

153 FERC ¶ 61,254
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

New Brunswick Energy Marketing Corporation

Docket Nos. ER14-225-001
ER14-225-002
ER14-225-003

ORDER ACCEPTING NOTICES OF CHANGE IN STATUS AND UPDATED
MARKET POWER ANALYSIS

(Issued November 30, 2015)

1. In this order, we accept two notice of change in status filings and an updated market power analysis for the Northeast region submitted by New Brunswick Energy Marketing Corporation (NB Energy Marketing) in compliance with the regional reporting schedule adopted in Order No. 697.¹ As discussed below, we conclude that NB Energy Marketing continues to satisfy the Commission's standards for market-based rate authority and that the New Brunswick Power Corporation's (NB Power) new Open Access Transmission Tariff (New OATT) provides for comparable, non-discriminatory access. Additionally, we grant NB Energy Marketing's request to be relieved from the obligation to submit quarterly reports to the Commission,² as discussed more fully below.

¹ *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 882-893, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010), *aff'd sub nom. Mont. Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011), *cert. denied*, 133 S. Ct. 26 (2012).

² August 7, 2015 Filing at 25.

I. Background

2. NB Energy Marketing functions as a wholly owned subsidiary of NB Power that makes sales at wholesale in the U.S. at market-based rates.³ Although NB Power's generation facilities are located exclusively outside of the U.S., its transmission lines are directly interconnected with the transmission systems administered by ISO New England Inc. (ISO-NE) and Northern Maine Independent System Administrator, Inc (Northern Maine Administrator). The Province of New Brunswick is part of the New Brunswick balancing authority area, a portion of which is in northern Maine. The New Brunswick Energy and Utilities Board (New Brunswick Regulatory Board) has exclusive jurisdiction over NB Power's transmission system.

A. OATT History and Quarterly Reporting Requirement

3. On February 9, 2009, Integrys Energy Services, Inc. (Integrys) filed a complaint, questioning whether Attachment M to the New Brunswick System Operator⁴ OATT, which provides procedures for customers seeking to utilize what is referred to as the "MEPCO Reservations,"⁵ complies with the Commission's open access requirements.⁶ On March 29, 2011, the Commission terminated the complaint proceeding concerning NB Power Generation's market-based rate authority and noted that there was no record evidence to demonstrate that NB Power Generation or its affiliates had used

³ NB Energy Marketing's predecessor, New Brunswick Power Generation Corporation (NB Power Generation) was initially granted market-based rate authority on October 6, 2008. *New Brunswick Power Generation Corp.*, Docket No. ER08-1439-000 (Oct. 6, 2008) (delegated letter order).

⁴ NB Energy Marketing explains in its October 30, 2013 filing that the system operator functions previously performed by the New Brunswick System Operator are now performed within the vertically-integrated NB Power.

⁵ The MEPCO Reservations refer to 188 MW of transmission capability on the transmission line between New Brunswick and Maine.

⁶ Integrys Complaint, Docket No. EL09-32-000 (Feb. 9, 2009).

Attachment M to discriminate against competitors.⁷ The Commission also noted that the New Brunswick System Operator was revising its OATT in light of Order No. 890⁸ and that those revisions would be subject to approval by the New Brunswick Regulatory Board. Therefore, the Commission required NB Power Generation to submit a compliance filing once it had revised its OATT to be consistent with Order No. 890, and stated that the compliance filing must describe how the revised NB System Operator OATT offers comparable, non-discriminatory transmission access, including with respect to the provisions in Attachment M. The Commission also required NB Power Generation to submit a report to the Commission every 90 days regarding the status of the New Brunswick Regulatory Board's review of the revised OATT (quarterly OATT reporting requirement).⁹

4. On September 29, 2011, NB Power Generation submitted a revised New Brunswick System Operator OATT in compliance with the March 29, 2011 Order and asserted that Attachment M conforms to the requirement of comparable, non-discriminatory access. NB Power Generation stated that the New Brunswick Regulatory Board had not yet acted on the revised OATT. On December 1, 2011, the compliance filing was accepted in a delegated letter order, but the quarterly reporting requirement was not removed.¹⁰

⁷ *Integritys Energy Servs, Inc. v. New Brunswick Power Generation Corp.*, 134 FERC ¶ 61,243, at PP 66, 68 (2011) (March 29, 2011 Order). Attachment M of the NB System Operator's OATT provided that a party which is not affiliated with NB Power Generation that seeks to acquire to use some or all the reservations must provide a "viable business plan that would provide benefits to New Brunswick and has also disclosed sufficient financial resources to implement the proposed utilization of the portion of the reservations which it seeks to acquire or use."

⁸ *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 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

⁹ See March 29, 2011 Order, 134 FERC ¶ 61,243 at P 67.

¹⁰ See *New Brunswick Power Generation Corp.*, Docket No. ER08-1439-004 (Dec. 1, 2011) (delegated letter order).

B. October 30, 2013 Filing

5. On October 30, 2013, NB Energy Marketing submitted a notice of change in status filing informing the Commission that the passage of the Electricity Act¹¹ by the New Brunswick General Assembly on October 1, 2013 substantially restructured the electricity sector of New Brunswick. NB Energy Marketing states that the Electricity Act amalgamated several Provincial energy companies into a single vertically-integrated company, NB Power. NB Power Generation was not amalgamated with the other Provincial companies, but was renamed NB Energy Marketing. NB Energy Marketing explains that the NB Power transmission system is now operated by NB Power's transmission system operator division and that the New Brunswick Regulatory Board now assumes the compliance and enforcement role previously performed by the New Brunswick System Operator.

6. Additionally, NB Energy Marketing states that the Commission-approved OATT previously administered by the New Brunswick System Operator would continue in effect as NB Power's Transitional OATT on an interim basis, pending the filing by NB Power of an application by September 30, 2014 for approval of a new OATT.

7. According to NB Energy Marketing, the modifications in the Transitional OATT from the New Brunswick System Operator OATT were generally minimal, with two important exceptions: (1) the previous Standards of Conduct in Attachment L of the New Brunswick System Operator OATT were replaced by NB Power's new Order No. 717-compliant Standards of Conduct; and (2) the Attachment M MEPCO Reservations were removed. NB Energy Marketing states that both of these changes enhance the conformity of the Transitional OATT with the Commission's *pro forma* OATT. Accordingly, NB Energy Marketing argues that the electricity sector changes and consequent tariff modifications do not have a material effect on the conditions that the Commission relied upon when it granted NB Energy Marketing market-based rate authority.

C. February 14, 2014 Filing

8. On February 14, 2014, NB Energy Marketing submitted its updated market power analysis for the Northeast region. NB Energy Marketing states that it passes the pivotal supplier and the wholesale market share screen in the ISO-NE market and the New Brunswick balancing authority area in all seasons; however, NB Energy Marketing represents that when NB Power's 660 MW nuclear Point Lepreau Generation Station is included in the analysis, NB Energy Marketing fails the wholesale market share screen in the New Brunswick balancing authority area in the winter, spring, and summer seasons

¹¹ See Electricity Act (S.N.B. 2013, c.7), available at <http://laws.gnb.ca/en/ShowTdm/cs/2013-c.7//>.

(Point Lepreau sensitivity analysis).¹² On March 12, 2014, NB Energy Marketing filed a delivered price test for the New Brunswick balancing authority area to rebut the presumption of horizontal market power. On May 9, 2014, NB Energy Marketing supplemented its updated market power analysis with additional workpapers to support its delivered price test analysis.

D. August 7, 2015 Filing

9. On August 7, 2015, NB Energy Marketing filed a notice of change in status filing to notify the Commission that the New Brunswick Regulatory Board approved NB Power's New OATT, which became effective on August 1, 2015. NB Energy Marketing states that the New OATT replaces and supersedes the Transitional OATT that had been in place since October 2013. NB Energy Marketing states that NB Power's New OATT offers comparable, non-discriminatory transmission access. NB Energy Marketing notes that, as in the Transitional OATT, the MEPCO provisions of Attachment M have been removed. NB Energy Marketing explains that NB Power made numerous changes to its Transitional OATT as required by Order No. 890 and subsequent Commission orders. NB Energy Marketing provides an overview of these changes in its filing. NB Energy Marketing argues these tariff modifications do not have a material effect on the conditions that the Commission relied upon when it granted NB Energy Marketing market-based rate authority.

10. NB Energy Marketing notes that the New Brunswick Regulatory Board directed NB Power to conduct additional analysis regarding certain existing deviations from the Commission's *pro forma* OATT to determine whether further changes to the New OATT are needed.¹³ The New Brunswick Regulatory Board directed NB Power to submit a report by December 31, 2015, detailing the results of the studies.

11. Finally, NB Energy Marketing requests that the Commission relieve it from the obligation to submit quarterly OATT status reports.

¹² NB Energy Marketing states that the Point Lepreau facility was on a planned outage for most of the December 2011 – November 2012 study period. February 14, 2014 Filing at 3.

¹³ For example, the New Brunswick Regulatory Board asked NB Power to conduct a detailed study to resolve whether the proposed Schedule 4 addressing the terms for the pricing of energy and generator imbalance service should be revised to more closely align with Order No. 890. The New Brunswick Regulatory Board also required NB Power to assess the potential need for a separate small generator interconnection agreement and any issues with respect to its adoption.

II. Notice of Filings and Responsive Pleading

12. Notice of NB Energy Marketing's October 30, 2013 change in status filing was published in the *Federal Register*, 78 Fed. Reg. 67,138 (2013), with interventions or protests due on or before November 20, 2013. The Northern Maine Administrator filed a timely motion to intervene and comments.

13. Notice of NB Energy Marketing's February 14, 2014 updated market power analysis was published in the *Federal Register*,¹⁴ with interventions or protests due on or before May 30, 2014. None was filed.

14. Notice of NB Energy Marketing's August 7, 2015 change in status filing was published in the *Federal Register*, 80 Fed. Reg. 48,852 (2015) with interventions or protests due on or before August 28, 2015. None was filed.

15. Northern Maine Administrator does not protest NB Energy Marketing's October 30, 2013 change in status filing but states that it is filing comments for additional context. Northern Maine Administrator explains that the Electricity Act precipitated the reintegration of the previously disaggregated functions of NB Power's transmission operators. Therefore, while NB Energy Marketing will not be "amalgamated with" the NB Power group of companies, it will remain affiliated with them. The Northern Maine Administrator states that the region of Northern Maine is electrically isolated from the U.S. transmission grid and is electrically connected to the New England transmission grid through the transmission facilities of NB Power. According to Northern Maine Administrator, the limited transfer capability of the Northern Maine/NB Power interface affords the only means by which competitive suppliers from outside the Northern Maine region can compete to serve load in the Northern Maine region. For this reason, the Northern Maine Administrator states that the Northern Maine wholesale market is uniquely sensitive to any restrictions or impediments to true open access at the Northern Maine/NB Power interface.

III. Discussion

A. Procedural Matters

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), Northern Maine Administrator's timely, unopposed motion to intervene serves to make it a party to this proceeding.

¹⁴ 79 Fed. Reg. 10,793 (2014); 79 Fed. Reg. 15,328 (2014); 79 Fed. Reg. 29,177 (2014).

B. Substantive Matters**1. Market-Based Rate Authorization**

17. 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.¹⁵ As discussed below, we find that NB Energy Marketing has rebutted the presumption of market power in the New Brunswick balancing authority area and conclude that NB Energy Marketing satisfies the Commission's standards for market-based rate authority in the Northeast region. Accordingly, we will accept NB Energy Marketing's updated market power analysis and notices of change in status filings.

2. Horizontal Market Power**a. Indicative Screens**

18. The Commission has adopted two indicative screens for assessing horizontal market power: the pivotal supplier screen and the wholesale market share screen.¹⁶ 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.¹⁷

19. NB Energy Marketing prepared the pivotal supplier and wholesale market share screens for the ISO-NE market, consistent with the requirements of Order No. 697.¹⁸ We have reviewed those screens and find that NB Energy Marketing passes the pivotal supplier and wholesale market share screens in the ISO-NE market, with market shares ranging from 2.3 to 5.7 percent in the Point Lepreau sensitivity analysis. Accordingly, we find that NB Energy Marketing satisfies the Commission's requirements for market-based rate authority regarding horizontal market power in the ISO-NE market.

20. With respect to the New Brunswick balancing authority area, NB Energy Marketing passes the pivotal supplier screen, but fails the wholesale market share screen in the Point Lepreau sensitivity analysis. NB Energy Marketing represents that it passes the wholesale market share screen with a 17.7 percent market share in the fall season;

¹⁵ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 62, 399, 408, 440.

¹⁶ *Id.* P 62.

¹⁷ *Id.* PP 33, 62-63.

¹⁸ *Id.* PP 231-232.

however, NB Energy Marketing fails the wholesale market share screen in the winter, spring, and summer seasons, with market shares ranging from 24.1 to 32.2 percent.¹⁹

21. The Commission has stated that an applicant that fails one or more of the indicative screens has several procedural options, including the right to challenge the market power presumption by submitting a delivered price test analysis, or alternatively, sellers can accept the presumption of market power and adopt some form of cost-based mitigation. Accordingly, NB Energy Marketing submitted a delivered price test analysis for the New Brunswick balancing authority area.

b. Delivered Price Test

22. The Commission has explained that the delivered price test identifies potential suppliers based on market prices, input costs, and transmission availability, and calculates each supplier's economic capacity and available economic capacity²⁰ for each season/load period.²¹ Under the delivered price test, applicants must also calculate market concentration using the Hirschman-Herfindahl Index (HHI).²² An HHI of less than 2,500 in the relevant market for all season/load periods, in combination with a demonstration that the applicants are not pivotal and do not possess more than a 20 percent market share in any of the season/load periods, would constitute a showing of a lack of horizontal market power, absent compelling contrary evidence from intervenors. A detailed description of the mechanics of the delivered price test is provided in Order No. 697.²³

¹⁹ February 14, 2014 Filing, Attachment 9, Frame Aff.

²⁰ "Economic capacity" is the total generation capacity of a potential supplier that can compete in the destination market, given its costs and transmission availability. "Available economic capacity" is derived by subtracting each potential supplier's native load obligation from its total capacity and adjusting transmission availability accordingly. *See* Order No. 697, FERC Stats. & Regs. ¶ 31, 252 at P 96 n.78.

²¹ Super-peak, peak, and off-peak, for winter, shoulder, and summer periods and an additional highest super-peak for the summer.

²² The HHI is the sum of the squared market shares. For example, in a market with five equal size firms, each would have a 20 percent market share. For that market, $HHI = (20)^2 + (20)^2 + (20)^2 + (20)^2 + (20)^2 = 400 + 400 + 400 + 400 + 400 = 2,000$.

²³ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 104-117.

23. As with the indicative screens, applicants and intervenors may present evidence such as historical wholesale sales data, which may be used to calculate market shares and market concentration and to refute or support the results of the delivered price test. In Order No. 697, the Commission encouraged applicants to present the most complete analysis of competitive conditions in the market as the data allows.²⁴

24. NB Energy Marketing's delivered price test analysis for the New Brunswick balancing authority area indicates that NB Energy Marketing is a pivotal supplier during three season/load periods using the economic capacity measure, but is not pivotal in any season/load period using the available economic capacity measure. When the economic capacity measure is used, NB Energy Marketing reports market shares above 20 percent in all season/load periods and HHIs ranging from 1,604 to 2,306. When the available economic capacity measure is used, NB Energy Marketing reports market shares below 20 percent in all season/load periods and HHIs ranging from 607 to 2,055. NB Energy Marketing also filed two sensitivity analyses showing that when prices are increased or decreased by 10 percent, the results of the delivered price test change very little under both the economic capacity and available economic capacity measures.

c. Commission Determination

25. After weighing all of the relevant factors, we find that, on balance, based on the record evidence, NB Energy Marketing has rebutted the presumption of horizontal market power and satisfies the Commission's horizontal market power standard for the grant of market-based rate authority. NB Energy Marketing's delivered price test analysis for the New Brunswick balancing authority area varies depending on whether the economic capacity or available economic capacity measure is used. The Commission has stated that the delivered price test does not function like the initial screens – i.e., failure of either the economic capacity or available economic capacity analyses does not result in an automatic failure of the test as a whole. Neither measure is definitive; the Commission weighs the results of the economic capacity and the available economic capacity analyses and considers the arguments of the parties.²⁵ In the delivered price test analysis, available economic capacity accounts for native load requirements. As the Commission explained in Order No. 697:

[I]n markets where utilities retain significant native load obligations, an analysis of available economic capacity may more accurately assess an individual seller's competitiveness, as well as the overall competitiveness of a market, because available economic capacity recognizes the native load

²⁴ *Id.* P 111.

²⁵ *Id.* P 112.

obligations of the sellers. On the other hand, in markets where the sellers have been predominantly relieved of their native load obligations, an analysis of economic capacity may more accurately reflect market conditions and a seller's relative size in the market.²⁶

26. Because NB Energy Marketing's affiliate, NB Power, has native load obligations in the New Brunswick balancing authority area, we find that the available economic capacity measure of the delivered price test more accurately captures conditions in the relevant market. As noted above, using the available economic capacity measure, NB Energy Marketing's study indicates that it is not pivotal, has less than a 20 percent market share in all season/load periods, and does not exceed the 2,500 HHI threshold in any of the 10 seasons/load periods.

27. In addition to submitting a delivered price test analysis, NB Energy Marketing provided two sensitivity analyses which separately analyze what effect, if any, an increase of 10 percent or a decrease of 10 percent of the market price would have on the results of the delivered price test analysis. In the sensitivity analysis, market concentration, as measured by the HHI, remains below the 2,500 threshold and market shares remain below 20 percent in all 10 delivered price test periods using the available economic capacity measure. In addition, NB Energy Marketing is not pivotal in either sensitivity when using the available economic capacity measure. NB Energy Marketing's sensitivity analyses indicate that the overall results from the sensitivity delivered price test analyses are only slightly different than those reported for the base case delivered priced test analyses.

28. After weighing all of the relevant evidence, we find that on balance NB Energy Marketing has rebutted the presumption of horizontal market power in the New Brunswick balancing authority area.

3. Vertical Market Power

29. 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.²⁷ The Commission also requires that a market-based rate seller whose foreign affiliate owns, controls, or operates transmission facilities outside of the U.S. that can be used by competitors of the seller to reach U.S. markets must demonstrate that such affiliate either has adopted and is implementing an

²⁶ *Id.*

²⁷ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408.

OATT, or otherwise offers comparable, non-discriminatory access to such transmission facilities.²⁸

30. NB Energy Marketing states that NB Power provides open and non-discriminatory access to its transmission system in accordance with the Electricity Act and its New OATT. NB Energy Marketing explains that the New Brunswick Regulatory Board held a hearing on the New OATT during the week of February 9, 2015. As part of that proceeding, NB Power submitted testimony regarding compliance of the NB Power OATT with the Commission's requirements for open and non-discriminatory access and concluded that the vast majority of the NB Power OATT provisions substantially conform with or are superior to the *pro forma* OATT. To the extent there are significant deviations from the *pro forma* OATT, NB Power states that they are acceptable to the Commission based on the Commission's reciprocity policies. NB Energy Marketing states that the New Brunswick Regulatory Board generally accepted NB Power's analysis and conclusions.

31. We have reviewed NB Power's New OATT and while we note that it contains deviations from the *pro-forma* OATT, we agree that it provides for comparable, non-discriminatory transmission access. Accordingly, we relieve NB Energy Marketing from the requirement to submit a report to the Commission every 90 days regarding the status of the New Brunswick Regulatory Board's review of NB Power's OATT.

32. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.²⁹ 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, storage, or distribution facilities; sites for 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).³⁰ 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.³¹ The Commission adopted a rebuttable presumption that the ownership or control of, affiliation with any entity that

²⁸ 18 C.F.R. § 35.37d (2015).

²⁹ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 440.

³⁰ *Id.* P 447; Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

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

owns or controls, inputs to electric power production does not allow a seller to raise entry barriers but will allow intervenors to demonstrate otherwise.³²

33. In its February 14, 2014 filing, NB Energy Marketing states that neither it nor its affiliates own or control intrastate natural gas infrastructure; sites for generation capacity development; or physical coal supply sources or those who may access transportation of coal supplies. NB Energy Marketing affirmatively states that it has not erected and will not erect barriers to entry into the relevant markets.

34. Based on NB Energy Marketing's representations, as discussed herein, we find that NB Energy Marketing satisfies the Commission's requirements for market-based rate authority regarding vertical market power.

4. Reporting Requirements

35. An entity with market-based rate authorization must file an Electric Quarterly Report (EQR) with the Commission, consistent with Order Nos. 2001³³ and 768,³⁴ to fulfill its responsibility under section 205(c)³⁵ of the Federal Power Act to have rates on file in a convenient form and place.³⁶ NB Energy Marketing must file EQRs electronically with the Commission consistent with the procedures set forth in Order

³² *Id.* P 446.

³³ *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).

³⁴ *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).

³⁵ 16 U.S.C. § 824d(c) (2012).

³⁶ *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).

No. 770.³⁷ Failure to timely and accurately file an EQR is a violation of the Commission's regulations for which NB Energy Marketing may be subject to refund, civil penalties, and/or revocation of market-based rate authority.³⁸

36. NB Energy Marketing 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.³⁹

37. Additionally, NB Energy Marketing must file an updated market power analysis for all regions in which it is designated as a Category 2 seller in compliance with the regional reporting schedule adopted in Order No. 697.⁴⁰ The Commission also reserves the right to require such an analysis at any intervening time.

The Commission orders:

(A) NB Energy Marketing's updated market power analysis is hereby accepted for filing, as discussed in the body of this order.

(B) NB Energy Marketing's notices of change in status are hereby accepted for filing, as discussed in the body of this order.

(C) NB Energy Marketing is hereby relieved from the requirement to submit a report to the Commission every 90 days regarding the status of the New Brunswick Regulatory Board's review of the OATT, as discussed in the body of this order.

³⁷ Order No. 770, FERC Stats. & Regs. ¶ 31,338.

³⁸ 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.

³⁹ *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).

⁴⁰ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 848-850.

(D) NB Energy Marketing is hereby directed to file updated market power analyses according to the regional schedule adopted in Order No. 697, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.