

153 FERC ¶ 61,013
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.

Oildale Energy, LLC

Docket No. ER15-2304-001

ORDER GRANTING MARKET-BASED RATE AUTHORIZATION AND REQUEST
FOR WAIVERS

(Issued October 5, 2015)

1. In this order, we grant Oildale Energy, LLC (Oildale) authority to make wholesale sales of electric energy, capacity and ancillary services at market-based rates, effective July 15, 2015, as requested. We also grant Oildale's request for certain waivers commonly granted to market-based rate sellers, except as noted herein.
2. Additionally, we find that Oildale meets the criteria for Category 1 Seller in all 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 July 30, 2015, as amended on August 28, 2015, pursuant to section 205 of the Federal Power Act (FPA),² Oildale 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. Oildale states that it owns and operates an approximately 40 megawatt (MW) cogeneration facility (Facility) that has been certified as a qualifying facility (QF) under the Commission's regulations implementing the Public Utility Regulatory Policies Act of 1978, as amended (PURPA).⁴ Oildale states that the Facility is interconnected with Pacific Gas & Electric Company (PG&E), which previously purchased all of the Facility's electrical output under long-term power purchase agreements that expired on June 30, 2015. Oildale states that, under the PURPA power sales contracts, it was exempt from sections 205 and 206 of the FPA.⁵ Following the contracts' expiration, the Facility did not generate power until July 15, 2015 in response to a request from CAISO that the Facility remain in service to address a local reliability need. Accordingly, Oildale requests waiver of the Commission's prior notice requirements to allow for a retroactive effective date of July 15, 2015 for its proposed market-based rate tariff.

5. Oildale states that it is 100 percent indirectly owned by Enpower, Corp. (Enpower), which in turn is 100 percent owned by individual shareholders. Oildale states that Enpower also owns a 50 percent interest in Wadham Energy Limited Partnership (Wadham), which owns an approximately 26.5 MW biomass-fired QF, the output of which is fully committed to PG&E under a long-term power sales contract.

II. Notice of Filings

6. Notices of Oildale's filings were published in the *Federal Register*,⁶ 80 Fed. Reg. 46,976 (2015), with interventions and protests due on or before August 20, 2015 and September 8, 2015, respectively. On August 20, 2015, CAISO filed comments in support

² 16 U.S.C. § 824d (2012).

³ Oildale requests authorization to sell ancillary services in the market administered by the California Independent System Operator Corporation (CAISO).

⁴ Public Utility Regulatory Policies Act of 1978, 16 U.S.C. §§ 2601-2645 (1978).

⁵ Application at 2 (citing 18 C.F.R. § 292.601(c)(1)).

⁶ 80 Fed. Reg. 46,976 (2015); 80 Fed. Reg. 53,790 (2015).

of Oildale's request for waiver of the Commission's 60-day prior notice filing requirement.

7. Notice of Oildale's request for blanket authorization under Part 34 of the Commission's regulations was separately published in the *Federal Register*, 80 Fed. Reg. 49,219 (2015), with interventions or protests due on or before August 31, 2015. None was filed.

III. Discussion

8. As discussed below, we will grant Oildale'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 July 15, 2015, as requested. We will also grant Oildale's request for certain waivers.

A. Market-Based Rate Authorization

9. 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.⁷

1. Horizontal Market Power

10. The Commission has adopted two indicative screens for assessing horizontal market power: the pivotal supplier screen and the wholesale market share screen.⁸ 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.⁹

11. Oildale relies on Live Oak Limited's recently accepted market power analysis¹⁰ to demonstrate that Oildale passes both the pivotal supplier and the wholesale market share screens for the CAISO market. Oildale further represents that its affiliated capacity from the Wadham biomass-fired QF is fully committed under a long-term power purchase

⁷ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 62, 399, 408, 440.

⁸ *Id.* P 62.

⁹ *Id.* PP 33, 62-63.

¹⁰ *See Live Oak Limited*, Docket No. ER15-1172-001, *et al.* (May 19, 2015) (delegated letter order).

agreement. Based on these representations, we find that Oildale satisfies the Commission's requirements for market-based rates regarding horizontal market power.

2. Vertical Market Power

12. 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 Open Access Transmission Tariff (OATT) on file or that the seller has received waiver of the OATT requirement before granting a seller market-based rate authorization.¹¹

13. In Order No. 807, the Commission amended its regulations to waive the OATT requirements of 18 C.F.R. § 35.28, the Open Access Same-Time Information System OASIS requirements of 18 C.F.R. Part 37, and the Standards of Conduct requirements of 18 C.F.R. Part 358, under certain conditions, for entities that own interconnection facilities.¹²

14. 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. 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 concerns about discriminatory conduct that the Commission’s OATT, OASIS, and Standards of Conduct requirements were intended to address.”¹³ 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

¹¹ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408.

¹² See *Open Access and Priority Rights on Interconnection Customer’s Interconnection Facilities*, Order No. 807, FERC Stats. & Regs. ¶ 31,367 (2015).

¹³ *Id.* P 55.

determines that it is in the public interest to do so.¹⁴ Oildale represents that the transmission facilities owned by Oildale and Wadham are limited and discrete transmission facilities that meet the criteria for blanket waiver under Order No. 807.¹⁵

15. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.¹⁶ 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).¹⁷ 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.¹⁸ 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.¹⁹

16. Regarding other barriers to entry, Oildale states that it owns an approximately 3.2-mile-long dedicated natural gas line to receive natural gas deliveries at its site from Kern River Gas Transmission Company's interstate pipeline system. Oildale states that it and

¹⁴ *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) (2015).

¹⁵ We note that, although Oildale made such affirmation in its initial application, in its August 28, 2015 amendment it nonetheless separately requested 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. We find that Oildale's request for waiver is unnecessary in light of the Commission's determination in Order No. 807 (effective June 30, 2015) to automatically waive those requirements under certain conditions, for entities that own interconnection facilities. Order No. 807, FERC Stats. & Regs. ¶ 31,367 at PP 55-57.

¹⁶ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 440.

¹⁷ Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

¹⁸ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

¹⁹ *Id.* P 446.

its affiliates do not otherwise own or control intrastate natural gas transportation, storage or distribution facilities. Further, Oildale represents that neither it nor its affiliates owns or controls physical coal supply sources, and do not have ownership or control over who may access transportation of coal supplies. Finally, Oildale affirmatively states that it and its affiliates have not erected, and will not erect, barriers to entry in the relevant market.

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

B. Waiver Requests

1. Prior Notice Requirement

18. Oildale argues that extraordinary circumstances exist in this case that justify waiver of the Commission's 60-day prior notice filing requirement to allow Oildale's tariff to take effect on July 15, 2015.

19. Oildale explains that in late-June 2015, while it was considering whether to retire the Facility from service, CAISO requested that Oildale keep the Facility in operation to address a local reliability need. Following discussions, the parties agreed that the Facility would be dispatched and compensated under the Capacity Procurement Mechanism (CPM) provisions in CAISO's Electric Tariff.²⁰ The CPM is a provision that authorizes CAISO to procure electric capacity needed to maintain grid reliability and includes an "exceptional dispatch" provision that allows CAISO involuntarily to commit and dispatch generating resources that are not otherwise cleared through its market software in order to maintain grid reliability. Oildale states that the exceptional dispatch designation is not expected to be effective beyond the initial 60-day designation period. Oildale states that the Facility did not generate power between June 30, 2015 and July 15, 2015 and that, absent the CPM mechanism, the Facility would not operate to produce electricity. Oildale further notes that the Commission has authorized CAISO to enter into extraordinary dispatch arrangements with generators, and has approved the rate and other applicable terms.²¹ Thus, Oildale states that the Commission has already opined on the justness and reasonableness of wholesale electricity sales to CAISO via the CPM.

²⁰ See CAISO, CAISO eTariff, § 43, Capacity Procurement Mechanism (3.0.0); *California Indep. Sys. Operator Corp.*, 134 FERC ¶ 61,211 (2012).

²¹ See *Cal. Indep. Sys. Operator Corp.*, 138 FERC ¶ 61,112 (2012).

20. Oildale cites *ISO New England Inc.* and *Mirant Americas Energy Marketing, L.P.* as examples where the Commission found extraordinary circumstances to justify waiver of the 60-day prior notice requirement.²² Oildale states that in *ISO New England Inc.*, the Commission found extraordinary circumstances when agreements “were required to compensate sellers for critical generation services needed to assure reliability.”²³ Similarly, Oildale notes that in *Mirant*, the Commission granted waiver of the prior notice requirement because denying the waiver request “would inequitably penalize the resource owners, who ran those resources at [the system operator’s] direction to meet a reliability need,”²⁴ where the Commission previously authorized the system operator to enter into the type of reliability agreement at issue here. According to Oildale, these same extraordinary circumstances are present in the instant case. Oildale adds that it would have been impossible to prepare and file with the Commission the necessary FPA section 205 filing 60 days before CAISO issued its exceptional dispatch designation on July 15, 2015, given that CAISO did not broach the idea with Oildale until June 23, 2015. Oildale states that it diligently undertook to make its section 205 filing with the Commission as soon after the exceptional dispatch designation as practicable.

21. CAISO supports Oildale’s request for waiver of the prior notice filing requirement. CAISO explains that the CPM provides tariff-based compensation to resources without capacity contracts that are needed for short-term reliability, oftentimes on immediate or extremely short notice. CAISO states that it offered the exceptional dispatch CPM designation to Oildale because of a reliability need and that, by the time Oildale was put on notice of this need, it would have been impossible for Oildale to meet the required 60 days’ notice to the Commission. Further, CAISO is concerned that if the Commission were to deny Oildale’s request for waiver of the prior notice requirement, then similarly situated resources might decline an extraordinary dispatch designation until they secured a Commission order approving market-based rate authority.

22. Section 205 of the FPA explicitly requires that, absent waiver, proposed rates be filed with the Commission at least 60 days in advance of their proposed effective date.²⁵ In this regard, the Commission has explained that it cannot “ignore its statutory duty to determine whether rates are just and reasonable by permitting utilities to submit filings

²² Application at 4-5 (citing *ISO New England Inc.*, 112 FERC ¶ 61,057, at P 14 (2005); *Mirant Americas Energy Marketing, L.P. v. ISO New England Inc.*, 112 FERC ¶ 61,056, at PP 13-15 (*Mirant*)).

²³ *ISO New England, Inc.*, 112 FERC ¶ 61,057 at P 14.

²⁴ *Mirant*, 112 FERC ¶ 61,056, at PP 13-15.

²⁵ See *El Paso Elec. Co.*, 105 FERC ¶ 61,131, at PP 9-11 (2003).

whenever convenient,” and that it “must have the opportunity to examine proposed rates, terms, and conditions of jurisdictional service before that service commences.”²⁶ The Commission has explained that it would grant waiver of the prior notice requirement for proposals to charge market-based rates filed on or after the date service commenced only in extraordinary circumstances.²⁷ In *Central Hudson II*, the Commission elaborated that when a filing is made after the commencement of service, the filing utility must make a stronger showing of good cause than if the filing had been made sometime prior to the commencement of service.²⁸

23. We find that waiver is appropriate in this particular case to allow Oildale’s market-based rate tariff, which was filed on July 30, 2015, to become effective on July 15, 2015. We agree with Oildale that the instant circumstances are analogous to the “extraordinary circumstances” found in *ISO New England* and *Mirant*, discussed above. Like the agreements at issue in *ISO New England*, the sale of power from the Oildale facility was required to ensure reliability on a shortened time horizon, which does not always lend itself to compliance with the 60-day prior notice requirement. CAISO’s exceptional dispatch designation is likewise akin to the direction given to generators by ISO New England in *Mirant*. Consistent with the Commission’s decision in *Mirant*, denying waiver to Oildale would inequitably penalize Oildale for abiding by CAISO’s direction to meet a reliability need. In addition, as noted by Oildale, the Commission has already approved the CPM provisions in the CAISO tariff under which Oildale will be compensated.

2. Other Waivers and Authorizations

24. Oildale also requests the following waivers and authorizations: (1) waiver of the filing requirements of subparts B and C of Part 35 of the Commission’s regulations, except sections 35.12(a), 35.13(b), 35.15, and 35.16; (2) waiver of the accounting and other requirements of Parts 41, 101, and 141 of the Commission’s regulations, except sections 141.14 and 141.15; and (3) blanket authorization under section 204 of the FPA²⁹

²⁶ *Id.* P 14.

²⁷ See *Cent. Hudson Gas & Elec. Co.*, 60 FERC ¶ 61,106 (*Central Hudson I*), *reh’g denied*, 61 FERC ¶ 61,089 (1992) (*Central Hudson II*); *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139 at 61,984, *clarified*, 65 FERC ¶ 61,081 (1993).

²⁸ *Central Hudson II*, 61 FERC ¶ 61,089 at 61,355-56 (finding the press of other business does not provide good cause for waiver where an agreement was filed seven days after service commenced).

²⁹ 16 U.S.C. § 824c (2012).

and Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability.

25. The Commission will grant the requested waivers and authorizations consistent with those granted to other entities with market-based rate authorizations.³⁰ Notwithstanding the waiver of the accounting and reporting requirements, the Commission expects Oildale to keep its accounting records in accordance with generally accepted accounting principles.

C. Reporting Requirements

26. An entity with market-based rate authorization must file an Electric Quarterly Report (EQR) with the Commission, consistent with Order Nos. 2001³¹ and

³⁰ 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"))).

³¹ *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).

768,³² to fulfill its responsibility under FPA section 205(c)³³ to have rates on file in a convenient form and place.³⁴ Oildale must file EQRs electronically with the Commission consistent with the procedures set forth in Order No. 770.³⁵ Failure to timely and accurately file an EQR is a violation of the Commission's regulations for which Oildale may be subject to refund, civil penalties, and/or revocation of market-based rate authority.³⁶

27. Additionally, Oildale 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.³⁷

28. In Order No. 697, the Commission created two categories of sellers.³⁸ 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

³² *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).

³³ 16 U.S.C. § 824d(c) (2012).

³⁴ *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).

³⁵ Order No. 770, FERC Stats. & Regs. ¶ 31,338.

³⁶ The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2015). 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.

³⁷ *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 (2015).

³⁸ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 848.

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.³⁹ Sellers that do not fall into Category 1 are designated as Category 2 sellers and are required to file updated market power analyses.⁴⁰

29. Oildale represents that it meets the criteria for Category 1 seller status in all regions. Oildale represents that it and its affiliates own or control less than 500 MW of generation capacity in aggregate in all regions. Oildale states that it does not own, operate, or control, and is not affiliated with any entity that owns, operates, or controls transmission facilities other than the limited facilities that are necessary to interconnect their generation facilities to the grid. Oildale further represents that it is not affiliated with a franchised public utility and that Oildale's market-based rate application does not present any other vertical market power concerns.

30. Based on Oildale's representations, we designate Oildale as a Category 1 seller in all regions. The Commission also reserves the right to require an updated market power analysis at any time for any region.⁴¹

The Commission orders:

(A) Oildale's market-based rate tariff is hereby accepted for filing, effective July 15, 2015, as requested, as discussed in the body of this order.

(B) Oildale's request for waiver of the prior notice requirement is 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.

³⁹ 18 C.F.R. § 35.36(a) (2015).

⁴⁰ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 850.

⁴¹ *Id.* P 853.

(E) Blanket authorization under Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability is hereby granted. Oildale is hereby authorized to issue securities and assume obligations or liabilities as guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Oildale, 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 Oildale's issuance of securities or assumptions of liability.

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