ORDER ON MARKET-BASED RATES, UPDATED SIMULTANEOUS TRANSMISSION IMPORT LIMIT VALUES AND TERMINATING SECTION 206 PROCEEDINGS
(Issued October 25, 2017)

1. This order addresses three separate proceedings under section 206 of the Federal Power Act (FPA)\(^1\) that the Commission instituted to determine whether FortisUS

Energy, 2 Central Hudson Gas & Electric Company (Central Hudson), Tucson Electric Power Company (Tucson Electric), UNS Electric Inc. (UNS Electric), and UniSource Energy Development Company (collectively, Tucson MBR Sellers) may continue to charge market-based rates in the Tucson Electric balancing authority area. Each of the three section 206 proceedings was triggered by a failure of the wholesale market share indicative screen in the Tucson Electric balancing authority area submitted as part of a January 23, 2015 change in status filing, a December 31, 2015 triennial updated market power analysis, and an October 17, 2016 change in status filing. The Commission also accepts updated Simultaneous Transmission Import Limit (SIL) values for the Tucson Electric balancing authority area for the December 2014-November 2015 study period.

2. In this order, we find that, on balance, after weighing all relevant factors, Tucson MBR Sellers satisfy the Commission’s horizontal market power standard for the grant of market-based rate authority for the Tucson Electric balancing authority area. Accordingly, we accept the January 2015 change in status filing, the December 2015 triennial update, and the October 2016 change in status filing and terminate the section 206 proceedings instituted in Docket Nos. EL15-42-000, EL16-37-000, and EL17-9-000.

I. Background

A. January 2015 Change in Status (Docket No. EL15-42-000)

3. On January 23, 2015, Tucson MBR Sellers filed a notice of change in status informing the Commission, among other things, that on December 10, 2014, Tucson Electric acquired a 75 percent interest in the 619 megawatt (MW) Power Block 3 of the Gila River Power Station (Gila Block 3) and that UNS Electric acquired a 25 percent interest in Gila Block 3. Tucson MBR Sellers also report that on December 30, 2014, Tucson Electric acquired a 10.61 percent interest in the 425 MW Springerville Generating Station Unit 1 (Springerville Unit 1) and on January 2, 2015, Tucson Electric acquired a 24.75 percent interest in Springerville Unit 1. Tucson MBR Sellers represent that Tucson Electric’s acquisition of 35.36 percent of Springerville Unit 1 did not result in any increase in generating capacity controlled by Tucson MBR Sellers because prior to the transaction Tucson Electric held a 14.14 percent interest in Springerville Unit 1 and leased the balance from an owner-trustee. Tucson MBR Sellers note that as of January 1, 2015,

2015, Tucson Electric no longer controls 200 MW of capacity of Springerville Unit 1 due to lease expirations.³

4. This change in status filing included an indicative screen analysis for the Tucson Electric balancing authority area and first-tier balancing authority areas for the December 2012 – November 2013 study period.⁴ Tucson MBR Sellers state that they pass both the market share and pivotal supplier indicative screens (together, indicative screens) in the first-tier balancing authority areas. However, they note that in the Tucson Electric balancing authority area, they pass the pivotal supplier screen, but fail the market share screen in the winter and spring seasons. Tucson MBR Sellers included delivered price test (DPT) analyses to rebut the presumption of horizontal market power created by the indicative screen failures in the Tucson Electric balancing authority area.⁵ The indicative screen failures establish a rebuttable presumption of horizontal market power and served as the basis for the Commission’s February 27, 2015 order initiating a section 206 proceeding in Docket No. EL15-42-000.⁶ In the February 2015 Show Cause Order, the Commission directed Tucson MBR Sellers to show cause as to why the Commission

³ As of the January 2015 notice of change in status, Tucson Electric owns 49.5 percent of the interest in Springerville Unit 1.

⁴ The first-tier balancing authority areas include the Arizona Public Service Company, El Paso Electric Company, Public Service Company of New Mexico, Salt River Project, and Western Area Power Administration – Lower Colorado balancing authority areas.

⁵ Tucson MBR Sellers submitted three DPT analyses for the Tucson Electric balancing authority area. The base case analysis reflects the changes being reported in the January 2015 change in status, the first sensitivity analysis also reflects that on December 22, 2013, UNS placed into service the 138-kV Vail-Valencia transmission line and the second sensitivity uses forward-looking data. Tucson MBR Sellers’ August 14, 2017 supplemental filing updates the forward-looking data with actual historical December 2014-November 2015 data. On January 21, 2014, Tucson MBR Sellers filed a notice of change in status reporting that the Vail-Valencia line had been placed into service. Energization of the line connected the portion of the Tucson Electric balancing authority area that comprises Tucson Electric’s service territory with the portion that comprises UNS Electric’s southern service territory. The January 21, 2014 notice of change in status was accepted by the Commission on February, 27, 2015. Tucson Electric Power Company, 150 FERC ¶ 61,152 (2015).

should not revoke their market-based rate authority in the Tucson Electric balancing authority area.

5. On November 16, 2015, the Director of the Division of Electric Power Regulation – West issued a letter under delegated authority directing Tucson MBR Sellers to submit additional information with respect to, among other things, their long-term firm power purchase agreements and their historical sales data.\(^7\)

6. On February 1, 2016, Tucson MBR Sellers submitted a response to the November 16 Data Request. In the February 1 filing, Tucson MBR Sellers provided additional information regarding their long-term firm power purchase agreements and historical sales data.

7. On August 14, 2017, Tucson MBR Sellers supplemented the January 2015 change in status filing to replace the forward looking data analysis with historical data using December 2014 through November 2015 load, resource and market configuration data and a 2015 study year SIL.

B. December 2015 Triennial (Docket No. EL16-37-000)

8. On December 31, 2015, as amended on November 18, 2016, Tucson MBR Sellers\(^8\) submitted an updated market power analysis for the Southwest region covering the December 2013-November 2014 study period. The updated market power analysis included SIL studies prepared by Tucson MBR Sellers for this study period that the Commission has since approved.\(^9\)


\(^8\) Tucson MBR Sellers state that they mistakenly captioned Central Hudson in their triennial update. Because it is a Category 1 Seller, Central Hudson requested that it be removed as a party. See April 21, 2016 Response to Order to Show Cause at n.1. While we agree that Central Hudson should not be a party to Docket No. ER10-2805-000, it is properly included in Docket No. EL16-37-000 because the section 206 investigation extends to all affiliates with market-based rate authority, including Central Hudson. Therefore, we clarify that Central Hudson is not a party to the triennial update but is a party to all three section 206 proceedings.

9. Tucson MBR Sellers state that they pass both the market share and pivotal supplier indicative screens in the first-tier balancing authority areas. However, they note that in the Tucson Electric balancing authority area, they pass the pivotal supplier screen, but fail the market share screen in the winter season. Tucson MBR Sellers submitted a DPT analysis to rebut the presumption of horizontal market power created by the market share screen failure in the Tucson Electric balancing authority area. The updated market power analysis does not reflect Tucson Electric’s acquisition of Gila Block 3, as that transaction occurred after the study period. However, the updated market power analysis does reflect Tucson Electric’s acquisition of 122 MW of Springerville Unit 1, which is the subject of the October 2016 change in status discussed below. The market share screen failure establishes a rebuttable presumption of horizontal market power and served as the basis for the Commission’s February 22, 2016 order initiating a section 206 proceeding in Docket No. EL16-37-000. In the February 2016 Show Cause Order, the Commission directed Tucson MBR Sellers to show cause as to why the Commission should not revoke their market-based rate authority in the Tucson Electric balancing authority area.

C. **October 2016 Change in Status (Docket No. EL17-9-000)**

10. On October 17, 2016, Tucson MBR Sellers filed a notice of change in status informing the Commission, among other things, that Tucson Electric now controls 71 MW owned by Red Horse Wind 2, LLC and 30 MW owned by Red Horse III, LLC, and has acquired the remaining 50.5 percent interest in the 425 MW Springerville Unit 1. Tucson MBR Sellers also note that, in accordance with the conditions set forth in the Commission’s order approving the Springerville Unit 1 transaction, Tucson Electric will be selling 125 MW of firm capacity and energy from its existing system resources during all winter peak period hours from December 1, 2016, through February 28, 2017, and December 1, 2017, through December 31, 2017. This change in status filing included market share and pivotal supplier indicative screen analysis for the Tucson Electric

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10 The first-tier balancing authority areas are the Arizona Public Service Company, El Paso Electric Company, Public Service Company of New Mexico, Salt River Project, Western Area Power Administration Colorado Missouri, and Western Area Power Administration – Lower Colorado balancing authority areas.


balancing authority area and first-tier balancing authority areas and a new SIL study for the December 2014-November 2015 study period. Tucson MBR Sellers state that they pass both the market share and pivotal supplier indicative screens in the first-tier balancing authority areas. However, they note that in the Tucson Electric balancing authority area, they pass the pivotal supplier screen, but fail the market share screen in the fall and winter seasons.

11. Tucson MBR Sellers submitted a DPT analysis for the December 2014-November 2015 study period to rebut the presumption of horizontal market power created by the market share screen failure in the Tucson Electric balancing authority area. This screen failure establishes a rebuttable presumption of horizontal market power and served as the basis for the Commission’s November 8, 2016 order initiating a section 206 proceeding in Docket No. EL17-9-000. In the November 2016 Show Cause Order, the Commission directed Tucson MBR Sellers to show cause as to why the Commission should not revoke their market-based rate authority in the Tucson Electric balancing authority area. Tucson MBR Sellers submitted a response on December 8, 2016 that included an additional DPT analysis for the December 2015-November 2016 study period and the forward-looking December 2016-November 2017 study period.

12. On September 25, 2017, Tucson MBR Sellers filed an amendment to the December 8, 2016 filing to correct the analytical modelling of certain remote load served by Tucson Electric and to update the December 2015-November 2016 analysis to fully reflect actual historical data.

II. Notice of Filings and Responsive Pleadings

13. Notice of the January 23, 2015 change in status filing was published in the Federal Register with interventions and protests due on or before February 13, 2015 and February 22, 2016. None was filed.

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13 The first-tier balancing authority areas are the Arizona Public Service Company, El Paso Electric Company, Public Service Company of New Mexico, Salt River Project, Western Area Power Administration Colorado Missouri, and Western Area Power Administration – Lower Colorado balancing authority areas.


14. Notice of the December 31, 2015 triennial update filing was published in the *Federal Register*,\(^{16}\) with interventions and protests due on or before December 9, 2016. None was filed.

15. Notice of the October 17, 2016 change in status filing was published in the *Federal Register*,\(^{17}\) with interventions and protests due on or before November 7, 2016. None was filed.

16. Notice of the section 206 proceeding in Docket No. EL15-42-000 was published in the *Federal Register*,\(^{18}\) with interventions and protests due within 30 days of the February 2015 Show Cause Order. Alterna Springerville LLC, LDVF1 TEP LLC, Wilmington Trust Company and William J. Wade filed a timely motion to intervene. Tucson MBR Sellers filed a response to the February 2015 Show Cause Order on March 3, 2015. In this response, Tucson MBR Sellers refer back to the DPT analyses that were submitted as part of the January 2015 change in status filing.

17. Notice of the section 206 proceeding in Docket No. EL16-37-000 was published in the *Federal Register*,\(^{19}\) with interventions and protests due within 30 days of the February 2016 Show Cause Order. Navopache Electric Cooperative, Inc. filed a timely motion to intervene. Tucson MBR Sellers filed a response to the February 2016 Show Cause Order on April 21, 2016. In this response, Tucson MBR Sellers filed additional information regarding their sales and purchases, including purchases used to meet native load requirements in the Tucson Electric balancing authority area.\(^{20}\)

18. Notice of the section 206 proceeding in Docket No. EL17-9-000 was published in the *Federal Register*,\(^{21}\) with interventions and protests due within 30 days of the October 2016 Order. The Navajo Tribal Utility Authority filed a timely motion to intervene. Tucson MBR Sellers filed a response to the October 2016 Order on December 8, 2016.

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\(^{17}\) 81 Fed. Reg. 74,416 (2016).


\(^{20}\) See April 21, 2016 Response to Show Cause Order.

19. Notice of Tucson MBR Sellers’ August 14, 2017 supplemental filing in Docket No. EL15-42-00 was published in the Federal Register, with interventions and protests due September 5, 2017. None was filed.

20. Notice of the Tucson MBR Sellers’ September 25, 2017 amendment was published in the Federal Register, with interventions and protests due October 16, 2017. None was filed.

III. Discussion

A. Procedural Matters

21. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2016), the timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceedings in which they were filed.

B. Market-Based Rate Authorization

22. 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. An applicant that fails one or more of the indicative screens is provided with several procedural options including the right to challenge the market power presumption by submitting a DPT analysis.


25 Id. P 63.
1. **Horizontal Market Power**

   a. **Indicative Screens**

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

24. Tucson MBR Sellers prepared the pivotal supplier and wholesale market share screens for the Tucson Electric, Arizona Public Service Company, El Paso Electric Company, Public Service Company of New Mexico, Salt River Project, and Western Area Power Administration – Lower Colorado balancing authority areas as part of the January 2015 change in status, the December 2015 triennial update, and the October 2016 change in status filings. Tucson MBR Sellers also prepared the pivotal supplier and wholesale market share screens for the Western Area Power Administration – Colorado Missouri balancing authority area as part of the December 2015 triennial update and the October 2016 change in status filing.

25. We have reviewed Tucson MBR Sellers’ pivotal supplier and wholesale market share screens for the relevant geographic markets. We find that Tucson MBR Sellers pass the pivotal supplier and wholesale market share screens for the Arizona Public Service Company, El Paso Electric Company, Public Service Company of New Mexico, Salt River Project, Western Area Power Administration – Colorado Missouri, and Western Area Power Administration – Lower Colorado balancing authority areas. Accordingly, we find that Tucson MBR Sellers satisfy the Commission’s requirements for market-based rate authority regarding horizontal market power in these balancing authority areas.

26. With respect to the Tucson Electric balancing authority area, Tucson MBR Sellers represent that they pass the pivotal supplier screen but fail the wholesale market share indicative screen in each of the three proceedings.

27. 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

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26 *Id.* P 62.

27 *Id.* PP 33, 62-63.
Accordingly, Tucson MBR Sellers submitted separate DPT analyses for the Tucson Electric balancing authority area with their January 2015 change in status, December 2015 triennial update, and October 2016 change in status.

**b. DPTs and Alternative Evidence**

28. The Commission has explained that the DPT identifies potential suppliers based on market prices, input costs, and transmission availability, and calculates each supplier’s economic capacity and available economic capacity\(^{29}\) for each season/load period.\(^{30}\) Under the DPT, applicants must also calculate market concentration using the Hirschman-Herfindahl Index (HHI).\(^{31}\) 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.\(^{32}\)

29. 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

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\(^{28}\) Id. P 63. The results of the delivered price test analysis can be used for pivotal supplier, market share, and market concentration analyses.

\(^{29}\) “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.

\(^{30}\) Super-peak, peak, and off-peak, for winter, shoulder, and summer periods and an additional highest super-peak for the summer.

\(^{31}\) 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, $\text{HHI} = (20)^2 + (20)^2 + (20)^2 + (20)^2 + (20)^2 = 400 + 400 + 400 + 400 + 400 = 2,000$.

\(^{32}\) Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 104-117.
Order No. 697, the Commission encouraged applicants to present the most complete analysis of competitive conditions in the market as the data allows.\textsuperscript{33}

\textit{January 2015 Change in Status}

30. Tucson MBR Sellers submitted three DPT analyses for the Tucson Electric balancing authority area as part of the January 2015 change in status. The base case analysis reflects the changes being reported in the January 2015 change in status, the first sensitivity analysis also reflects that on December 22, 2013, UNS Electric placed into service the 138-kV Vail-Valencia transmission line, and the second sensitivity uses forward-looking data.\textsuperscript{34}

31. Tucson MBR Sellers’ DPT base case analysis for the Tucson Electric balancing authority area indicates that Tucson MBR Sellers are not pivotal in any season/load level using the available economic capacity measure.\textsuperscript{35} When the available economic capacity measure is used, Tucson MBR Sellers report market shares above 20 percent in the three winter season/load levels, with a high market share of 32 percent in the winter off-peak season/load level, and HHIs below 2,500 in all season/load levels.\textsuperscript{36} Tucson MBR Sellers report the same results for the first sensitivity analysis that reflects the December 2013 energization of the Vail-Valencia line, with the exception that the high market share falls to 28 percent from 32 percent in the winter-off-peak season/load level.\textsuperscript{37} Tucson MBR Sellers explain that, while they fail the market share analysis during the winter season/load levels, they will have to continue to rely on short-term energy markets in order to meet their load and reliability obligations during the summer season/load levels.

\textsuperscript{33} Id. P 111.

\textsuperscript{34} We did not consider Tucson MBR Sellers’ second sensitivity analysis that uses forward-looking data because such analysis is inconsistent with the Commission’s market-based rate requirements. Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 298-301 (“We will continue to require the use of historical data for both the indicative screens and the DPT in market-based rate cases.”).

\textsuperscript{35} When the economic capacity measure is used, Tucson MBR Sellers are pivotal in all season/load levels.

\textsuperscript{36} When the economic capacity measure is used, Tucson MBR Sellers report market shares above 20 percent and HHIs above 2,500 in all season/load levels.

\textsuperscript{37} The energization of the Vail-Valencia line is reflected in the SIL values adopted herein.
even with the acquisition of Gila Block 3.\textsuperscript{38} Tucson MBR Sellers provide a copy of Tucson Electric’s Integrated Resource Plan as evidence that it did not have sufficient generation to meet its peak load during the summer season/load levels. Tucson MBR Sellers further explain that, in contrast, the winter season/load levels in the Southwest are characterized by low load levels, thus leaving Tucson MBR Sellers with excess uncommitted capacity. Tucson MBR Sellers present an analysis of EQR data as alternative evidence that they are a net buyer in the short-term energy markets and therefore do not have the ability or incentive to exercise market power.

\textit{December 2015 Updated Market Power Analysis}

32. As part of the December 2015 triennial update, Tucson MBR Sellers filed a DPT analysis for the Tucson Electric balancing authority area. In this DPT, Tucson MBR Sellers are not pivotal in any season/load level using the available economic capacity measure.\textsuperscript{39} Using the available economic capacity measure, Tucson MBR Sellers report a single failure of the market share analysis with a market share of 22 percent in the winter super peak season/load level, and HHIs below 2,500 in all season/load levels.\textsuperscript{40}

\textit{October 2016 Change in Status}

33. Tucson MBR Sellers submitted two DPT analyses for the Tucson Electric balancing authority area as part of the October 2016 change in status.\textsuperscript{41} In both DPTs, Tucson MBR Sellers are not pivotal in any season/load level using the available economic capacity measure.

\textsuperscript{38} Tucson MBR Sellers January 23, 2015 Filing, Exhibit C at 5 n.8.

\textsuperscript{39} When the economic capacity measure is used, Tucson MBR Sellers are pivotal in eight of the ten season/load levels.

\textsuperscript{40} When the economic capacity measure is used, Tucson MBR Sellers report market shares above 20 percent in all season/load levels and HHIs above 2,500 in seven of the ten season/load levels.

\textsuperscript{41} Tucson MBR Sellers submitted an additional DPT analysis using forward-looking data in December 2016 in response to the Commission’s order instituting the section 206 proceeding in Docket No. EL17-9-000. We did not consider this analysis because it is inconsistent with the Commission’s market-based rate requirements. See n.32.
economic capacity measure. In the first DPT analysis, when the available economic capacity measure is used, Tucson MBR Sellers failed the market share screen in the winter seasons with market shares between 23 and 42 percent. Tucson MBR Sellers also submitted an alternative analysis that reflects the fact that, in accordance with the terms and mitigation set forth in the section 203 order approving the acquisition of the remaining interest in Springerville Generating Station Unit 1, Tucson Electric will be selling 125 MW of firm capacity during all winter peak period hours from December 1, 2016, through February 28, 2017, and December 1, 2017, through December 31, 2017.

In this alternative analysis, Tucson MBR Sellers’ market shares in the winter season, using the available economic capacity measure, fall between 22 and 32 percent. In the December 2016 filing, Tucson MBR Sellers also submitted a DPT for the December 2015-November 2016 study period showing market shares between 0 percent and 23 percent. In the September 25, 2017 amendment, Tucson MBR Sellers updated this analysis using fully historical data. This updated analysis shows that Tucson MBR Sellers passed the market share screens in the winter season with market shares between 0 percent and 19 percent. However, the DPT for the December 2015-November 2016 study period does not reflect the acquisition of the remaining interest in Springerville Generating Station Unit 1.

c. **Commission Determination**

34. After weighing all of the relevant factors we find that, on balance, based on the record evidence, Tucson MBR Sellers have rebutted the presumption of horizontal market power in the Tucson Electric balancing authority area and satisfy the Commission’s horizontal market power standard for the grant of market-based rate authority.

35. We will not rely on the results of Tucson MBR Sellers’ DPT analyses that were submitted as part of the January 2015 change in status because these analyses do not comply with the Commission’s standards as discussed in *Public Service Co. of*

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42 When the economic capacity measure is used, Tucson MBR Sellers are pivotal in all season/load levels and report market shares above 20 percent and HHIs above 2,500 in all season/load levels.

43 203 Order, 156 FERC ¶ 61,170 at P 19. After December 31, 2017, Tucson Electric will retire its San Juan Generating Station Unit 2 from service, reducing Tucson Electric’s baseload generating capacity by 170 MW.
New Mexico. For example, Tucson MBR Sellers’ DPT analyses contain a worksheet, “Generation Database,” that contains variable cost calculations for the Western Electricity Coordinating Council generators that Tucson MBR Sellers included in their analyses. There are 4,303 observations in this dataset and 2,124 observations have a zero dollar cost for variable operations and maintenance costs, defined in Tucson MBR Sellers’ workpapers as “VOM.” The Commission clarified in PNM that although variable operation and maintenance costs may be a small component of hourly costs, we do not expect these costs for most generating units to have a zero value because all generation technologies require maintenance or have at least some operational costs to produce electricity. In addition, Tucson MBR Sellers used the same natural gas fuel costs for generators in California, Colorado, Arizona, Nevada and New Mexico. The Commission clarified in PNM that, because fuel cost is a major factor in determining whether a facility’s output is considered economic in the DPT analysis, regional price variation for fuels should be considered when the model includes competing supply from generators over a large geographic area, and the fuel price used should be estimated from a nearby price point unless a reasonable alternative methodology is provided.

36. We also decline to draw any conclusions as to potential market power based on the DPT from the December 2015 triennial because it did not reflect Tucson MBR Sellers’ then-current market position and mitigation. In contrast, the DPTs that were submitted as part of the October 2016 change in status comply with the standards set forth in PNM and also include both the Gila Block 3 acquisition and the remaining interest in the Springerville Unit 1.

37. We agree that the October 2016 DPT analysis that reflects the terms and conditions of the Commission-approved mitigation set forth in the 203 Order is a better portrayal of Tucson MBR Sellers’ current market presence because it reflects both the Springerville Unit 1 transaction and the 125 MW winter period sale of firm capacity. This analysis shows that Tucson MBR Sellers are not pivotal in any season/load period using the available economic capacity measure. Moreover, while Tucson MBR Sellers’

44 153 FERC ¶ 61,060 (2015) (PNM) (Order providing clarifications on DPTs and SILs).

45 Tucson MBR Sellers January 23, 2015 Filing Workpaper “Generation Database.xlsx” (Tab “Generation Dataset”).

46 See PNM, 153 FERC ¶ 61,060 at PP 43-46 (citing 18 C.F.R. § 33.3(d)(2) (2017)).

47 Id. P 41.

48 The available economic capacity measure is more applicable than the economic
market shares exceed 20 percent in the winter season/load levels, the corresponding market concentration levels in these periods range between 923 and 1,332, which are well below the 2,500 point HHI threshold. Furthermore, we note that Tucson MBR Sellers only fail the market share screens in the winter peak periods and that Tucson Electric will be retiring its San Juan Generating Station Unit 2 by no later than December 31, 2017. This retirement will reduce Tucson Electric's baseload capacity by an additional 170 MW, which in turn will significantly reduce Tucson MBR Sellers’ available economic capacity market shares in the winter season. Therefore, we find, on balance, after weighing all other relevant factors, that Tucson MBR Sellers have rebutted the presumption of market power in the Tucson Electric balancing authority area. Because the October 2016 DPT is for a study period (December 2014-November 2015) prior to the refund effective dates for the first two section 206 proceedings and represents a better assessment of Tucson Electric’s market presence,\(^{49}\) we find it appropriate to base our findings on that study. Therefore, we find that Tucson MBR Sellers satisfy the Commission’s requirements for market-based rates regarding horizontal market power and will close out all three section 206 proceedings.

2. **Vertical Market Power**

38. In cases where a public utility, or any of its affiliates, owns, operates, or controls transmission facilities, the Commission requires that there be a Commission-approved Open Access Transmission Tariff (OATT) on file, or that such entity has received waiver of the OATT requirement under 18 C.F.R. § 35.28(d)(1) or satisfies the requirements for blanket waiver under 18 C.F.R. § 35.28(d)(2).\(^{50}\)

\^capacity in this case because the latter measure does not consider native load obligations and therefore overstates the ability of Tucson MBR Sellers to participate in the market.

\(^{49}\) The refund effective period for the EL15-42-000 proceeding runs from February 2015 through May 2016; the refund effective period for the EL16-37-000 proceeding runs from February 2016 through May 2017.

39. Tucson MBR Sellers represent that the January 2015 and the October 2016 changes in status do not involve any transmission assets other than limited generation interconnection facilities, nor any inputs to electric power production. Tucson MBR Sellers also state that their transmission facilities are subject to the terms and conditions of Tucson Electric’s and UNS Electric’s Commission-approved OATTs.

40. The Commission also considers a seller’s ability to erect other barriers to entry as part of the vertical market power analysis. 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, and physical coal supply sources and ownership of or control over who may access transportation of coal supplies (collectively, inputs to electric power production). 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. 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.

41. Tucson MBR Sellers state that Central Hudson owns a natural gas distribution network used to serve natural gas customers in New York’s mid-Hudson Valley region. They further state that their affiliate, UNS Gas, Inc., owns 31 miles of intrastate gas transmission and distribution lines that serve the Griffith Power Plant, the Black

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

52 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).

53 Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447. See also 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 354, 356 (2015), order on reh’g, Order No. 816-A, FERC Stats. & Regs. ¶ 31,382 (2016) (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.”).

54 Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 446.
Mountain Generating Station, and the Valencia Generating Facility. Tucson MBR Sellers state that Tucson Electric owns or operates coal-fired generating facilities. They explain that Tucson Electric purchases coal under various long-term agreements, but does not own any coal mines or coal mineral rights. Tucson MBR Sellers state that these coal purchase contracts are used exclusively to supply coal to power plants owned and operated by Tucson Electric.

42. Tucson MBR Sellers state that Tucson Electric leases railcars for use at its Springerville Generating Facility. Tucson MBR Sellers state that Tucson Electric also holds: (i) a 50 percent ownership interest in the Lee Ranch Coal Spur Line that connects the Lee Ranch and El Segundo Mines to railroad lines owned by BNSF Railway Company (BNSF); (ii) a 41.48 percent ownership interest in the Springerville/Coronado Spur Line that connects Salt River Project’s Coronado Generating Station to lines owned by BNSF; and (iii) a 82.95 percent ownership interest in the Springerville Spur Line that runs between the Coronado and Springerville Generating Stations. Finally, consistent with Order No. 697, Tucson MBR Sellers affirmatively state that they have not erected barriers to entry into the relevant market and will not erect barriers to entry into the relevant market.55

43. Based on Tucson MBR Sellers’ representations, we find that Tucson MBR Sellers satisfy the Commission’s requirements for market-based rates regarding vertical market power.

C. Simultaneous Transmission Import Limit Values

44. The Commission will adopt Tucson Electric’s proposed SIL values when reviewing updated market power analyses for the Tucson Electric balancing authority area for the December 2014-November 2015 study period. Those values that we adopt are as follows: for the winter season, 572 MW; for the spring season, 1,118 MW; for the summer season, 1,173 MW; for the fall season, 1,082 MW. Future sellers submitting screens for the Tucson Electric balancing authority area are encouraged to use these Commission-accepted SIL values. In the alternative, such sellers may propose different SIL values, provided that their SIL studies comply with Commission directives and they explain why the Commission should consider a different SIL value for the Tucson Electric balancing authority area rather than the Commission-accepted SIL values provided herein. In the event the results of a particular seller’s wholesale market share and/or pivotal supplier screen differ if the seller-supplied SIL value is used instead of the

55 We interpret this statement to apply to Tucson MBR Sellers and their affiliates, and our authorizations herein are predicated on Tucson MBR Sellers 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; 18 C.F.R. § 35.37(e)(3) (2017).
Commission-accepted SIL value, the order on that particular filing will examine the seller-supplied SIL study and address whether the seller-supplied SIL value is acceptable. However, if the overall results of the screens would be unchanged regardless of which set of SIL values is used, i.e., the seller would pass using either set of SIL values or fail using either set of SIL values, the order will be based on the Commission-accepted SIL values and would not address the seller-supplied SIL values.

D. Reporting Requirements

45. Consistent with the procedures the Commission adopted in Order No. 2001, an entity with market-based rate authorization must file electronically with the Commission an Electric Quarterly Report (EQR) containing: (1) a summary of the contractual terms and conditions in every effective service agreement for market-based power sales; and (2) transaction information for effective short-term (less than one year) and long-term (one year or longer) market-based power sales during the most recent calendar quarter.56 Public utilities must file EQRs no later than 30 days after the end of the reporting quarter.57


57 The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2017). Failure to file an EQR (without an appropriate request for extension), or failure to report an agreement in an EQR, may result in forfeiture of market-based rate authority, requiring filing of a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates. See Electronic Quarterly Reports, 157 FERC ¶ 61,058 (2016); Notice of Revocation of Market-Based Rate Tariff re Electric Quarterly Reports, 82 Fed. Reg. 5562 (2017).
46. Additionally, Tucson MBR Sellers must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.  

E. **Docket Nos. EL15-42-000, EL16-37-000 and EL17-9-000**

47. Finally, we will terminate Docket Nos. EL15-42-000, EL16-37-000, and EL17-9-000. Based on the above discussion, there is no further need for these proceedings.

The Commission orders:

(A) Tucson MBR Sellers’ January 23, 2015 change in status filing is hereby accepted, as discussed in the body of this order.

(B) Tucson MBR Sellers’ December 31, 2015 updated market power analysis is hereby accepted, as discussed in the body of this order.

(C) Tucson MBR Sellers’ October 17, 2016 change in status filing is hereby accepted, as discussed in the body of this order.

(D) The section 206 proceedings in Docket Nos. EL15-42-000, EL16-37-000, and EL17-9-000 are hereby terminated, as discussed in the body of this order.

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58 *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(a) (2017).
The specific Commission-accepted SIL values identified in this order are hereby adopted for purposes of analyzing updated market power analyses for the Tucson Electric balancing authority area for the December 2014- November 2015 study period, as discussed in the body of this order.

By the Commission.

( SEAL )

Nathaniel J. Davis, Sr.,
Deputy Secretary.