

152 FERC ¶ 61,117
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.

Joliet Battery Storage LLC
West Chicago Battery Storage LLC

Docket Nos. ER15-1907-000
ER15-1908-000

ORDER GRANTING MARKET-BASED RATE AUTHORIZATION AND REQUESTS
FOR WAIVERS

(Issued August 10, 2015)

1. In this order, we grant Joliet Battery Storage LLC (Joliet Battery) and West Chicago Battery Storage LLC (West Chicago Battery) (jointly, Battery Storage Sellers) authority to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates, effective June 12, 2015, as requested. Also, as discussed below, we grant Battery Storage Sellers waiver of the requirements to file an Open Access Transmission Tariff (OATT), to establish an Open Access Same-Time Information System (OASIS), and to comply with the Standards of Conduct.¹ We also grant Battery Storage Sellers' request for other waivers commonly granted to market-based rate sellers, except as noted herein.

¹ We note that in Order No. 807 (effective June 30, 2015), the Commission amended its regulations to waive the OATT requirements of 18 C.F.R. § 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. *See Open Access and Priority Rights on Interconnection Customer's Interconnection Facilities*, Order No. 807, FERC Stats. & Regs. ¶ 31,367 (2015).

2. Additionally, we find that Battery Storage Sellers meet the criteria for Category 1 sellers in all regions and are so designated.²

I. Background

A. Joliet Battery

3. On June 11, 2015, in Docket No. ER15-1907-000, pursuant to section 205 of the Federal Power Act (FPA),³ Joliet Battery 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.⁴

4. Joliet Battery states that it is constructing and will own and operate a 19.8 megawatt (MW) (nameplate) energy storage facility to be located in Joliet, Illinois (Joliet Project). Joliet Battery states that the Joliet Project will consist of 11 energy storage devices and a 34 kilovolt (kV) underground cable, and will be interconnected to a 34.5 kV distribution line owned by Commonwealth Edison Company (ComEd). ComEd is located in the PJM market. Joliet Battery states that it is an exempt wholesale generator.

5. Joliet Battery states that the interconnection facilities will not form an integrated transmission grid and will constitute limited, discrete facilities constructed for the purposes of delivering the output of the Joliet Project to PJM. Joliet Battery requests that

² See *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, at PP 848-850, *clarified*, 121 FERC ¶ 61,260 (2007) (Clarification Order), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010), *aff'd sub nom. Mont. Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011), *cert. denied*, 133 S. Ct. 26 (2012).

³ 16 U.S.C. § 824d (2012).

⁴ Battery Storage Sellers request authorization to sell ancillary services in the markets administered by PJM Interconnection, L.L.C. (PJM), New York Independent System Operator, Inc. (NYISO), ISO New England Inc. (ISO-NE), California Independent System Operator Corp. (CAISO), Midcontinent Independent System Operator, Inc. (MISO), and Southwest Power Pool, Inc. (SPP). Battery Storage Sellers also request authorization to engage in the sale of certain ancillary services as third-party providers in other markets.

the Commission grant it waiver of Order Nos. 888,⁵ 889,⁶ 890,⁷ 2004,⁸ and 717,⁹ and section 35.28,¹⁰ and Parts 37¹¹ and 358¹² of the Commission's regulations with respect to the interconnection facilities (open access requirements).

⁵ *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).

⁶ *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).

⁷ *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).

⁸ *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).

⁹ *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).

¹⁰ 18 C.F.R. § 35.28 (2014).

6. Joliet Battery states that it is a direct, wholly owned subsidiary of Northern Illinois Battery Storage Holding, LLC. Northern Illinois Battery Storage Holding, LLC is a direct, wholly owned subsidiary of RES Battery Storage Holding LLC (RES Battery Holding).¹³ Joliet Battery states that RES Battery Holding is a direct, wholly owned subsidiary of RES America Developments Inc., which is a direct, wholly owned subsidiary of Renewable Energy Systems Americas, Inc. (RES Americas). Joliet Battery further states that RES Americas is a direct, wholly owned subsidiary of Renewable Energy Systems Ltd, which is a direct, wholly owned subsidiary of Renewable Energy Systems Holdings, Ltd., (RES Holdings Ltd.), a company formed under the laws of England and Wales. According to Joliet Battery, RES Americas is the exclusive means through which RES Holdings Ltd. does business in the United States.

B. West Chicago Battery

7. On June 11, 2015, in Docket No. ER15-1908-000, pursuant to section 205 of the FPA, West Chicago Battery 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.¹⁴

8. West Chicago Battery states that it is constructing and will own and operate a 19.8 MW (nameplate) energy storage facility (West Chicago Project) and limited interconnection facilities that will be interconnected to a 34.5 kV distribution line owned by ComEd in the PJM market. West Chicago states that it is an exempt wholesale generator.

9. West Chicago Battery states that the interconnection facilities will not form an integrated transmission grid and will constitute limited, discrete facilities constructed for the purposes of delivering the output of the West Chicago Project to PJM. West Chicago

¹¹ 18 C.F.R. pt. 37 (2014).

¹² 18 C.F.R. pt. 358 (2014).

¹³ Joliet Battery states that RES Battery Holding is in the process of being formed to serve as the immediate parent company of Northern Illinois Battery Storage Holding, LLC.

¹⁴ Battery Storage Sellers request authorization to sell ancillary services in the markets administered by PJM, NYISO, ISO-NE, CAISO, MISO, and SPP. Battery Storage Sellers also request authorization to engage in the sale of certain ancillary services as a third-party provider in other markets.

Battery requests that the Commission grant it waiver of Order Nos. 888, 889, 890, 2004, and 717, and section 35.28, and Parts 37 and 358 of the Commission's regulations with respect to the interconnection facilities.

10. West Chicago Battery is a direct, wholly owned subsidiary of Northern Illinois Battery Storage Holding, LLC, the ownership of which is described above.

II. Notice of Filings

11. Notice of Battery Storage Sellers' filings was published in the *Federal Register*, 80 Fed. Reg. 35,345 (2015), with interventions and protests due on or before July 2, 2015. None was filed.

12. Notice of Joliet Battery's request for blanket authorization under Part 34 was separately published in the *Federal Register*, 80 Fed. Reg. 35,344 (2015), with interventions or protests due on or before July 2, 2015. Notice of West Chicago Battery's request for blanket authorization under Part 34 was separately published in the *Federal Register*, 80 Fed. Reg. 35,343 (2015), with interventions or protests due on or before July 2, 2015. None was filed.

III. Discussion

13. As discussed below, we will grant Battery Storage Sellers' request for authorization to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates and we will accept their market-based rate tariffs, effective June 12, 2015, as requested.¹⁵ We will also grant Battery Storage Sellers' request for certain waivers.

¹⁵ We note that Battery Storage Sellers are 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 Battery Storage Sellers seek 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 Authorization

14. 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

15. 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

16. Battery Storage Sellers each state that they rely on AlphaGen Power LLC's (AlphaGen Power) accepted market power analysis¹⁹ to demonstrate that Battery Storage Sellers pass both the pivotal supplier and the wholesale market share screens for the PJM market with market shares ranging from 0.45 to 0.6 percent. Based on Battery Storage Sellers' representations, we find that Battery Storage Sellers satisfy the Commission's requirements for market-based rates regarding horizontal market power.

2. Vertical Market Power

17. 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

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 *AlphaGen Power LLC*, Docket No. ER14-630-000 (February 26, 2014) (delegated letter order). Battery Storage Sellers rely on historical data for the PJM market for the study period of December 2011 through November 2012 in the AlphaGen Power pivotal supplier and market share screens study. Battery Storage Sellers state 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.

OATT on file or that the seller has received waiver of the OATT requirement before granting a seller market-based rate authorization.²⁰

18. Battery Storage Sellers state that neither they, nor any of their affiliates own, operate, or control electric transmission facilities in the United States for the transmission of electricity in interstate commerce, other than the limited equipment necessary to connect individual generating facilities to the transmission grid. Battery Storage Sellers further state that they will qualify for the blanket OATT waiver provided in Order No. 807 as of June 30, 2015, the effective date of Order No. 807. Because Battery Storage Sellers' facilities will be operational before June 30, 2015, Battery Storage Sellers are requesting waiver of the Commission's open access transmission requirements to cover the period prior to June 30, 2015. As discussed more fully below, we will grant Battery Storage Sellers' request for waiver of the requirement to have an OATT on file for their facilities.

19. 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

²⁰ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408.

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.

20. Regarding other barriers to entry, Battery Storage Sellers state that neither they nor their affiliates own or control natural gas transportation, storage or distribution facilities or physical coal sources and control over who may access transportation of coal supplies, such as barges and rail cars. Battery Storage Sellers add that certain affiliates have rights to land upon which their respective generation facility is or will be located. Further, Battery Storage Sellers state that other affiliates have demonstrated site control for generation development through the interconnection process. Battery Storage Sellers describe such facilities and state that the land sites to which their affiliates have interests for potential future development of generation plants do not cause entry barrier concerns. Furthermore, Battery Storage Sellers commit to file any necessary quarterly site control reports with the Commission in accordance with Commission rules applicable to entities with market-based rate authority.

21. Finally, consistent with Order No. 697, Battery Storage Sellers affirmatively state that they and their affiliates have not erected, and will not erect, barriers to entry in the relevant market.

22. Based on Battery Storage Sellers' representations, we find that Battery Storage Sellers satisfy the Commission's requirements for market-based rates regarding vertical market power.

B. Waiver Requests

1. OATT, OASIS, and Standards of Conduct

23. Battery Storage Sellers seek 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, Battery Storage Sellers state that these interconnection facilities are designed and operated to provide generator interconnection service to electric generating facilities, and are not designed and operated as networked transmission facilities for the provision of transmission service to third parties. Battery Storage Sellers further add that ownership of limited interconnection facilities for such purposes does not confer such applicant with transmission market power.

24. 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.²⁵ In prior orders, the Commission has enunciated the standards for exemption from some or all of the requirements of Order Nos. 888, 889, and 890.²⁶ 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 889.²⁷ Order No. 717 did not change those criteria.²⁸

25. 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.²⁹

26. 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

²⁵ 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.

²⁶ 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).

²⁷ 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).

²⁸ See Order No. 717, FERC Stats. & Regs. ¶ 31,280 at PP 31-33.

²⁹ *Black Creek*, 77 FERC at 61,941.

circumstances are present that indicate that a waiver would not be justified.³⁰ Based on the statements in Battery Storage Sellers' applications, we find that the facilities qualify as limited and discrete. Accordingly, we will grant Battery Storage Sellers 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 facilities and 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 for the period June 12, 2015 through June 30, 2015.

27. The Commission recently explained how market-based rate applicants and sellers may demonstrate a lack of vertical market power once the blanket waiver provided for in 18 C.F.R. § 35.28(d)(2) takes effect.³¹ The Commission explained in *Kingfisher Wind* that, in Order No. 807, the Commission modified its policy to provide an additional method for obtaining waiver of the OATT requirements. In Order No. 807, the Commission stated that a market-based rate seller or any of its affiliates that owns, operates, or controls transmission facilities may satisfy the vertical market power requirements in 18 C.F.R. § 35.37(d) by one of the following: (1) have a Commission-approved OATT on file; (2) receive waiver of the OATT requirement under 18 C.F.R. § 35.28(d)(1); or (3) satisfy the requirements for a blanket waiver under 18 C.F.R. § 35.28(d)(2).³²

28. An applicant that qualifies for the blanket OATT waiver under 18 C.F.R. § 35.28(d)(2) should affirm in its market-based rate application that it qualifies for the blanket OATT waiver.³³ As the Commission stated in Order No. 807, "[s]uch a waiver is justified because the usually limited and discrete nature of [interconnection facilities'] dedicated interconnection purpose means that such facilities do not typically present the

³⁰ *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.

³¹ *Kingfisher Wind, LLC*, 151 FERC ¶ 61,276, at PP 26-27 (2015).

³² Order No. 807, FERC Stats. & Regs. ¶ 31,367 at P 57.

³³ As noted above, Battery Storage Sellers state that they will qualify for the blanket OATT waiver provided in Order No. 807.

concerns about discriminatory conduct that the Commission's OATT, OASIS, and Standards of Conduct requirements were intended to address."³⁴ In accordance with Order No. 807, the waivers referenced in 18 C.F.R. § 35.28(d)(2) shall be deemed in effect unless revoked as of the date the public utility ceases to satisfy the qualifications of 18 C.F.R. § 35.28(d)(2), and also may be revoked by the Commission if the Commission determines that it is in the public interest to do so.³⁵

29. We note that the Commission stated in Order No. 807 that an entity that has already been issued a waiver of the OATT, OASIS, and Standards of Conduct requirements and that is eligible for the blanket waiver under Order No. 807 will be deemed to be operating under the blanket waiver without further filings necessary with respect to the previously-issued waiver.³⁶

2. Other Waivers and Authorizations

30. Battery Storage Sellers also request 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 Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability.

³⁴ *Id.* P 55.

³⁵ *Id.* P 101. After revocation of its waivers, the public utility must comply with the requirements that had been waived within 60 days of revocation. 18 C.F.R. § 35.28(d)(2)(i).

³⁶ Order No. 807, FERC Stats. & Regs. ¶ 31,367 at P 176 (referencing P 89, which states, in part, that "if an entity has previously received a specific waiver of the OATT and related obligations pursuant to the Commission's 'limited and discrete' or 'small entity' standards, the blanket waiver will supersede the existing waiver"); *see also* 18 C.F.R. § 35.28.

31. The Commission will grant the requested waivers and authorizations consistent with those granted to other entities with market-based rate authorizations.³⁷ Notwithstanding the waiver of the accounting and reporting requirements, the Commission expects Battery Storage Sellers to keep their accounting records in accordance with generally accepted accounting principles.

32. We direct Battery Storage Sellers each to submit a compliance filing containing revisions to the limitations and exemptions sections of its market-based rate tariff to include a citation to this order.³⁸

³⁷ We note that the Commission has examined and approved the continued applicability of the waiver of its accounting and reporting requirements in Parts 41, 101, and 141 of the Commission's regulations, as well as the continued applicability of the blanket authorization for the issuance of securities and the assumption of liabilities in Part 34 of the Commission's regulations. *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 984-985 (regarding waiver of Parts 41, 101, and 141) and PP 999-1000 (regarding blanket approval under Part 34). However, waiver of the provisions of Part 101 that apply to hydropower licensees is not granted with respect to licensed hydropower projects. Hydropower licensees are required to comply with the requirements of the Uniform System of Accounts pursuant to 18 C.F.R. Part 101 to the extent necessary to carry out their responsibilities under Part I of the FPA. We further note that a licensee's status as a market-based rate seller under Part II of the FPA does not exempt it from its accounting responsibilities as a licensee under Part I of the FPA. *See Seneca Gen., LLC*, 145 FERC ¶ 61,096, at P 23 & n.20 (2013) (citing *Trafalgar Power Inc.*, 87 FERC ¶ 61,207, at 61,798 (1999) (noting that "all licensees are required to comply with the requirements of the Uniform System of Accounts to the extent necessary to carry out their responsibilities under [s]ections 4(b), 10(d) and 14 of the FPA"))).

³⁸ *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at Appendix C, *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 384. These tariff revisions may be filed the next time each of the Battery Storage Sellers makes a market-based rate filing with the Commission.

C. Reporting Requirements

33. 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 Battery Storage Sellers 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 Battery Storage Sellers 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 Market Transparency Provisions of Section 220 of the Federal Power Act*, Order No. 768, FERC Stats. & Regs. ¶ 31,336 (2012), *order on reh 'g*, Order No. 768-A, 143 FERC ¶ 61,054 (2013).

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.

34. Additionally, Battery Storage Sellers 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

35. 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

36. Battery Storage Sellers request Category 1 seller status in the Northeast, Southeast, Northwest, Central, SPP, and Southwest regions. Battery Storage Sellers state that in all regions they and their affiliates own or control less than 500 MW of generation capacity. Battery Storage Sellers state that they do not and will not own, operate or control any transmission facilities other than limited equipment necessary to connect their facilities to the transmission grid. Battery Storage Sellers add that they are not affiliated with any entity that owns, operates or controls transmission facilities in the same region as their generation assets; are not affiliated with a franchised public utility in the same region as their generation assets; and there are no vertical market power concerns.

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.

37. Based on Battery Storage Sellers' representations, we designate them as Category 1 sellers in the Northeast, Southeast, Northwest, Central, SPP, and Southwest regions.

The Commission orders:

(A) Battery Storage Sellers' market-based rate tariffs are hereby accepted for filing, effective June 12, 2015, as requested, as discussed in the body of this order.

(B) Battery Storage Sellers are hereby directed to revise the limitations and exemptions section of their market-based rate tariffs, as discussed in the body of this order.

(C) Battery Storage Sellers' 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.

(D) 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.

(E) 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.

(F) Blanket authorization under Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability is hereby granted. Battery Storage Sellers are 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 Battery Storage Sellers, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(G) 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 Battery Storage Sellers' issuance of securities or assumptions of liability.

(H) Battery Storage Sellers are hereby required to file EQRs in compliance with Order Nos. 2001 and 768. If the effective date of Battery Storage Sellers' market-based rate tariffs falls within a quarter of the year that has already expired, Battery Storage Sellers' 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.