

128 FERC ¶ 61,188  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
and Philip D. Moeller.

Vista Energy Marketing, L.P.

Docket Nos. ER09-553-000  
ER09-553-001

ORDER GRANTING MARKET-BASED RATE AUTHORIZATION

(Issued August 26, 2009)

1. In this order, the Commission grants market-based rate authorization to Vista Energy Marketing, L.P. (Vista Marketing), effective June 9, 2009, as requested.<sup>1</sup> Additionally, we find that Vista Marketing meets the criteria for a Category 1 seller and is so designated.<sup>2</sup>

**Background**

2. On January 26, 2009, Vista Marketing filed an initial application for market-based rate authority with an accompanying rate schedule (January 26 Filing). The proposed market-based rate schedule provides for the sale of energy, capacity, and ancillary services at market-based rates. Vista Marketing requests waivers commonly granted to some other market-based rate applicants.

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<sup>1</sup> Rate Schedule FERC No. 1, Substitute Original Sheet Nos. 1-2.

<sup>2</sup> See *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, at P 848-50, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 (2008), *clarified*, 124 FERC ¶ 61,055 (2008), *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).

3. Vista Marketing states that it is a Texas Limited Partnership with its principal place of business in Houston, Texas. Vista Marketing represents that it is primarily engaged in the business of being a retail energy provider in deregulated natural gas markets. Vista Marketing states that it is comprised of a General Partner and three Limited Partners. Vista Marketing's General Partner, Irish Marketing, LLC (Irish Marketing), a Texas Corporation, is comprised of three members who each hold a one-third membership interest in Irish Marketing, and who have invested capital in Irish Marketing for the purpose of developing and structuring new entities, such as Vista Marketing. Two of these individuals are Member/Managers of Irish Marketing, and one is solely a Member/Investor of Irish Marketing. All three are also the Limited Partners of Vista Marketing. Vista Marketing explains that two members of Irish Marketing sit on the board of Bounce Energy, an independent Electric Reliability Council of Texas (ERCOT) residential retail electric energy provider.

4. Vista Marketing also represents that it does not own any generation or transmission capacity or related assets of any type. Vista Marketing also states that it is not affiliated with any franchised public utility.

5. In 2006, two individuals associated with Vista Marketing entered into plea agreements with the United States Attorney's Office for the Northern District of California and the Fraud Section of the Criminal Division of the U.S. Department of Justice in the disposition of a federal criminal charge of conspiracy to manipulate the price of natural gas. In 2006 and 2007, these two individuals entered into separate Consent Orders with the United States Attorney's Office for the Northern District of Georgia to settle complaints filed by the Commodity Futures Trading Commission alleging that these individuals violated the Commodity Exchange Act by knowingly delivering false or misleading or inaccurate reports of market information to publishers of natural gas price indexes, by intentionally attempting to manipulate the price of natural gas, and by aiding and abetting other traders in doing so.<sup>3</sup> As such, and to obtain further information on the instant application, on February 26, 2009, the Director, Division of Tariffs and Market Development – West, issued a data request seeking information about Vista Marketing's affiliations and the business interests of Vista Marketing's owners.<sup>4</sup> The data request also sought additional information regarding Vista Marketing's market power analysis and tariff.

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<sup>3</sup> As discussed below, one of these individuals will be Director of Trading for Vista Marketing; the other will be a Member/Investor in Irish Marketing and a Limited Partner in Vista Marketing.

<sup>4</sup> *Vista Energy Marketing, LP.*, Docket No. ER09-553-000 (February 26, 2009) (unpublished letter order).

6. On April 10, 2009, Vista Marketing filed its response to the data request (April 10 Response). In this response, Vista Marketing makes certain representations and commitments regarding its management and operations. Specifically, Vista Marketing represents that although Irish Marketing, as the General Partner of Vista Marketing, has overall oversight authority over the activities of Vista Marketing, the members of Irish Marketing have agreed that the business affairs of Irish Marketing should be controlled solely by the Member/Managers. It explains that this overall oversight “can be exercised by [the Member/Managers] of Irish Marketing. Irish Marketing is responsible for the capitalization of [Vista Marketing] and retains the sole signature authority over [Vista Marketing] monies, which authority can be exercised by either [of the Member/Managers], but not by [the Member/Investor]. Irish Marketing will have the authority to approve or deny requests for expansion and capitalization projects presented by [Vista Marketing].”<sup>5</sup> In addition, Vista Marketing commits that the Member/Investor of Irish Marketing will not take part in the management of Irish Marketing’s business and also will have no power to sign for, or to bind, Irish Marketing.<sup>6</sup> As a result, the individual who is a Member/Investor is prohibited by this commitment from engaging in the management of Irish Marketing.<sup>7</sup> These prohibitions are intended to eliminate the Member/Investor’s ability to exert any control into the day-to-day operations of Vista Marketing.<sup>8</sup> Further, Vista Marketing represents that the Member/Managers control the day-to-day operations of Irish Marketing and, to the extent real-time

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<sup>5</sup> April 10 Response at 12. Vista Marketing explains that in the Irish Marketing Limited Liability Company Agreement, the Member/Managers have “complete and exclusive control of the management of [Irish Marketing’s] business and affairs, and the Members, other than the [Member/]Managers, shall have no right to participate in the management of the conduct of [Irish Marketing’s] business and affairs nor any power or authority to act for or on behalf of [Irish Marketing] in any respect whatsoever.” April 10 Response at 13.

<sup>6</sup> *Id.* at 13.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 4.

supervision of the Member/Investor<sup>9</sup> is necessary, the Member/Managers will perform that function.<sup>10</sup>

7. With regard to the direct control and management of Vista Marketing, Applicant emphasizes that the Member/Investor of Irish Marketing, who is also a Limited Partner of Vista Marketing, is prohibited from exercising an active management or operational role in Vista Marketing.<sup>11</sup> In addition, Vista Marketing specifically states that [in his role as Limited Partner of Vista Marketing], the Member/Investor [of Irish Marketing] has no day-to-day operational responsibilities and also has no other managerial or operational responsibilities in Vista Marketing.<sup>12</sup> Vista Marketing further commits that this individual is not now, nor will he be in the future, an officer of Vista Marketing.

8. Vista Marketing states that the Director of Trading of Vista Marketing will be responsible for various day-to-day operations at Vista Marketing, and that the activities of the Director of Trading will be monitored by Vista Marketing's Chief Compliance Officer.<sup>13</sup> Vista Marketing explains that the person who serves as Chief Financial Officer and Compliance Officer will be responsible for ensuring the company's compliance with applicable rules and regulations. According to Vista Marketing, this person is responsible for monitoring the activities of all Vista Marketing employees, as well as the activities of those persons or entities that have contact with Vista Marketing. Vista Marketing also states that it has adopted a compliance policy program.

9. In its April 10 Response, Vista Marketing also withdraws its request to sell ancillary services in the California Independent System Operator Corporation and any other markets, and has revised its tariff to reflect this amendment.

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<sup>9</sup> Vista Marketing states that Irish Marketing's Members have invested capital in Irish Marketing for the purpose of developing and structuring new entities. April 10 Response at 11.

<sup>10</sup> April 10 Response at 13-14.

<sup>11</sup> Vista Marketing represents that a Limited Partner that exerts operational control risks losing the limited liability status afforded Limited Partners under limited partnership law. April 10 Response at n.9.

<sup>12</sup> *Id.* at 4-5.

<sup>13</sup> *Id.* at 13-14.

10. In its April 10 Response, Vista Marketing also notes that the individual who serves as Member/Investor of Irish Marketing and one of the Limited Partners of Vista Marketing currently engages in trading financial natural gas products as a commodity trading partner to Irish Exchange, L.P. utilizing Intercontinental Exchange (ICE)-, NYMEX-, and OTC-cleared accounts to trade natural gas-related derivative products. Geographically, Vista Marketing states that these derivative products are correlated to trading points throughout the United States and Canada. Vista Marketing represents that this individual does not trade electricity in the United States. Further, Vista Marketing clarifies that the Director of Trading for Vista Marketing is not engaged currently in selling or trading electricity or futures of natural gas or electricity in the United States, and has only recently begun trading natural gas for Vista Marketing. Vista Marketing also represents that it does not currently report transaction prices to the publishers of natural gas and/or electricity price indices.

11. To obtain further information on the amended application, on June 9, 2009, the Director, Division of Tariffs and Market Development – West, issued a data request seeking information about Vista Marketing’s management, the business interests of Vista Marketing’s owners, the role of the Member/Investor, and the role of the Director of Trading.<sup>14</sup>

12. Vista Marketing filed its response to the data request on July 9, 2009 (July 9 Response). In response to the data request, Vista Marketing provides additional detail on the day-to-day responsibilities of the Director of Trading at Vista Marketing. Vista Marketing also provides additional information on the background of the two individuals who are Member/Managers of Irish Marketing. Vista Marketing states that other than these two individuals, there are no other parties or individuals with management authority over Vista Marketing.<sup>15</sup> Again, Vista Marketing represents that Irish Marketing’s Member/Investor “will not exert control or influence or attempt to exert control or influence control over Vista Marketing.”<sup>16</sup> It explains that the Member/Investor will be sharing the same physical office space as Irish Marketing and Vista Marketing. Additionally, Vista Marketing states that the Member/Investor has no role in either Irish Marketing or Vista Marketing other than his investment in Irish Marketing, which in turn has invested capital in Vista Marketing. Vista Marketing also states that the

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<sup>14</sup> *Vista Energy Marketing, LP.*, Docket No. ER09-553-000 (June 9, 2009) (unpublished letter order).

<sup>15</sup> July 9 Response at 3.

<sup>16</sup> *Id.* at 4.

Member/Investor is a Limited Partner in Vista Marketing, and, as a limited partner, is prohibited from exercising an active management or operational role in the company.<sup>17</sup>

13. In addition, Vista Marketing represents that it has decided to appoint a different employee as its Chief Compliance Officer. Rather than appointing its Chief Financial Officer to also serve as Chief Compliance Officer, Vista Marketing states that it has chosen an individual that it believes is better suited to take on these responsibilities because of his extensive background in the energy industry. Vista Marketing states that “[i]t is likely that additional officers will be hired as the business grows.”<sup>18</sup> Vista Marketing commits that in order to ensure that all Vista Marketing employees are fully cognizant of the Commission’s rules and regulations, “all Vista [Marketing] employees will undergo comprehensive [Commission] compliance training as quickly as possible but in any event no later than September 9, 2009.”<sup>19</sup> The Chief Compliance Officer’s training will focus particularly on how he should carry out his role. Vista Marketing represents that this individual is tasked with “monitoring all of Vista’s [Marketing’s] activities in order to ensure compliance with [the Commission’s] rules and regulations and with bringing any concerns regarding Vista’s [Marketing’s] trading and activities to the attention of the Enforcement Office at the [Commission] in the event he observes any activities or practices that cause concern or in any way may be in violation of the [Commission’s] rules and regulations.”<sup>20</sup> Further, this individual will not be trading natural gas or electricity or directing others to trade natural gas or electricity for Vista Marketing and will have a desk on the trading floor “in order to enhance his ability to monitor the trading and other activities of the Vista [Marketing] employees.”<sup>21</sup> Finally, if this individual leaves Vista Marketing or otherwise ceases to perform his duties as Chief Compliance Officer, Vista Marketing commits to “notify [the Commission] within 30 days of his departure and will inform [the Commission] as to the name and relevant background of the new Chief Compliance Officer.”<sup>22</sup>

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 3.

<sup>19</sup> *Id.* at 3.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

## **Notice of Filing and Responsive Pleadings**

14. Notice of the January 26 Filing was published in the *Federal Register*, 74 FR 6150 (2009), with interventions or protests due on or before February 17, 2009. None was filed.
15. Notice of Vista Marketing's request for blanket authorization under Part 34 was separately published in the *Federal Register*, 74 FR 7039 (2009), with interventions and protests due on or before February 25, 2009. None was filed.
16. On March 26, 2009, Vista Marketing filed a request for an extension of time to submit information required by the February 26 data request. On March 27, 2009, the Commission issued a notice granting the request for an extension of time to and including April 13, 2009.
17. Notice of the April 10 Response was published in the *Federal Register*, 74 FR 18220 (2009), with interventions or protests due on or before May 1, 2009. None was filed.
18. Notice of the July 9 Response was published in the *Federal Register*, 74 FR 36668 (2009), with interventions or protests due on or before July 30, 2009. None was filed.

## **Discussion**

### **Market-Based Rate Authorization**

19. 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.<sup>23</sup> As discussed below, the Commission concludes that Vista Marketing satisfies the Commission's standards for market-based rate authority.

#### **1. Horizontal Market Power**

20. The Commission adopted two indicative screens for assessing horizontal market power, the pivotal supplier screen and the wholesale market share screen.<sup>24</sup>

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<sup>23</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 62,399, 408, 440.

<sup>24</sup> *Id.* P 62.

21. Neither Vista Marketing nor any of its affiliates owns, operates, or controls any electric generation facilities. Based on Vista Marketing's representations, we find that it satisfies the Commission's requirements for market-based rate authorization regarding horizontal market power.

## 2. 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 Open Access Transmission Tariff (OATT) on file before granting a seller market-based rate authorization.<sup>25</sup>

23. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.<sup>26</sup> The Commission requires a seller to provide a description of its ownership or control of, or affiliation with an entity that owns or controls, intrastate natural gas transportation, storage or distribution facilities; sites for new generation capacity development; and physical coal supply sources and ownership of or control over who may access coal supplies (collectively, inputs to electric power production).<sup>27</sup> 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.<sup>28</sup>

24. Vista Marketing represents that neither it nor any of its affiliates owns, operates, or controls any transmission assets.

25. With regard to other barriers to entry, Vista Marketing represents that neither it nor any of its affiliates owns or controls intrastate natural gas transportation, storage or distribution facilities; any unique sites for generation capacity development; physical coal supply sources and ownership or control over who may access transportation of coal

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<sup>25</sup> *Id.* P 408.

<sup>26</sup> *Id.* P 440.

<sup>27</sup> *Id.* P 447. In Order No. 697-A, the Commission revised the definition of inputs to electric power production to include "physical coal supply sources and ownership of or control over who may access transportation of coal supplies." Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

<sup>28</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

supplies; or other essential resources or inputs that could be used to restrict market entry by competing power suppliers.

26. Vista Marketing also affirmatively states that neither it nor any of its affiliates has erected barriers to entry into the relevant market and will not erect barriers to entry into the relevant market.

27. Based on Vista Marketing's representations, the Commission finds that it satisfies the Commission's requirements for market-based rate authorization regarding vertical market power.

### **Additional Commitments**

28. As noted above, in its April 10 and July 9 Responses, Vista Marketing makes certain additional representations and commitments regarding its management and operations and how it intends to ensure compliance with the Commission's rules and regulations. Specifically, Vista Marketing represents and commits that:

- The Member/Investor in Irish Marketing has no role in either Irish Marketing or Vista Marketing other than his investment in Irish Marketing as a Member/Investor and his investment in Vista Marketing as Limited Partner;<sup>29</sup>
- The two Member/Managers of Irish Marketing have sole management authority over Vista Marketing;<sup>30</sup>
- The Member/Managers of Irish Marketing have complete and exclusive control of the management of Irish Marketing's business and affairs, and the Member/Investor shall have no right to participate in the management of the conduct of Irish Marketing's business and affairs, nor any power or authority to act for or on behalf of Irish Marketing in any respect whatsoever;<sup>31</sup>
- The Member/Investor in Irish Marketing has no day-to-day operational responsibilities and also has no other managerial or operational responsibilities in

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<sup>29</sup> July 9 Response at 4.

<sup>30</sup> April 10 Response at 4.

<sup>31</sup> *Id.*

Vista Marketing,<sup>32</sup> and is prohibited from exercising an active management or operational role in Vista Marketing;<sup>33</sup>

- The Member/Investor in Irish Marketing will not take part in the management of Irish Marketing's business and also will have no power to sign for, or to bind, Irish Marketing. Thus, the Member/Investor is prohibited by this commitment from engaging in the management of Irish Marketing, which, in turn, eliminates his ability to exert any control through the General Partner into the management or day-to-day operations of Vista Marketing;<sup>34</sup>
- The Member/Investor in Irish Marketing is not now, nor will he be in the future, an officer of Vista Marketing;<sup>35</sup>
- The Member/Investor in Irish Marketing will not exert control or influence or attempt to exert control or influence control over Vista Marketing;<sup>36</sup>
- In order to ensure that all Vista Marketing employees are fully cognizant of the Commission's rules and regulations, all Vista Marketing employees will undergo comprehensive Commission compliance training as quickly as possible, but in any event no later than September 9, 2009;<sup>37</sup>
- The Chief Compliance Officer is tasked with monitoring all of Vista Marketing's activities in order to ensure compliance with the Commission's rules and regulations and with bringing any concerns regarding Vista Marketing's trading and activities to the attention of the Office of Enforcement at the Commission in the event he observes any activities or practices that cause concern or in any way may be in violation of the Commission's rules and regulations;<sup>38</sup>

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<sup>32</sup> April 10 Response at 11; July 9 Response at 4.

<sup>33</sup> April 10 Response at 5; July 9 Response at 4.

<sup>34</sup> April 10 Response at 4.

<sup>35</sup> *Id.*

<sup>36</sup> July 9 Response at 4.

<sup>37</sup> *Id.* at 3.

<sup>38</sup> *Id.*

- The activities of the Vista Marketing's Director of Trading will be monitored by Vista Marketing's Chief Compliance Officer;<sup>39</sup>
- The Chief Compliance Officer will not be trading natural gas or electricity or directing others to trade natural gas or electricity for Vista Marketing and will have a desk on the trading floor;<sup>40</sup>
- If the individual currently serving as Chief Compliance Officer leaves Vista Marketing or otherwise ceases to perform his duties as Chief Compliance Officer, Vista Marketing will notify the Commission within 30 days of his departure and will inform the Commission as to the name and relevant background of the new Chief Compliance Officer;<sup>41</sup> and
- Vista Marketing will, at all times, have an experienced compliance officer to monitor compliance with the Commission's rules and regulations.<sup>42</sup>

29. We will accept the foregoing representations and commitments as additional safeguards against Vista Marketing's employees engaging in future instances of market manipulation. As such, for so long as the individuals who pled guilty to false price reporting are associated with Vista Marketing, we will monitor Vista Marketing's compliance with these representations and commitments on a regular basis. Vista Marketing is also subject to audit to ensure its compliance with these representations and commitments, and with Commission rules, regulations and policies. In addition, we direct Vista Marketing to report to the Commission if the terms of any of the representations and commitments as accepted herein undergo a change. Such report should be submitted no later than 30 days of the date of such change.

### **Tariff Sheets**

30. In Order No. 697, the Commission adopted two standard required provisions that each seller must include in its market-based rate tariff: a provision requiring compliance with the Commission's regulations and a provision identifying any limitations and

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<sup>39</sup> April 10 Response at 14.

<sup>40</sup> July 9 Response at 3.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

exemptions regarding the seller's market-based rate authority.<sup>43</sup> In addition to the required tariff provisions, the Commission adopted a set of standard provisions that must be included in a seller's market-based rate tariff to the extent that they are applicable.<sup>44</sup> In Order No. 697-A, the Commission also required that each seller include in its market-based rate tariff a provision identifying which category of seller it qualifies as in each region.<sup>45</sup>

31. Vista Marketing's market-based rate tariff submitted in the April 10 Response includes the Commission's two standard required provisions and the required category designation provision. Vista Marketing's proposed tariff sheets are accepted.

### **Waiver Requests**

32. Vista Marketing requests the following waivers and authorizations: (1) waiver of Subparts B and C of Part 35 of the Commission's regulations requiring the filing of cost-of-service information, except as to sections 35.12(a), 35.13(b), 35.15, and 35.16; (2) waiver of Parts 41, 101, and 141 of the Commission's accounting and periodic reporting requirements; and (3) blanket authorization under Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability.

33. The Commission will grant the requested waivers and authorizations consistent with those granted some other entities with market-based rate authorizations.<sup>46</sup> Notwithstanding the waiver of the accounting and reporting requirements here, the Commission expects Vista Marketing to keep its accounting records in accordance with generally accepted accounting principles.

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<sup>43</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 914.

<sup>44</sup> *Id.* P 917.

<sup>45</sup> Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 391-93.

<sup>46</sup> It should be noted that the Commission has recently examined and approved the continued applicability of the waivers of its accounting and reporting requirements (18 C.F.R. Parts 41, 101, and 141), as well as continued applicability of the blanket authorization for the issuance of securities and the assumption of liabilities (18 C.F.R. Part 34). *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 984-85 (regarding waiver of Parts 41, 101, and 141), 999-1000 (regarding blanket approval under Part 34).

### **Reporting Requirements**

34. 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.<sup>47</sup> Public utilities must file EQRs no later than 30 days after the end of the reporting quarter.<sup>48</sup>

35. Additionally, Vista Marketing must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.<sup>49</sup> As discussed above, this includes any departures from the representations and commitments discussed in Paragraphs 28-29 above.

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<sup>47</sup> *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 (2003). Attachments B and C of Order No. 2001 describe the required data sets for contractual and transaction information. Public utilities must submit Electric Quarterly Reports to the Commission using the EQR Submission System Software, which may be downloaded from the Commission's website at <http://www.ferc.gov/docs-filing/eqr.asp>.

<sup>48</sup> The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2009). 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.

<sup>49</sup> *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) (2008).

36. In Order No. 697, the Commission created two categories of sellers.<sup>50</sup> Category 1 sellers are not required to file regularly scheduled updated market power analyses. Category 1 sellers are wholesale power marketers and wholesale power producers that own or control 500 MW or less of generation in aggregate per region; that do not own, operate or control transmission facilities other than limited equipment necessary to connect individual generation facilities to the transmission grid (or have been granted waiver of the requirements of Order No. 888); that are not affiliated with anyone that owns, operates or controls transmission facilities in the same region as the seller's 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.<sup>51</sup> Sellers that do not fall into Category 1 are designated as Category 2 and are required to file an updated market power analysis.<sup>52</sup>

37. Based on Vista Marketing's representations that neither it nor its affiliates own or control generation or transmission capacity or related assets of any type, and it is not affiliated with any franchised public utility, we find that it meets the criteria for a Category 1 seller and is so designated. The Commission also reserves the right to require an updated market power analysis at any time.

The Commission orders:

(A) Vista Marketing's market-based rate tariff is accepted for filing effective June 9, 2009, 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 Parts 41, 101, and 141 of the Commission's regulations is hereby granted, with the exception of 18 C.F.R. §§ 141.14, 141.15 (2009).

(D) 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 Vista Marketing's issuances of securities or assumptions of liabilities.

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<sup>50</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 848.

<sup>51</sup> 18 C.F.R. § 35.36(a)(2) (2009).

<sup>52</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 850.

(E) Vista Marketing's representations and commitments regarding its management and operations are hereby accepted and Vista Marketing is hereby directed to report any change to the terms of these representations and commitments within 30 days of such a change, as discussed in the body of this order.

(F) Vista Marketing is subject to audit to determine whether it is in compliance with the representations, conditions and requirements upon which the authorizations are granted and with Commission rules, regulations and policies. In the event of a violation, the Commission may take action within the scope of its oversight and enforcement authority.

(G) Vista Marketing is required to file EQRs in compliance with Order No. 2001. If the effective date of Vista Marketing's market-based rate tariff falls within a quarter of the year that has already expired, Vista Marketing's EQRs for the expired quarter(s) are due within 30 days of the date of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.