

155 FERC ¶ 61,006
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Smith Creek Hydro, LLC

Docket No. ER16-904-001

ORDER GRANTING MARKET-BASED RATE AUTHORIZATION AND REQUEST
FOR WAIVERS

(Issued April 1, 2016)

1. In this order, we grant Smith Creek Hydro, LLC (Smith Creek) authority to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates, effective April 1, 2016, as requested. Also, as discussed below, we grant Smith Creek's request for waiver of the Commission's requirements to file an Open Access Transmission Tariff (OATT) and to establish and maintain an Open Access Same-Time Information System (OASIS). We also grant Smith Creek's request for other waivers commonly granted to market-based rate sellers, except as noted herein.

2. Additionally, we find that Smith Creek meets the criteria for a Category 1 seller in all regions and is so designated.¹

I. Background

3. On February 5, 2016, as amended March 4, 2016 and March 16, 2016,² pursuant to section 205 of the Federal Power Act (FPA),³ Smith Creek 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. Smith Creek states that it will acquire a 37.8 megawatt (MW) hydroelectric facility located in Boundary County, Idaho (Project) from Eugene Water & Electric Board (Eugene) pursuant to an asset sales agreement, with an expected closing date of April 1, 2016 (Transaction).⁵ Smith Creek explains that it will sell the entire electrical output of the Project to Eugene for an initial period of three years pursuant to a power

¹ See *Refinements to Policies and Procedures for Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 816, FERC Stats. & Regs. ¶ 31,374, at PP 320-322 (2015); *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).

² Smith Creek amended its application to address issues related to the Part 101 waiver request and also to ensure that all the requisite information required by Order No. 816 is included.

³ 16 U.S.C. § 824d (2012).

⁴ Smith Creek requests authorization to sell ancillary services in the markets administered by the California Independent System Operator Corporation. Smith Creek also requests authorization to engage in the sale of certain ancillary services as a third-party provider in other markets.

⁵ Smith Creek concurrently filed an application with the Commission in Docket No. EC16-68-000 seeking authorization of the Transaction under section 203 of the FPA, 16 U.S.C. § 824b (2012).

purchase agreement that Eugene and Smith Creek have agreed to enter into in conjunction with the closing of the Transaction (Power Purchase Agreement).

5. Smith Creek states that the Project is interconnected to the transmission system and balancing authority area operated by Bonneville Power Administration (BPA). Smith Creek states the Transaction includes the sale by Eugene and purchase by Smith Creek of the 30.5 mile, 115 kv transmission line used to interconnect the Project to the existing substation and transmission grid owned and operated by BPA (Project Line).⁶

6. Smith Creek also states that Eugene currently allows Northern Lights, Inc., (Northern Lights) to use the Project Line pursuant to a power transfer agreement between Eugene and Northern Lights (Power Transfer Agreement). Smith Creek states that the Power Transfer Agreement permits Northern Lights *de minimis* use of the Project Line to transfer power from the BPA Bonners Ferry substation to a tie-in point along the Project Line. Smith Creek represents that Northern Lights uses the Project Line to distribute power to a small number of retail customers using equipment owned by Northern Lights. Smith Creek states that, under the Power Transfer Agreement, Northern Lights is subject to a demand limit of 3 MW. According to Smith Creek, this demand limit has never been exceeded and will not be exceeded. Smith Creek states that, after the Transaction, it will assume Eugene's rights and responsibilities under the Power Transfer Agreement with Northern Lights for its remaining term, through January 1, 2020.⁷

7. Smith Creek represents that the Project Line currently is exempt from the Commission's jurisdiction, under section 201(f) of the FPA,⁸ because it is owned by Eugene, a municipal entity.⁹ Smith Creek represents that, because the Project Line is not used solely as a gen-tie line, it will be subject to the Commission's jurisdiction once the Transaction closes. Accordingly, Smith Creek requests that the Commission grant it

⁶ February 5 Application at 4.

⁷ February 5 Application at 4-5.

⁸ 16 U.S.C. § 824(f) (2012).

⁹ February 5 Application at n.7.

waiver of Order Nos. 888,¹⁰ 889,¹¹ 890,¹² section 35.28,¹³ and Part 37¹⁴ with respect to the Project Line.

8. Smith Creek states that it is a joint venture, owned 25 percent by Smith Creek Management, LLC (Smith Creek Management) and 75 percent by Smith Creek Holdings, Inc. (Smith Creek Holdings). Smith Creek Holdings is a wholly owned subsidiary of JAVA Hydro Electric, Inc. (JAVA), which is a wholly owned subsidiary of JAVA Holdings Ltd., a company formed under the laws of Alberta, Canada (JAVA Holdings). JAVA Holdings is indirectly wholly-owned by a family trust for which one individual serves as the sole trustee. Smith Creek Management is owned by two individuals.¹⁵ Smith Creek represents that it is affiliated with a 3.8 MW small power production qualifying facility and a 25.8 MW hydroelectric facility, both located in the Puget Sound Energy (Puget) balancing authority area, which is first-tier to the BPA balancing authority area. Smith Creek represents that the entire output of these affiliated facilities

¹⁰ *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).

¹¹ *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).

¹² *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).

¹³ 18 C.F.R. § 35.28 (2015).

¹⁴ 18 C.F.R. pt. 37 (2015).

¹⁵ February 5 Application at 5.

is fully committed under power purchase agreements for firm sales of one year or more to Puget, a non-affiliated third party purchaser.¹⁶

II. Notice of Filings

9. Notices of Smith Creek's filings, as amended March 4, 2016 and March 16, 2016, were published in the *Federal Register*,¹⁷ with interventions and protests due on or before March 23, 2016. None was filed.

10. Notice of Smith Creek's request for blanket authorization under Part 34 of the Commission's regulations was separately published in the *Federal Register*,¹⁸ with interventions and protests due on or before March 1, 2016. None was filed.

III. Discussion

11. As discussed below, we will grant Smith Creek'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 April 1, 2016, as requested.¹⁹ We will also grant Smith Creek's request for certain waivers.

A. Market-Based Rate Authorization

12. 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.²⁰

¹⁶ *Id.* at 11.

¹⁷ 81 Fed. Reg. 7534; 81 Fed. Reg. 12,725; 81 Fed. Reg. 15,297 (2016).

¹⁸ 81 Fed. Reg. 8186 (2016).

¹⁹ We note that Smith Creek is not being granted authority to make third-party sales of operating reserves to a public utility that is purchasing ancillary services to satisfy its own OATT requirements to offer ancillary services to its own customers. If Smith Creek seeks such authority, it must make the required showing and receive Commission authorization prior to making such sales. *See Third-Party Provision of Ancillary Services; Accounting and Financial Reporting for New Electric Storage Technologies*, Order No. 784, FERC Stats. & Regs. ¶ 31,349, at PP 200-202 (2013), *order on clarification*, Order No. 784-A, 146 FERC ¶ 61,114 (2014).

²⁰ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 62, 399, 408, 440.

1. Horizontal Market Power

13. The Commission has adopted two indicative screens for assessing horizontal market power: the pivotal supplier screen and the wholesale market share screen.²¹ 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.²²

14. As discussed above, Smith Creek represents that it and its affiliates' generation capacity in the BPA balancing authority area and first-tier markets is fully committed under long-term power purchase agreements.²³ Based on Smith Creek's representations, we find that Smith Creek satisfies the Commission's requirements for market-based rates regarding horizontal market power.

2. Vertical Market Power

15. 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 file²⁴ or that such entity has received waiver of the OATT requirement under 18 C.F.R. § 35.28(d)(1) or satisfies the requirements for blanket OATT waiver under 18 C.F.R. § 35.28(d)(2).²⁵

16. In this case, as discussed more fully below, the Commission will grant Smith Creek's request for waiver of the requirement to have an OATT on file for the Project

²¹ *Id.* P 62.

²² *Id.* PP 33, 62-63.

²³ In Order No. 816, the Commission clarified that in instances where all generation owned or controlled by a seller and its affiliates in the relevant balancing authority areas or markets, including first-tier balancing authority areas or markets, is fully committed, the seller will not be required to file indicative screens. Order No. 816, FERC Stats. & Regs. ¶ 31,374 at P 39.

²⁴ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408.

²⁵ *See Open Access and Priority Rights on Interconnection Customer's Interconnection Facilities*, Order No. 807, FERC Stats. & Regs. ¶ 31,367, at P 57 (2015), *order on reh'g*, Order No. 807-A, 153 FERC ¶ 61,047 (waiving 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 also Oildale Energy, LLC*, 153 FERC ¶ 61,013, at PP 12-14 (2015).

Line. Additionally, Smith Creek represents that none of its affiliates owns or controls any transmission facilities in North America other than the limited equipment necessary to interconnect their individual generating facilities to the transmission grid. Smith Creek further represents that its affiliates' interconnection facilities satisfy the Commission's requirements for the blanket OATT waiver under 18 C.F.R. § 35.28(d)(2).

17. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.²⁶ 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; and physical coal supply sources and ownership of or control over who may access transportation of coal supplies (collectively, inputs to electric power production).²⁷ The Commission also requires sellers to make an affirmative statement that they and their affiliates have not erected barriers to entry into the relevant market and will not erect barriers to entry into the relevant market.²⁸ 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.²⁹

18. Regarding other barriers to entry, Smith Creek represents that it and its affiliates do not own or control intrastate natural gas transportation, storage, or distribution facilities, sources of coal supplies and the transportation of coal supplies, or other essential resources or inputs that could be used to restrict market entry by competing suppliers in North America.³⁰ In addition, consistent with Order No. 697, Smith Creek

²⁶ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 440.

²⁷ Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176. *See also* Order No. 816, FERC Stats. & Regs. ¶ 31,374 at PP 207-212 (removing the requirement that sellers report the acquisition of control of a site or sites for new generation capacity development for which site control has been demonstrated).

²⁸ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447. *See also* Order No. 816, FERC Stats. & Regs. ¶ 31,374 at PP 354, 356 (confirming that the affirmative statement regarding barriers to entry must be made with regard to a seller and its affiliates and amending 18 C.F.R. § 35.37 (e)(3) to specify that "a Seller is required to make an affirmative statement that it and its affiliates have not erected barriers to entry into the relevant market and will not erect barriers to entry into the relevant market.").

²⁹ Order No. 697, FERC Stats. & Regs. 31,252 at P 446.

³⁰ February 5 Application at 12; March 4 Amended Application at 14; March 16 Amended Application at 13-14.

affirmatively states that it has not and will not erect barriers to entry in the relevant geographic market.³¹

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

B. Waiver Requests

1. OATT and OASIS

20. Smith Creek seeks waiver of the requirements to file an OATT and establish and maintain an OASIS.³² In support, Smith Creek represents that the Project Line constitutes only the limited equipment necessary to interconnect the Project to the transmission grid, but acknowledges that, due to the use of the line by Northern Lights, it cannot qualify for the blanket waivers under Order No. 807.³³ Smith Creek argues that waiver is appropriate because the Project Line constitutes a limited and discrete transmission line compared to others in the same geographic area. Additionally, Smith Creek states that Northern Lights will be harmed if it cannot rely on the terms of the existing Power Transfer Agreement.³⁴ Finally, Smith Creek also states that it will own only the Project Line, and that "there are no third parties other than Northern Lights that currently have an interest in use of the line."³⁵

³¹ We interpret this statement to apply to Applicant and its affiliates, and our authorizations herein are predicated on Applicant's complying with this commitment. *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447. *See also* Order No. 816, FERC Stats. & Regs. ¶ 31,374 at PP 354, 356.

³² Smith Creek did not request a waiver of the requirement to abide by the Standards of Conduct. Therefore, we note that, to the extent that Smith Creek is subject to the Standards of Conduct requirements of Part 358, it must comply with them, although our determination in this order is without prejudice to Smith Creek's submitting a request for such waiver in the future.

³³ March 4 Amended Application at 16 (citing Order No. 807, FERC Stats. & Regs. ¶ 31,367 at P 57).

³⁴ February 5 Application at 16.

³⁵ *Id.*

21. Order Nos. 888 and 890 and section 35.28 of the Commission's regulations³⁶ require public utilities that own, operate, or control facilities used for the transmission of electric energy in interstate commerce to file an OATT prior to providing transmission service. Order No. 889 and Part 37 of the Commission's regulations³⁷ require public utilities to establish and maintain an OASIS. In prior orders, the Commission has enunciated the standards for waiver of, or exemption from, some or all of the requirements of Order Nos. 888, 889, and 890.³⁸ The Commission has stated that the criteria for waiver of the requirements of Order Nos. 890 and 2004 have not changed from those used to evaluate requests for waiver under Order Nos. 888 and 889.³⁹ Order No. 717 did not change those criteria.⁴⁰

22. 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* OATT 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.⁴¹

23. The Commission has determined that waiver of the requirements to establish an OASIS would be appropriate for a public utility if the applicant: (1) owns, operates, or controls only limited and discrete transmission facilities (rather than an integrated transmission grid); or (2) is a small public utility that owns, operates, or controls an integrated transmission grid, unless other circumstances are present that indicate that waiver would not be justified. The Commission has held that waiver of Order No. 889 will remain in effect until the Commission takes action in response to a complaint to the

³⁶ 18 C.F.R. § 35.28 (2015).

³⁷ 18 C.F.R. pt. 37 (2015).

³⁸ See, e.g., *Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232, at 61,941 (1996) (*Black Creek*); *Entergy Mississippi, Inc.*, 112 FERC ¶ 61,228, at P 22 (2005) (*Entergy*).

³⁹ 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).

⁴⁰ See Order No. 717, FERC Stats. & Regs. ¶ 31,280 at PP 31-33.

⁴¹ *Black Creek*, 77 FERC at 61,941.

Commission that an entity evaluating its transmission needs could not get the information necessary to complete its evaluation.⁴²

24. Based on Smith Creek's representations that the Project Line would constitute only the limited equipment necessary to interconnect the Project to the transmission grid, with use by Northern Lights that is subject to a demand limit of 3 MW, we find that the facilities are limited and discrete and do not constitute an integrated transmission system for purposes of the waiver analysis considered in this order. We note that the Power Transfer Agreement predates Smith Creek's ownership of the Project, and that waiver will allow Northern Lights continued use of the transmission facilities in accordance with the remaining term of the existing agreement. Accordingly, we will grant Smith Creek's request for waiver of the requirements set forth in Order Nos. 888 and 890, and in section 35.28 of the Commission's regulations to have an OATT on file for the duration of the Power Transfer Agreement. However, if Smith Creek receives a request for additional transmission service during this period, it must file with the Commission a *pro forma* OATT within 60 days of the date of the request.⁴³

25. We will also grant Smith Creek waiver of the requirements of Order No. 889 and Part 37 of the Commission's regulations with respect to the requirement to establish and maintain an OASIS. We note that Smith Creek's waiver of the requirement to establish an OASIS will remain in effect until the Commission takes action in response to a complaint to the Commission alleging that an entity evaluating its transmission needs could not get the information necessary to complete its evaluation.⁴⁴

2. Other Waivers and Authorizations

26. Smith Creek 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 (with the exception of the provisions of Part 101 that apply to hydropower licensees with respect to licensed hydropower

⁴² *Entergy*, 112 FERC ¶ 61,228 at P 23 (citing *Central Minnesota Municipal Power Agency*, 79 FERC ¶ 61,260, at 62,127 (1997); *Easton Utilities Commission*, 83 FERC ¶ 61,334, at 62,343 (1998)).

⁴³ *Black Creek*, 77 FERC ¶ 61,232 at 61,941.

⁴⁴ *Entergy*, 112 FERC ¶ 61,228 at P 23 (citing *Central Minnesota*, 79 FERC ¶ 61,260 at 62,127; *Easton*, 83 FERC ¶ 61,334 at 62,343).

projects), and 141 of the Commission's regulations, except sections 141.14 and 141.15; and (3) blanket authorization under section 204 of the FPA⁴⁵ and Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability.

27. We will grant the requested waivers and authorizations consistent with those granted to other entities with market-based rate authorizations.⁴⁶ Notwithstanding the waiver of the accounting and reporting requirements, we expect Smith Creek to keep its accounting records in accordance with generally accepted accounting principles.

⁴⁵ 16 U.S.C. § 824c (2012).

⁴⁶ 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 Generation, 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")). *See also* Order No. 816, FERC Stats. & Regs. ¶ 31,374 at PP 345-347 (clarifying that hydropower licensees that makes sales *only* at market-based rates and that have been granted waiver of Part 101 as part of their market-based rate tariffs may satisfy the requirements in Part 101 by following General Instruction No. 16 under Part 101).

C. Reporting Requirements

28. An entity with market-based rate authorization must file an Electric Quarterly Report (EQR) with the Commission, consistent with Order Nos. 2001⁴⁷ and 768,⁴⁸ to fulfill its responsibility under FPA section 205(c)⁴⁹ to have rates on file in a convenient form and place.⁵⁰ Smith Creek must file EQRs electronically with the Commission consistent with the procedures set forth in Order No. 770.⁵¹ Failure to timely and accurately file an EQR is a violation of the Commission's regulations for which Smith Creek may be subject to refund, civil penalties, and/or revocation of market-based rate authority.⁵²

⁴⁷ *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).

⁴⁸ *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).

⁴⁹ 16 U.S.C. § 824d(c) (2012).

⁵⁰ *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).

⁵¹ Order No. 770, FERC Stats. & Regs. ¶ 31,338.

⁵² 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.

29. Additionally, Smith Creek 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.⁵³

30. In Order No. 697, the Commission created two categories of sellers.⁵⁴ 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 capacity 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.⁵⁵ Sellers that do not fall into Category 1 are designated as Category 2 sellers and are required to file updated market power analyses.⁵⁶

31. Smith Creek represents that it meets the criteria for Category 1 seller status in all regions. Smith Creek represents that it and its affiliates own less than 70 MW of generation capacity in the Northwest region. Smith Creek states that, except as described previously with respect to the Project Line, neither it nor its affiliates own, operate, or control interests in transmission or distribution facilities in the United States except the limited equipment necessary to connect their respective facilities to the transmission grid. Smith Creek adds that, outside of the Northwest region, neither it nor its affiliates own or control any generation or transmission assets. Finally, Smith Creek states that it is not affiliated with a franchised public utility in any region, and does not raise any other vertical market power issues.⁵⁷

⁵³ *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).

⁵⁴ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 848.

⁵⁵ 18 C.F.R. § 35.36(a) (2015).

⁵⁶ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 850.

⁵⁷ February 5 Application at 17-18.

32. Based on Smith Creek's representations, we designate Smith Creek as a Category 1 seller in all regions. The Commission reserves the right to require an updated market power analysis at any time for any region.⁵⁸

The Commission orders:

(A) Smith Creek's market-based rate tariff is hereby accepted for filing, effective April 1, 2016, as requested, as discussed in the body of this order.

(B) Smith Creek's request for waiver of the requirements to file an OATT and to establish and maintain an OASIS is hereby granted, as discussed in the body of this order.

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

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

(E) Blanket authorization under Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability is hereby granted. Smith Creek 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 Smith Creek, 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 Smith Creek's issuance of securities or assumptions of liability.

⁵⁸ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 853.

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