

151 FERC ¶ 61,202
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.

Blue Sky West, LLC

Docket No. ER15-1471-000

ORDER GRANTING MARKET-BASED RATE AUTHORIZATION AND
REQUEST FOR WAIVERS

(Issued June 5, 2015)

1. In this order, we grant Blue Sky West, LLC (Blue Sky West) authority to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates, effective June 1, 2015, as requested. As discussed below, we grant Blue Sky West'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 Blue Sky West's request for other waivers commonly granted to market-based rate sellers, except as noted herein.
2. Additionally, we find that Blue Sky West meets the criteria for Category 2 seller status in the Northeast region and Category 1 seller status in all other regions and is so designated.¹

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

I. Background

3. On April 7, 2015, as amended on April 30, 2015 (April 30 Amendment), pursuant to section 205 of the Federal Power Act (FPA),² Blue Sky West 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. Blue Sky West states that it is constructing and will own and operate a 186 megawatt (MW) wind-powered electric generation facility (Facility) in ISO-NE. Blue Sky West represents that it has entered into long-term power purchase agreements to sell the entire output of the Facility to unaffiliated third parties.

5. Blue Sky West states that the Facility will include 34.5 kilovolt (kV) electrical connector lines and an approximately 17 mile, 115 kV generator lead line that it will use to connect its generation facilities to the ISO-NE-controlled transmission grid. In its April 30 Amendment, Blue Sky West requests that the Commission waive the requirements under Order Nos. 888⁴ and 890⁵ and their implementing regulations at

² 16 U.S.C. § 824d (2012).

³ Blue Sky West requests authorization to sell ancillary services in the markets administered by the California Independent System Operator Corp., New York Independent System Operator, Inc. (NYISO), ISO New England Inc. (ISO-NE), PJM Interconnection, L.L.C., and Midcontinent Independent System Operator, Inc. Blue Sky West also requests authorization to engage in the sale of certain ancillary services as a third-party provider in other markets.

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 *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).

section 35.28⁶ to file an OATT, the requirements under Order No. 889⁷ and Part 37 of the Commission's regulations⁸ to establish an OASIS, and the requirements under Order Nos. 889, 2004,⁹ and 717,¹⁰ and Part 358 of the Commission's regulations¹¹ to comply with the Standards of Conduct with respect to the limited interconnection facilities.¹²

⁶ 18 C.F.R. § 35.28 (2014).

⁷ *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).

⁸ 18 C.F.R. pt. 37 (2014).

⁹ *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).

¹⁰ *Standards of Conduct for Transmission Providers*, Order No. 717, FERC Stats. & Regs. ¶ 31,280 (2008), *order on reh'g*, Order No. 717-A, 129 FERC ¶ 61,043, 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).

¹¹ 18 C.F.R. pt. 358 (2014).

¹² In Order No. 807, which will become effective June 30, 2015, 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). Although Blue Sky West's interconnection facilities will not be energized prior to the effective date of Order No. 807, the requested

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6. Blue Sky West is a wholly owned, indirect subsidiary of SunEdison, Inc., which is a publicly traded company that develops wind and solar energy projects and sells photovoltaic energy solutions.¹³ Blue Sky West represents that it and its affiliates will own or control approximately 491 MW of generation capacity in the ISO-NE market, and are affiliated with approximately 180 MW of generation capacity in the NYISO market and 42 MW of generation capacity in the balancing authority area operated by New Brunswick Power Corporation's Transmission and System Operator, which are both first-tier to the ISO-NE market.

II. Notice of Filings

7. Notices of Blue Sky West's filings were published in the *Federal Register*¹⁴ with interventions and protests due on or before May 11, 2015. None was filed.

8. Notice of Blue Sky West's request for blanket authorization under Part 34 of the Commission's regulations was separately published in the *Federal Register*, 80 Fed. Reg. 22,171 (2015), with interventions and protests due on or before March 23, 2015. None was filed.

III. Discussion

9. As discussed below, we will grant Blue Sky West's request for authorization to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates,¹⁵ and we will accept its market-based rate tariff, effective June 1, 2015, as requested. We will also grant Blue Sky West's request for certain waivers.

effective date for its market-based rate tariff precedes the Order No. 807 effective date. Therefore, in its April 30 amendment, Blue Sky West requested waiver of the OATT, OASIS, and Standards of Conduct requirements.

¹³ Blue Sky West asserts that the intermediary holding companies disclosed in the application do not own, operate, or control any other interests in the energy industry.

¹⁴ 80 Fed. Reg. 19,979 (2015); 80 Fed. Reg. 27,302 (2015).

¹⁵ We note that Blue Sky West 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 Blue Sky West 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

10. 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

11. 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

12. Blue Sky West relies on AV Solar Ranch 1, LLC's (AV Solar) recently accepted market power analysis¹⁹ to demonstrate that Blue Sky West passes both the pivotal supplier and the wholesale market share screens for the ISO-NE market with market shares ranging from 5.1 to 7.3 percent. Based on Blue Sky West's representations, we find that Blue Sky West satisfies the Commission's requirements for market-based rates regarding horizontal market power.

2. Vertical Market Power

13. 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

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.

¹⁹ *See AV Solar Ranch 1 LLC*, 148 FERC ¶ 61,102 (2014). Blue Sky West relies on historical data for the ISO-NE market for the study period of December 2011 through November 2012 in the AV Solar pivotal supplier and market share screens study. Blue Sky West 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.

14. Blue Sky West states that neither it nor its affiliates own transmission facilities other than limited equipment necessary to connect individual generating facilities to the transmission grid. In this case, as discussed more fully below, the Commission will grant Blue Sky West's request for waiver of the requirement to have an OATT on file for the interconnection facilities used to interconnect the Facility to the transmission system.

15. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.²¹ 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).²² 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.²³ 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.²⁴

16. Regarding other barriers to entry, Blue Sky West states that neither it nor any of its affiliates owns or controls intrastate natural gas transportation, storage or distribution facilities or physical coal supplies, such as barges and rail cars. Blue Sky West states that it is affiliated with entities that own or control sites for generation capacity development but further represents that these sites do not cause any entry barrier concerns.²⁵

²¹ *Id.* P 440.

²² Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

²³ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

²⁴ *Id.* P 446.

²⁵ Blue Sky West notes that its affiliates have previously filed quarterly reports at the Commission listing sites for generation capacity development in accordance with Order No. 697-C and Blue Sky West commits to make any necessary quarterly reports in the future.

17. In addition, consistent with Order No. 697, Blue Sky West affirmatively states that it and its affiliates have not erected, and will not erect, barriers to entry in the relevant market.

18. Based on Blue Sky West's representations, we find that Blue Sky West satisfies the Commission's requirements for market-based rates regarding vertical market power.

B. Waiver Requests

1. OATT, OASIS, and Standards of Conduct

19. Blue Sky West 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, Blue Sky West represents that the interconnection line and associated equipment described in its application are limited and discrete transmission facilities that do not form an integrated transmission grid.

20. 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 and 889.²⁷ 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

21. 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

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.

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

22. 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.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

23. Based on the statements in Blue Sky West's application, we find that its interconnection facilities qualify as limited and discrete. Blue Sky West will use the facilities solely to interconnect the Facility to the ISO-NE-controlled transmission system. Accordingly, we will grant Blue Sky West 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 Blue Sky West

³⁰ *Black Creek*, 77 FERC ¶ 61,232 at 61,941.

³¹ *Id.* Although the Commission originally precluded waiver of the requirements for OASIS and the Standards of Conduct for a small public utility that is a member of a tight power pool, in *Black Hills Power, Inc.*, 135 FERC ¶ 61,058, at PP 2-3 (2011) (*Black Hills*), the Commission explained that membership in a tight power pool is no longer a factor in the determination for waiver of Standards of Conduct. Moreover, *Black Hills* did not affect waivers based on a public utility disposing of no more than 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*)).

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

24. The Commission will also grant Blue Sky West 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 Blue Sky West'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, Blue Sky West'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 Blue Sky West has unfairly used its access to information to unfairly benefit itself or its affiliates.³⁵

2. Other Waivers and Authorizations

25. Blue Sky West also requests the following waivers and authorizations: (1) waiver of the filing requirements of subparts B and C of Part 35 of the Commission's regulations, except sections 35.12(a), 35.13(b), 35.15, and 35.16; (2) waiver of the accounting and other requirements of Parts 41, 101, and 141 of the Commission's regulations, except sections 141.14 and 141.15; and (3) blanket approval under section 204 of the FPA³⁶ and Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability.

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

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).

³⁵ *Id.* Blue Sky West must notify the Commission if there is a material change in facts that affects its waiver within 30 days of the date of such change. *Material Changes in Facts Underlying Waiver of Order No. 889 and Part 358 of the Commission's Regulations*, 127 FERC ¶ 61,141, at P 5 (2009).

³⁶ 16 U.S.C. § 824c (2012).

³⁷ We note that the Commission has examined and approved the continued applicability of the waiver of its accounting and reporting requirements in Parts 41, 101, and 141 of the Commission's regulations, as well as the continued applicability of the blanket authorization for the issuance of securities and the assumption of liabilities in Part 34 of the Commission's regulations. *See* Order No. 697, FERC Stats. & Regs.

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

C. Reporting Requirements

27. 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 section 205(c) of the FPA⁴⁰ to have rates on file in a convenient form and place.⁴¹ Blue Sky West must file EQRs electronically with the

¶ 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")).

³⁸ *Revised Public Utility Filing Requirements*, Order No. 2001, FERC Stats. & Regs. ¶ 31,127, *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reh'g denied*, Order No. 2001-B, 100 FERC ¶ 61,342, *order directing filing*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002), *order directing filing*, Order No. 2001-D, 102 FERC ¶ 61,334, *order refining filing requirements*, Order No. 2001-E, 105 FERC ¶ 61,352 (2003), *order on clarification*, Order No. 2001-F, 106 FERC ¶ 61,060 (2004), *order revising filing requirements*, Order No. 2001-G, 120 FERC ¶ 61,270, *order on reh'g and clarification*, Order No. 2001-H, 121 FERC ¶ 61,289 (2007), *order revising filing requirements*, Order No. 2001-I, FERC Stats. & Regs. ¶ 31,282 (2008).

³⁹ *Electricity Mkt. Transparency Provisions of Section 220 of the Fed. Power Act*, Order No. 768, FERC Stats. & Regs. ¶ 31,336 (2012), *order on reh'g*, Order No. 768-A, 143 FERC ¶ 61,054 (2013).

⁴⁰ 16 U.S.C. § 824d(c) (2012).

⁴¹ See *Revisions to Electric Quarterly Report Filing Process*, Order No. 770, FERC Stats. & Regs. ¶ 31,338, at P 3 (2012) (citing Order No. 2001, FERC Stats. & Regs. ¶ 31,127 at P 31).

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

28. Additionally, Blue Sky West 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

29. 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

30. Blue Sky West states that it is a Category 2 Seller in the Northeast region, and requests Category 1 Seller status in all other regions. Blue Sky West represents that it satisfies the criteria for Category 1 Seller status in the Southeast, Central, Southwest Power Pool, Southwest, and Northwest regions because it does not own, operate, or

⁴² Order No. 770, FERC Stats. & Regs. ¶ 31,338.

⁴³ The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2014). Forfeiture of market-based rate authority may require a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

⁴⁴ *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005); 18 C.F.R. § 35.42 (2014).

⁴⁵ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 848.

⁴⁶ 18 C.F.R. § 35.36(a) (2014).

⁴⁷ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 850.

control any generation facilities located in those regions and it is not affiliated with any entity that owns, operates or controls transmission facilities (other than the limited facilities required to connect individual generating facilities to the transmission grid) in the same region as its generation assets. Blue Sky West also states that it does not own or control transmission facilities in any region other than the limited facilities required to connect individual generation facilities to the transmission grid. Blue Sky West states that it is not affiliated with a franchised public utility in the same region as its generation assets and that there are no other vertical market power concerns.

31. Based on Blue Sky West's representations, we designate Blue Sky West as a Category 2 seller in the Northeast region and a Category 1 seller in all other regions. Blue Sky West must file an updated market power analysis for the Northeast region in compliance with the regional reporting schedule adopted in Order No. 697.⁴⁸ The Commission reserves the right to require an updated analysis at any time for any region.⁴⁹

The Commission orders:

(A) Blue Sky West's market-based rate tariff is hereby accepted for filing, effective June 1, 2015, as requested, as discussed in the body of this order.

(B) Blue Sky West's request for waiver of the requirements to file an OATT, to establish and maintain an OASIS, and to comply with the Standards of Conduct is hereby granted, as discussed in the body of this order.

(C) Waiver of the provisions of Subparts B and C of Part 35 of the Commission's regulations, with the exception of sections 35.12(a), 35.13(b), 35.15, and 35.16, is hereby granted.

(D) Waiver of Part 101 of the Commission's regulations is hereby granted, with the exception that waiver of the provisions of Part 101 that apply to hydropower licensees is not granted with respect to licensed hydropower projects. Waiver of Parts 41 and 141 of the Commission's regulations is hereby granted, with the exception of sections 141.14 and 141.15.

(E) Blanket authorization under Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability is hereby granted. Blue Sky West is hereby authorized to issue securities and assume obligations or liabilities as

⁴⁸ *Id.*

⁴⁹ *Id.* P 853.

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 Blue Sky West, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(F) The Commission reserves the right to modify this order to require a further showing that neither the public nor private interests will be adversely affected by continued Commission approval of Blue Sky West's issuance of securities or assumptions of liability.

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