37 of the Commission's

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<sup>3</sup> Tonopah 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. (CAISO), Midcontinent Independent System Operator, Inc., and Southwest Power Pool, Inc. Tonopah also requests authorization to engage in the sale of certain ancillary services as a third-party provider.

<sup>4</sup> *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

<sup>5</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

<sup>6</sup> 18 C.F.R. § 35.28 (2014).

<sup>7</sup> *Open Access Same-Time Information System and Standards of Conduct*, Order No. 889, FERC Stats. & Regs. ¶ 31,035 (1996), *order on reh'g*, Order No. 889-A, FERC Stats. & Regs. ¶ 31,049, *reh'g denied*, Order No. 889-B, 81 FERC ¶ 61,253 (1997).

regulations<sup>8</sup> to establish an OASIS, and the requirements under Order Nos. 889, 2004,<sup>9</sup> and 717,<sup>10</sup> and Part 358 of the Commission's regulations<sup>11</sup> to comply with the Standards of Conduct with respect to the limited interconnection facilities.<sup>12</sup>

5. Tonopah states that it is a direct, wholly owned subsidiary of Tonopah Solar Energy Holdings II, LLC, which is a direct, wholly owned subsidiary of Tonopah Solar Energy I LLC (Tonopah Holdings I). Tonopah Solar Investments, LLC (Tonopah Investments) directly owns approximately 73.2 percent of the membership interests in, and is the managing member of, Tonopah Holdings I. Tonopah Solar I, LLC (Tonopah Solar I) directly owns the remaining approximately 26 percent interests in Tonopah Holdings I. Tonopah represents that Tonopah Solar I is a passive investor because it has only limited consent and veto rights necessary to protect its financial investment but does

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<sup>8</sup> 18 C.F.R. pt. 37 (2014).

<sup>9</sup> *Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs. ¶ 31,155 (2003), *order on reh'g*, Order No. 2004-A, FERC Stats. & Regs. ¶ 31,161, *order on reh'g*, Order No. 2004-B, FERC Stats. & Regs. ¶ 31,166, *order on reh'g*, Order No. 2004-C, FERC Stats. & Regs. ¶ 31,172 (2004), *order on reh'g*, Order No. 2004-D, 110 FERC ¶ 61,320 (2005), *vacated and remanded as it applies to natural gas pipelines sub nom. National Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831 (D.C. Cir. 2006); *see Standards of Conduct for Transmission Providers*, Order No. 690, FERC Stats. & Regs. ¶ 31,237, *order on reh'g*, Order No. 690-A, FERC Stats. & Regs. ¶ 31,243 (2007); *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).

<sup>10</sup> *Standards of Conduct for Transmission Providers*, Order No. 717, FERC Stats. & Regs. ¶ 31,280 (2008), *order on reh'g*, Order No. 717-A, FERC Stats. & Regs. ¶ 31,297, *order on reh'g*, Order No. 717-B, 129 FERC ¶ 61,123 (2009), *order on reh'g*, Order No. 717-C, 131 FERC ¶ 61,045 (2010), *order on reh'g*, Order No. 717-D, 135 FERC ¶ 61,017 (2011).

<sup>11</sup> 18 C.F.R. pt. 358 (2014).

<sup>12</sup> 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).

not have the ability to direct day-to-day operations of Tonopah Holdings I or Tonopah.<sup>13</sup> Tonopah claims that Tonopah Solar I's equity interests should not be considered to be voting securities.

## II. Notice of Filings

6. Notices of Tonopah's filings were published in the *Federal Register*,<sup>14</sup> with interventions and protests due on or before April 17, 2015. None was filed.

7. Notice of Tonopah's request for blanket authorization under Part 34 of the Commission's regulations was separately published in the *Federal Register*,<sup>15</sup> with interventions or protests due on or before January 26, 2015. None was filed.

## III. Discussion

8. As discussed below, we will grant Tonopah'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 February 21, 2015, as requested.<sup>16</sup> We will also grant Tonopah's request for certain waivers.

### A. Ownership Share Calculation and Affiliate Definition

9. Although we grant Tonopah's request for authorization to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates, as discussed below, we take this opportunity to provide clarification on how applicants should calculate ownership interests in downstream, partially owned entities for purposes of identifying affiliates. Tonopah states that one of its upstream owners, SolarReserve LLC (SolarReserve), indirectly owns 100 percent of the voting securities of SolarReserve CSP

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<sup>13</sup> Tonopah's upstream owners are discussed further below.

<sup>14</sup> 79 Fed. Reg. 78,846 (2014); 80 Fed. Reg. 9708 (2015); 80 Fed. Reg. 19,979 (2015).

<sup>15</sup> 80 Fed. Reg. 1404 (2015).

<sup>16</sup> We note that Tonopah 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 Tonopah 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).

Holdings, LLC, which in turn owns 50 percent of the voting securities of Tonopah Investments, which in turn ultimately owns 100 percent of the voting securities of Tonopah. In its February 13 Amendment, Tonopah identified a list of owners of SolarReserve and their respective direct percentage ownership interests in SolarReserve. Two of these owners have a greater than 10 percent voting interest in SolarReserve. However, Tonopah argues that these owners have a less than 10 percent indirect ownership interest in Tonopah and should not be deemed affiliates of Tonopah.

10. Under the Commission's regulations, an affiliate of a specified company includes any person that "directly or indirectly owns, controls, or holds with power to vote, 10 percent or more of the outstanding voting securities of the specified company."<sup>17</sup> Tonopah contends that the affiliate definition specifically states that indirect ownership of Tonopah is determined by reference to an entity that owns 10 percent or more of Tonopah's voting securities. Thus, Tonopah argues that applying the plain language of the rule as to the calculation of indirect ownership interests that the owners of SolarReserve indirectly hold in Tonopah, the math is straightforward (i.e., the product of each owner's direct voting security interests in SolarReserve and SolarReserve's 50 percent indirect voting security interest in Tonopah) and shows that each of the owners of SolarReserve (including the two that directly own at least 10 percent of SolarReserve) indirectly holds less than 10 percent of the voting securities in Tonopah.

11. We do not accept Tonopah's method of deriving ownership interests in downstream partially owned entities for purposes of identifying affiliates. It would effectively exclude indirect control from the Commission's definition of what constitutes an affiliate. This is best illustrated through an example that Tonopah itself cites in its application.<sup>18</sup> Consider a company (Company A) that owns 60 percent of the voting securities of an applicant. Company A is owned by four successive upstream companies (B, C, D, and E) each holding interests of 60 percent in the company below it (e.g., B holds 60 percent of A, C holds 60 percent of B). In this example, under Tonopah's method for deriving ownership interests, Company E would only have an eight percent indirect voting interest in the applicant.<sup>19</sup> The Commission's affiliate definition is framed not only in terms of ownership but also in terms of control. Company E could still indirectly control more than 10 percent of the voting securities of the applicant given its control over the voting securities of Company D, Company D's control over the voting securities of Company C, and so forth down the chain. By indirectly controlling more

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<sup>17</sup> 18 C.F.R. § 35.36(a)(9)(i) (2014).

<sup>18</sup> February 13 Amendment at 5.

<sup>19</sup> Company B would own 36 percent (.6 x .6) of Company A; Company C would own 22 percent (.6 x .36) of Company A; Company D would own 13 percent (.216 x .6) of Company A; and Company E would own 8 percent (.1296 x .6) of Company A.

than 10 percent of the securities of the applicant, Company E objectively satisfies the plain language of the Commission's affiliate definition in section 35.36(a)(9)(i) of the Commission's regulations.

12. Further, we note that Tonopah's proposed calculation of ownership interests in downstream, partially owned entities has been rejected in *Central Vermont Public Service Corporation*.<sup>20</sup> In that case, an applicant seeking authorization under section 203 of the FPA reported that one of the relevant upstream owners (Caisse de dépôt et placement du Quebec (Caisse)) held a 25.9 percent ownership interest in Gaz Métro LP based on multiplying its 59.65 percent interest in a subsidiary by that subsidiary's less than 100 percent interest in Gaz Métro LP. The Commission characterized Caisse's 25.9 percent indirect equity interest in Gaz Métro LP as a "derivative share" interest and stated that it "does not recognize this method of deriving ownership interests in downstream, partially owned entities for purposes of section 203 of the FPA or the Public Utility Holding Company Act of 2005 [(PUHCA 2005)]."<sup>21</sup> Tonopah argues that this case is not relevant because it did not address the Commission's definition of an affiliate under its market-based rate rules but instead focused exclusively on the definition of a holding company under PUHCA 2005. We find that the Commission's approach in *Central Vermont* is relevant in this context as well. Accordingly, we clarify that if an upstream owner owns at least 10 percent of any downstream holding company that, in turn, directly or indirectly owns at least 10 percent of an applicant, such upstream owner indirectly holds more than 10 percent of the voting securities of the applicant and is deemed to be an affiliate of the applicant.

## **B. Market-Based Rate Authorization**

13. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, horizontal and vertical market power.<sup>22</sup>

### **1. Horizontal Market Power**

14. The Commission has adopted two indicative screens for assessing horizontal market power: the pivotal supplier screen and the wholesale market share screen.<sup>23</sup> The Commission has stated that passage of both screens establishes a rebuttable presumption

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<sup>20</sup> *Central Vermont Public Service Corporation*, 138 FERC ¶ 61,161 (2012) (Central Vermont).

<sup>21</sup> *Id.* P 9 n.8 (citing 42 U.S.C. § 16451 et seq.).

<sup>22</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 62, 399, 408, 440.

<sup>23</sup> *Id.* P 62.

that the applicant does not possess horizontal market power, while failure of either screen creates a rebuttable presumption that the applicant has horizontal market power.<sup>24</sup>

15. Tonopah represents that the entire output of the Project is committed under a long-term power sales agreement to Nevada Power. In addition, the only other generation affiliated with Tonopah in the relevant geographic market is a 10 MW geothermal qualifying facility (QF) located in the CAISO market, which is also fully committed under a long-term power sales agreement with Pacific Gas and Electric Company. Based on these representations, we find that Tonopah satisfies the Commission's requirements for market-based rates 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.<sup>25</sup>

17. In this case, as discussed more fully below, the Commission will grant Tonopah's request for waiver of the requirement to have an OATT on file for the interconnection facilities used to interconnect the Project to the Nevada Power transmission grid. Tonopah represents that neither Tonopah nor its affiliates own transmission facilities other than those limited and discrete interconnection facilities needed to deliver the power from their respective generating facilities to their respective power purchasers.<sup>26</sup>

18. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.<sup>27</sup> The Commission requires a seller to provide a description of its ownership or control of, or affiliation with an entity that owns or controls, intrastate natural gas transportation, intrastate natural gas storage or distribution facilities; sites for new generation capacity development; and physical coal supply sources and ownership of or control over who may access transportation of coal supplies (collectively, inputs to electric power production).<sup>28</sup> The Commission also requires sellers to make an affirmative statement that they have not erected barriers to entry into

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<sup>24</sup> *Id.* PP 33, 62-63.

<sup>25</sup> *Id.* P 408.

<sup>26</sup> Tonopah requests waiver of the Commission's open access requirements with respect to the interconnection facilities.

<sup>27</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 440.

<sup>28</sup> Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

the relevant market and will not erect barriers to entry into the relevant market.<sup>29</sup> The Commission adopted a rebuttable presumption that the ownership or control of, or affiliation with any entity that owns or controls, inputs to electric power production does not allow a seller to raise entry barriers but will allow intervenors to demonstrate otherwise.<sup>30</sup>

19. Regarding other barriers to entry, Tonopah states that its affiliate upstream owners, USRG Power & Biofuel Fund II, L.P., and USRG Power & Biofuels Fund II-A, L.P., indirectly own a partial-ownership interest in Gulfstar Energy Group, LLC (Gulfstar) and Viking Gas Pipeline LLC (Viking), which own and operate approximately 100 miles of intrastate natural gas pipeline and gathering system located in Kentucky. With the exception of Gulfstar and Viking, Tonopah states that neither it nor its affiliates owns or controls intrastate natural gas transportation, intrastate natural gas storage or distribution facilities, sites for generation capacity development, physical coal supply sources. Tonopah further states that neither it nor its affiliates has control over who may access transportation of coal supplies.

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

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

### C. Waiver Requests

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

22. Tonopah 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, Tonopah represents that the interconnection facilities consist of discrete interconnection facilities constructed for the purposes of delivering the output of the Project to the Nevada Power transmission system. Tonopah states that the interconnection facilities do not form an integrated transmission grid.

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

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<sup>29</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

<sup>30</sup> *Id.* P 446.

public utilities to abide by certain Standards of Conduct.<sup>31</sup> In prior orders, the Commission has enunciated the standards for exemption from some or all of the requirements of Order Nos. 888, 889, and 890.<sup>32</sup> The Commission has stated that the criteria for waiver of the requirements of Order No. 890 and Order No. 2004 are unchanged from those used to evaluate requests for waiver under Order Nos. 888 and 889.<sup>33</sup> Order No. 717 did not change those criteria.<sup>34</sup>

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.<sup>35</sup>

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 transmission facilities (rather than an integrated transmission grid); or (2) is a small public utility that owns, operates, or controls an integrated transmission grid, unless other circumstances are present that indicate that a waiver would not be justified.<sup>36</sup> The

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<sup>31</sup> Order No. 889, FERC Stats. & Regs. ¶ 31,035 at 31,590; Order No. 2004, FERC Stats. & Regs. ¶ 31,155 at P 16; Order No. 717, FERC Stats. & Regs. ¶ 31,280 at P 313.

<sup>32</sup> See, e.g., *Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232, at 61,941 (1996) (*Black Creek*); *Entergy Mississippi, Inc.*, 112 FERC ¶ 61,228, at P 22 (2005) (*Entergy*).

<sup>33</sup> 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).

<sup>34</sup> See Order No. 717, FERC Stats. & Regs. ¶ 31,280 at PP 31-33.

<sup>35</sup> *Black Creek*, 77 FERC ¶ 61,232 at 61,941.

<sup>36</sup> *Id.* Although the Commission originally precluded waiver of the requirements for OASIS and the Standards of Conduct for a small public utility that is a member of a tight power pool, in *Black Hills Power, Inc.*, 135 FERC ¶ 61,058, at PP 2-3 (2011) (*Black Hills*), the Commission explained that membership in a tight power pool is no longer a factor in the determination for waiver of Standards of Conduct. Moreover, *Black Hills* did not affect waivers based on a public utility disposing of no more than 4 million megawatt-hours annually.

Commission has held that waiver of Order No. 889 will remain in effect until the Commission takes action in response to a complaint to the Commission that an entity evaluating its transmission needs could not get the information necessary to complete its evaluation (for OASIS waivers) or an entity complains that the public utility has unfairly used its access to information about transmission to benefit the utility or its affiliate (for Standards of Conduct waivers).<sup>37</sup>

26. Based on the statements in Tonopah's application, we find that its interconnection facilities qualify as limited and discrete. Tonopah will use the facilities solely to interconnect the Project to the transmission grid. Accordingly, we will grant Tonopah 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 Tonopah receives a request for transmission service, it must file with the Commission a *pro forma* OATT within 60 days of the date of the request.<sup>38</sup>

27. The Commission will also grant Tonopah 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 with respect to Standards of Conduct. We note that Tonopah's waiver of the requirement to establish an OASIS will remain in effect until the Commission takes action in response to a complaint to the Commission that an entity evaluating its transmission needs could not get the information necessary to complete its evaluation.<sup>39</sup> Likewise, Tonopah's waiver of the Standards of Conduct will remain in effect unless and until the Commission takes action on a complaint by an entity that Tonopah has unfairly used its access to information to unfairly benefit itself or its affiliates.<sup>40</sup>

## 2. Other Waivers and Authorizations

28. Tonopah 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,

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<sup>37</sup> *Entergy*, 112 FERC ¶ 61,228 at P 23 (citing *Central Minnesota Municipal Power Agency*, 79 FERC ¶ 61,260, at 62,127 (1997) (*Central Minnesota*); *Easton Utils. Comm'n*, 83 FERC ¶ 61,334, at 62,343 (1998) (*Easton*)).

<sup>38</sup> *Black Creek*, 77 FERC ¶ 61,232 at 61,941.

<sup>39</sup> *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).

<sup>40</sup> *Id.* Tonopah 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).

except sections 35.12(a), 35.13(b), 35.15, and 35.16; (2) waiver of the accounting and other requirements of Parts 41, 101, and 141 of the Commission's regulations, except sections 141.14 and 141.15; and (3) blanket approval under section 204 of the FPA<sup>41</sup> 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.<sup>42</sup> Notwithstanding the waiver of the accounting and reporting requirements, the Commission expects Tonopah to keep its accounting records in accordance with generally accepted accounting principles.

#### **D. Reporting Requirements**

30. An entity with market-based rate authorization must file an Electric Quarterly Report (EQR) with the Commission, consistent with Order Nos. 2001<sup>43</sup> and 768,<sup>44</sup> to

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<sup>41</sup> 16 U.S.C. § 824c (2012).

<sup>42</sup> We note that the Commission has examined and approved the continued applicability of the waiver of its accounting and reporting requirements in Parts 41, 101, and 141 of the Commission's regulations, as well as the continued applicability of the blanket authorization for the issuance of securities and the assumption of liabilities in Part 34 of the Commission's regulations. *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 984-985 (regarding waiver of Parts 41, 101, and 141) and PP 999-1000 (regarding blanket approval under Part 34). However, waiver of the provisions of Part 101 that apply to hydropower licensees is not granted with respect to licensed hydropower projects. Hydropower licensees are required to comply with the requirements of the Uniform System of Accounts pursuant to 18 C.F.R. Part 101 to the extent necessary to carry out their responsibilities under Part I of the FPA. We further note that a licensee's status as a market-based rate seller under Part II of the FPA does not exempt it from its accounting responsibilities as a licensee under Part I of the FPA. *See Seneca Gen., LLC*, 145 FERC ¶ 61,096, at P 23 n.20 (2013) (citing *Trafalgar Power Inc.*, 87 FERC ¶ 61,207, at 61,798 (1999) (noting that "all licensees are required to comply with the requirements of the Uniform System of Accounts to the extent necessary to carry out their responsibilities under [s]ections 4(b), 10(d) and 14 of the FPA")).

<sup>43</sup> *Revised Public Utility Filing Requirements*, Order No. 2001, FERC Stats. & Regs. ¶ 31,127, *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reh'g denied*, Order No. 2001-B, 100 FERC ¶ 61,342, *order directing filing*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002), *order directing filing*, Order No. 2001-D, 102 FERC ¶ 61,334, *order refining filing requirements*, Order No. 2001-E, 105 FERC ¶ 61,352 (2003), *order on clarification*, Order No. 2001-F, 106 FERC ¶ 61,060 (2004), *order revising filing requirements*, Order No. 2001-G, 120 FERC ¶ 61,270, *order on reh'g and*

fulfill its responsibility under section 205(c) of the FPA<sup>45</sup> to have rates on file in a convenient form and place.<sup>46</sup> Tonopah must file EQRs electronically with the Commission consistent with the procedures set forth in Order No. 770.<sup>47</sup> Failure to timely and accurately file an EQR is a violation of the Commission's regulations for which Tonopah may be subject to refund, civil penalties, and/or revocation of market-based rate authority.<sup>48</sup>

31. Additionally, Tonopah must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.<sup>49</sup>

32. In Order No. 697, the Commission created two categories of sellers.<sup>50</sup> Category 1 sellers are not required to file regularly scheduled updated market power analyses. Category 1 sellers are wholesale power marketers and wholesale power producers that own or control 500 MW or less of generation in aggregate per region; that do not own, operate, or control transmission facilities other than limited equipment necessary to connect individual generation facilities to the transmission grid (or have been granted waiver of the requirements of Order No. 888); that are not affiliated with anyone that

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*clarification*, Order No. 2001-H, 121 FERC ¶ 61,289 (2007), *order revising filing requirements*, Order No. 2001-I, FERC Stats. & Regs. ¶ 31,282 (2008).

<sup>44</sup> *Electricity Mkt. Transparency Provisions of Section 220 of the Fed. Power Act*, Order No. 768, FERC Stats. & Regs. ¶ 31,336 (2012), *order on reh'g*, Order No. 768-A, 143 FERC ¶ 61,054 (2013).

<sup>45</sup> 16 U.S.C. § 824d(c) (2012).

<sup>46</sup> *See Revisions to Electric Quarterly Report Filing Process*, Order No. 770, FERC Stats. & Regs. ¶ 31,338, at P 3 (2012) (citing Order No. 2001, FERC Stats. & Regs. ¶ 31,127 at P 31).

<sup>47</sup> Order No. 770, FERC Stats. & Regs. ¶ 31,338.

<sup>48</sup> The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2014). Forfeiture of market-based rate authority may require a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

<sup>49</sup> *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005); 18 C.F.R. § 35.42 (2014).

<sup>50</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 848.

owns, operates, or controls transmission facilities in the same region as the seller's generation assets; that are not affiliated with a franchised public utility in the same region as the seller's generation assets; and that do not raise other vertical market power issues.<sup>51</sup> Sellers that do not fall into Category 1 are designated as Category 2 sellers and are required to file updated market power analyses.<sup>52</sup>

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

34. Based on Tonopah's representations, we grant Tonopah Category 1 seller status in all regions. The Commission reserves the right to require an updated analysis at any time for any region.<sup>53</sup>

The Commission orders:

(A) Tonopah's market-based rate tariff is hereby accepted for filing, effective February 21, 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. Tonopah is hereby authorized to issue securities and assume obligations or liabilities as guarantor,

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<sup>51</sup> 18 C.F.R. § 35.36(a) (2014).

<sup>52</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 850.

<sup>53</sup> *Id.* P 853.

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 Tonopah, 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 Tonopah's issuance of securities or assumptions of liability.

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