

160 FERC ¶ 61,136
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, and Robert F. Powelson.

Exelon Fitzpatrick, LLC

Docket No. ER17-2201-000

ORDER GRANTING MARKET-BASED RATE AUTHORIZATION AND REQUEST
FOR WAIVERS

(Issued September 28, 2017)

1. In this order, we grant Exelon Fitzpatrick, LLC (Applicant) authority to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates, effective September 29, 2017, as requested. Also, as discussed below, we grant Applicant's request for waivers commonly granted to market-based rate sellers, except as noted herein.
2. Additionally, we find that Applicant meets the criteria for a Category 2 seller in the Northeast region and a Category 1 seller in all other regions, and is so designated.¹

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).

I. Background

3. On July 31, 2017, pursuant to section 205 of the Federal Power Act (FPA),² Applicant 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. Applicant states that it is a wholly owned subsidiary of Exelon Generation Company, LLC (Exelon Generation), which is a wholly owned subsidiary of Exelon Corporation (Exelon). Applicant explains that it will own the James A. Fitzpatrick Nuclear Power Plant (Facility) after consummation of the proposed transaction described in its section 203⁴ application filed on July 28, 2017 in Docket No. EC17-142-000. Applicant describes the Facility as an approximately 837 megawatt (MW) nuclear generation facility located in Scriba, New York, which consists of a nuclear generating unit, plus the associated interconnection facilities. Applicant represents that the Facility is located within the NYISO market.⁵

5. Applicant explains that Exelon's indirect, wholly owned subsidiaries are franchised public utilities that include: Commonwealth Edison Company, PECO Energy Company (PECO), Baltimore Gas and Electric Company (BGE), Potomac Electric Power Company (PEPCO), Delmarva Power & Light Company (DPL), and Atlantic City Electric Company (ACE) (collectively, Franchised Public Utilities). Applicant explains that ACE and DPL are included in the asset appendix and in the market power analysis.⁶

² 16 U.S.C. § 824d (2012).

³ Applicant also requests 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., California Independent System Operator Corporation Inc., Midcontinent Independent System Operator, Inc. (MISO), and Southwest Power Pool, Inc. (SPP). Applicant also requests authorization to engage in the sale of certain ancillary services as a third-party provider in other markets. Application at 15-16.

⁴ 16 U.S.C. § 824b (2012). Applicant explains that under the proposed transaction, it will acquire ownership of the Facility from Exelon Generation. Application at 2-3.

⁵ Application at 2-3.

⁶ *Id.* at 4-5.

6. Applicant explains that the relevant market for its market power analysis⁷ is the NYISO market. Applicant states that it is affiliated with the Nine Mile Point Nuclear Station, LLC (Nine Mile) and R.E. Ginna Nuclear Power Plant, LLC (Ginna), both of which are located in the NYISO market. In addition, Applicant states that an affiliate purchases an additional 28 MW of electric generation under a long-term power purchase agreement (PPA) such that Applicant and its affiliates own or control 2,003 MW of electric generation capacity within the NYISO market.⁸ Applicant represents that it is also affiliated with electric generation capacity located within the markets first-tier to the NYISO market.⁹ Applicant states that in the PJM market, it is affiliated with approximately 25,548 MW of electric generation capacity. Applicant further represents that in the ISO-NE market it is affiliated with approximately 2,837 MW of electric generation capacity, and in the MISO market, it is affiliated with approximately 2,448 MW of electric generation capacity.

7. Applicant further explains that neither it nor any of its affiliates, except for the Franchised Public Utilities, owns or controls any transmission facilities in the United States, other than the limited and discrete interconnection facilities required to connect individual generating facilities to the transmission grid. Applicant states that the Franchised Public Utilities have transferred operational control of their transmission facilities to PJM, which has an Open Access Transmission Tariff (OATT) on file with the Commission.¹⁰

8. Applicant states that certain of the Franchised Public Utilities own intrastate natural gas transportation and distribution facilities and operate liquefied natural gas facilities that do not offer services to third parties. Further, Applicant asserts that other Franchised Public Utilities supply and deliver natural gas to retail customers and provide transportation-only service to some customers.¹¹ Applicant states that, except for the natural gas facilities described above, neither it nor any of its affiliates owns or controls

⁷ Applicant states that it used the data submitted in its affiliates' December 2016 triennial filing, with the inclusion of a few additional data points to reflect changes since the December 2014-November 2015 study period. Application at 11. *See also Atlantic City Electric Co.*, Docket No. ER10-2997-005 (December 29, 2016).

⁸ Application at 6-7.

⁹ *Id.* at 8. *See also* Application at Attachment B.

¹⁰ Application at 3-5.

¹¹ *Id.*

intrastate natural gas transportation, storage, or distribution facilities, nor do they own or control physical coal supply sources or access to the transportation of coal supplies.¹²

9. Finally, Applicant requests waiver of the affiliate restrictions based on the fact that the Franchised Public Utilities do not have captive customers.¹³

II. Notice of Filings

10. Notice of Applicant's filing was published in the *Federal Register*,¹⁴ with interventions and protests due on or before August 21, 2017. Public Citizen, Inc. (Public Citizen) filed a motion to intervene and protest on August 21, 2017. Applicant filed a motion for leave to answer and answer on September 1, 2017.

11. Notice of Applicant's request for blanket authorization under Part 34 of the Commission's regulations was separately published in the *Federal Register*,¹⁵ with interventions and protests due on or before August 21, 2017. None was filed.

III. Responsive Pleadings

12. Public Citizen argues that Applicant's application is incomplete because Applicant does not include the New York Zero Emission Credit (ZEC) in its horizontal market power analysis. Public Citizen asserts that the ZEC, when combined with the request for market-based rate authority, will result in a windfall for Applicant, which would result in rates that would not likely be just and reasonable. Public Citizen states that it was an error for Applicant to update its horizontal market power screens by only including the additions and subtractions to its generation portfolio and newly entered into and recently expired PPAs that occurred between the end of the study period and the submission of this application.¹⁶ Public Citizen argues that neither NYISO nor its market monitor are currently equipped to mitigate Applicant's horizontal market power, which would result

¹² *Id.* at 9-10.

¹³ *Id.* at 15. *See also infra* PP 28-29.

¹⁴ 82 Fed. Reg. 36,764 (2017).

¹⁵ 82 Fed. Reg. 36,763 (2017).

¹⁶ *See supra* note 7.

from the combination of the ZEC subsidy with market-based rate authority.¹⁷ Public Citizen states that the Commission should either direct Applicant to explain why the ZEC was not included in its horizontal market power analysis, or reject the application outright. Public Citizen states that the alternative, especially without any mitigation, will result in unjust and unreasonable rates for Public Citizen's members.¹⁸

13. In its answer, Applicant argues that Public Citizen's protest is without merit because, in accordance with Order No. 697 and Order No. 816, the ZEC is not a part of the data required for the market power analysis. Applicant explains that the required horizontal market power screens focus on generation capacity. Applicant further explains that the Commission standardized the template for the pivotal supplier and market share screens and the data points that all sellers must use when submitting their horizontal market power analyses and that an applicant for market-based rate authority is not permitted to deviate from the Commission-specified template and data requirements. Because the ZEC is not generation capacity, Applicant asserts that it appropriately omitted the ZEC from its horizontal market power analysis.¹⁹

IV. Discussion

A. Procedural Matters

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2017), the timely, unopposed motion to intervene of Public Citizen serves to make it a party to this proceeding.

15. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2017), prohibits an answer to a protest and/or answer unless otherwise ordered by the decisional authority. We will accept Applicant's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

16. As discussed below, we will grant Applicant's request for authorization to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates,

¹⁷ Public Citizen states that NYISO has not implemented mitigation strategies that could address the impact of the ZEC on Exelon's bidding behavior. Public Citizen August 21, 2017 Protest at 4.

¹⁸ *Id.* at 1-4.

¹⁹ Applicant September 1, 2017 Answer at 2-3.

and we will accept its market-based rate tariff, effective September 29, 2017, as requested.²⁰ We will also grant Applicant's request for certain waivers.

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.²¹

a. Horizontal Market Power

18. The Commission has adopted two indicative screens for assessing horizontal market power: the pivotal supplier screen and the wholesale market share screen.²² 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.²³

19. Applicant relies on the data submitted in Atlantic City Electric Company's recently accepted market power analysis²⁴ to demonstrate that it passes both the pivotal supplier and the wholesale market share screens for the NYISO market. Applicant's pivotal supplier screen indicates that its net uncommitted capacity is less than the net uncommitted supply in the NYISO market and its market shares range from 2.9 to 6.2 percent. Based on Applicant's representations, we find that Applicant satisfies

²⁰ We note that Applicant 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 Applicant 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).

²¹ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 62, 399, 408, 440.

²² *Id.* P 62.

²³ *Id.* PP 33, 62-63.

²⁴ *Atlantic City Electric Co.*, Docket No. ER10-2997-005 (Aug. 1, 2017) (delegated letter order).

the Commission's requirements for market-based rates regarding horizontal market power.

20. We disagree with Public Citizen that Applicant's horizontal market power analysis is incomplete because it does not consider ZECs, and find that the ZEC is not a required input to either the pivotal supplier or wholesale market share screen. The Commission evaluates horizontal market power using the wholesale market share and pivotal supplier screens. Both screens are based on the generation capacity owned or controlled by the seller and its affiliates. In Order No. 697-A, the Commission stated that "the wholesale market share screen measures . . . whether a seller has a dominant position in the market based on the number of megawatts of uncommitted capacity owned or controlled by the seller as compared to the uncommitted capacity of the entire relevant market."²⁵ In addition, the Commission stated that "the pivotal supplier analysis evaluates the potential of a seller to exercise market power based on uncommitted capacity at the time of the relevant market's annual peak demand."²⁶ Because the ZEC does not affect the amount of generation capacity owned or controlled by Applicant or its affiliates, it was appropriate for Applicant not to include the ZEC in its horizontal market power analysis.

21. Based on our analysis of Applicant's filing, we find that Applicant made the appropriate representations to demonstrate that it does not possess horizontal market power. In particular, Applicant conducted the market power analysis according to the methods specified by the Commission in Order Nos. 697 and 816, and an order clarifying Order No. 697,²⁷ where the Commission stated that "the market share studies in market-based rates filings for both preliminary screens and DPT analyses should be based on the most recently available actual historical data," and that filers, such as the Applicant who is a non-transmission owner, "should rely on the same vintage data that were used in the triennial reviews..."²⁸ Consistent with this requirement, Applicant performed the screens by using data from its affiliates' recently accepted triennial review from

²⁵ Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 17.

²⁶ *Id.* P 18.

²⁷ *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, 121 FERC ¶ 61,260 (2007). See also, generally, Order No. 697, FERC Stats. & Regs. ¶ 31,252, and *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 (2015).

²⁸ *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, 121 FERC ¶ 61,260 at P 12.

December 29, 2016²⁹ and includes the changes to Applicant's generation portfolio that occurred between November 2015 and August 2017 by demonstrating what happens to the market shares "if more recent data had been used."³⁰ Because the ZEC is not generation capacity, it was correctly excluded from the changes in Applicant's generation portfolio. Accordingly, we find that the arguments set forth in Public Citizen's protest are without merit, and that Applicant has demonstrated that it does not possess horizontal market power.

b. Vertical Market Power

22. 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 file³¹ 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).³²

23. Applicant states that, except for the transmission facilities owned by the Franchised Public Utilities, which are operated by PJM under PJM's OATT, neither Applicant nor any of its 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. Applicant asserts that it and its affiliates, with the exception of the Franchised Public Utilities as stated above, qualify for the blanket OATT waiver provided in Order No. 807.

24. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.³³ The Commission requires a seller to provide

²⁹ See *supra* note 24.

³⁰ *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, 121 FERC ¶ 61,260 at P 12.

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

³² 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).

³³ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 440.

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).³⁴ 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.³⁵ 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.³⁶

25. Applicant states that its affiliation with the natural gas distribution facilities owned by PECO, BGE, and DPL does not raise any vertical market power concerns because the Commission has adopted a rebuttable presumption that ownership or control of such inputs to electric power production does not allow an entity selling electricity at market-based rates to erect barriers to entry. Except for the affiliation with the assets described above, neither Applicant nor any of its affiliates owns or controls any inputs to electric power production, including intrastate natural gas transportation; intrastate natural gas storage or distribution facilities; physical coal supply sources; and ownership of or control over who may access transportation of coal supplies.

26. Consistent with Order No. 697, Applicant affirmatively states that it and its affiliates have not erected barriers to entry in the relevant markets and will not erect barriers to entry in the relevant markets.³⁷

³⁴ 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).

³⁵ 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.”).

³⁶ Order No. 697, FERC Stats. & Regs. 31,252 at P 446.

³⁷ Application at 13-14.

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

c. Affiliate Restrictions

28. The Commission addresses potential affiliate abuse by requiring that a seller seeking market-based rate authority must comply with the affiliate restrictions in section 35.39 of the regulations, which govern the relationship between a franchised public utility with captive customers and its market-regulated power sales affiliates.³⁸

29. Applicant states that the Franchised Public Utilities each have retail customers that have access to competitively priced retail power, and thus are not considered captive for purposes of the Commission's market-based rate regulations.³⁹ Applicant also states that each of the Franchised Public Utilities has been granted market-based rate authority by the Commission.⁴⁰ Applicant asserts that the Commission has previously determined that the affiliate restrictions do not apply to the relationship between the Franchised Public Utilities and their market-regulated power sales affiliates because the Franchised Public Utilities do not have any captive wholesale or retail customers.⁴¹ Therefore, Applicant contends that waiver of the affiliate restrictions with respect to Applicant is appropriate in

³⁸ 18 C.F.R. § 35.39 (2017); Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 468. For example, section 35.39(b) states that “[a]s a condition of obtaining . . . market-based rate authority, no wholesale sale of electric energy or capacity may be made between a franchised public utility with captive customers and a market-regulated power sales affiliate without first receiving Commission authorization”

³⁹ Application at 15.

⁴⁰ *Id.* at 3-4.

⁴¹ *Id.* at 4, 15. See also, *Exelon Generation Co.*, 126 FERC ¶ 61,031, at PP 43-48 (2009); *Baltimore Gas & Elec. Co.*, Docket No. ER99-2948-012, *et al.* (Sept. 16, 2008) (delegated letter order); *Exelon Generation Co.*, 93 FERC ¶ 61,140, at 61,425 (2000), *on reh'g*, 95 FERC ¶ 61,309 (2001); *AmerGen VT, LLC*, 90 FERC ¶ 61,307, at 61,995

(Mar. 29, 2000) (delegated letter order), *on reh'g*, *Baltimore Gas & Elec. Co.*, 91 FERC ¶ 61,270 (2000); *Potomac Elec. Power Co.*, *et al.*, 93 FERC ¶ 61,240, at 61,781-61,782 (2000); *Pepeco Holdings, Inc.*, 141 FERC ¶ 61,034 (2012).

the instant proceeding.⁴² We find that, because none of the Franchised Public Utilities has captive customers, waiver of the affiliate restrictions with respect to Applicant is appropriate, and is hereby granted.

2. Waivers, Approvals, and Authorizations

30. Applicant 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, 101,⁴³ and 141 of the Commission's regulations, except sections 141.14 and 141.15; and (3) blanket authorization under section 204 of the FPA⁴⁴ and Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability.

31. We will grant the requested waivers and authorizations consistent with those granted to other entities with market-based rate authorizations.⁴⁵ Notwithstanding the

⁴² Applicant included language reflecting that waiver in the Limitations and Exemption section of its proposed tariff.

⁴³ The Commission notes that, although Applicant did not include in its transmittal letter the phrase "with the exception of the provisions of Part 101 that apply to hydropower licensees with respect to licensed hydropower projects," the phrase is appropriately included in its proposed market-based rate tariff.

⁴⁴ 16 U.S.C. § 824c (2012).

⁴⁵ 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* Order No. 816, FERC Stats. & Regs. ¶ 31,374 at PP 345-350; *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

waiver of the accounting and reporting requirements, we expect Applicant to keep its accounting records in accordance with generally accepted accounting principles.

32. The next time Applicant makes a market-based rate filing with the Commission, it must include a revised tariff in compliance with Order Nos. 697 and 697-A to include appropriate citations to this order.⁴⁶

3. Reporting Requirements

33. 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 Applicant must file EQRs electronically with the Commission

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”).

⁴⁶ See Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 916; Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 384. See also *Niagara Mohawk Power Corporation*, 121 FERC ¶ 61,275, at P 8 (2007).

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). See also *Filing Requirements for Electric Utility Service Agreements*, 155 FERC ¶ 61,280 (2016) (order clarifying reporting requirements and updating data dictionary).

⁴⁸ *Electricity Mkt. 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).

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).

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 Applicant may be subject to refund, civil penalties, and/or revocation of market-based rate authority.⁵²

34. Applicant 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

35. 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

36. Applicant represents that it is a Category 2 seller in the Northeast region, where its affiliates own or control more than 500 MW. Applicant states that it does not own or control generation in any region outside of the Northeast, nor does it own, operate, or

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 (2017). 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.

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 (2017).

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

⁵⁵ 18 C.F.R. § 35.36(a) (2017).

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

control transmission facilities other than the limited and discrete equipment necessary to interconnect its Facility to the grid. Last, Applicant states that it does not raise other vertical market power issues.⁵⁷

37. Based on Applicant's representations, we designate it as a Category 2 seller in the Northeast region and a Category 1 seller in all other regions. Applicant must file an updated market power analysis for the Northeast region in compliance with the regional reporting schedule adopted in Order No. 697.⁵⁸ The Commission reserves the right to require an updated market power analysis at any time for any region.⁵⁹

The Commission orders:

(A) Applicant's market-based rate tariff is hereby accepted for filing, effective September 29, 2017, as requested, as discussed in the body of this order.

(B) 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.

(C) 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.

(D) Waiver of the affiliate restrictions under section 35.59 is hereby granted.

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

⁵⁷ Application at 18-19.

⁵⁸ *Id.*

⁵⁹ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 853.

continued Commission approval of Applicant's issuance of securities or assumptions of liability.

(G) Applicant is hereby required to file EQRs in compliance with Order Nos. 2001 and 768. If the effective date of Applicant's market-based rate tariff falls within a quarter of the year that has already expired, Applicant's EQRs for the expired quarter are due within 30 days of the date of this order.

(H) Applicant is hereby directed to revise the limitations and exemptions section of its market-based rate tariff, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.