

136 FERC ¶ 61,147  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
John R. Norris, and Cheryl A. LaFleur.

Post Rock Wind Power Project, LLC

Docket Nos. ER11-3959-000  
ER11-3959-001

ORDER GRANTING MARKET-BASED RATE AUTHORIZATION AND REQUESTS  
FOR WAIVERS

(Issued August 30, 2011)

1. In this order, the Commission grants Post Rock Wind Power Project, LLC (Post Rock) authority to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates, effective August 29, 2011, as requested. Also, as discussed below, we grant Post Rock's request for waiver of the requirements under Order Nos. 888<sup>1</sup> and 890<sup>2</sup> to file an Open Access Transmission Tariff (OATT), the

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<sup>1</sup> *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

<sup>2</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

requirements under Order No. 889<sup>3</sup> to establish an Open Access Same-Time Information System (OASIS), and the requirements under Order Nos. 889, 2004,<sup>4</sup> and 717,<sup>5</sup> and Part 358<sup>6</sup> to comply with the Standards of Conduct. We also grant Post Rock's request for other waivers commonly granted to market-based rate sellers.

2. Additionally, we find that Post Rock meets the criteria for a Category 1 seller in the Northeast, Northwest, Southeast, Southwest, Southwest Power Pool, and Central regions and is so designated.<sup>7</sup>

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<sup>3</sup> *Open Access Same-Time Information System and Standards of Conduct*, Order No. 889, FERC Stats. & Regs. ¶ 31,035 (1996), *order on reh'g*, Order No. 889-A, FERC Stats. & Regs. ¶ 31,049, *reh'g denied*, Order No. 889-B, 81 FERC ¶ 61,253 (1997).

<sup>4</sup> *Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs. ¶ 31,155 (2003), *order on reh'g*, Order No. 2004-A, FERC Stats. & Regs. ¶ 31,161, *order on reh'g*, Order No. 2004-B, FERC Stats. & Regs. ¶ 31,166, *order on reh'g*, Order No. 2004-C, FERC Stats. & Regs. ¶ 31,172 (2004), *order on reh'g*, Order No. 2004-D, 110 FERC ¶ 61,320 (2005), *vacated and remanded as it applies to natural gas pipelines sub nom. National Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831 (D.C. Cir. 2006); *see Standards of Conduct for Transmission Providers*, Order No. 690, FERC Stats. & Regs. ¶ 31,237, *order on reh'g*, Order No. 690-A, FERC Stats. & Regs. ¶ 31,243 (2007); *see also Standards of Conduct for Transmission Providers*, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,611 (2007); Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,630 (2008).

<sup>5</sup> *Standards of Conduct for Transmission Providers*, Order No. 717, FERC Stats. & Regs. ¶ 31,280 (2008), *order on reh'g*, Order No. 717-A, FERC Stats. & Regs. ¶ 31,297, *order on reh'g*, Order No. 717-B, 129 FERC ¶ 61,123 (2009), *order on reh'g*, Order No. 717-C, 131 FERC ¶ 61,045 (2010), *order on reh'g*, Order No. 717-D, 135 FERC ¶ 61,017 (2011).

<sup>6</sup> 18 C.F.R. Part 358 (2011).

<sup>7</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 848-850, *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).

## **I. Background**

3. On June 30, 2011, as amended on July 28, 2011, pursuant to section 205 of the Federal Power Act (FPA),<sup>8</sup> Post Rock 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.<sup>9</sup> Post Rock states that it is developing an approximately 201 megawatt (MW) wind-powered electric generation facility in Kansas, located within the Midwest Energy, Inc. (Midwest Energy) transmission area. Post Rock states that this facility is expected to be interconnected to the Midwest Energy transmission system, which Post Rock represents is part of the Westar Energy Inc. (Westar) balancing authority area.<sup>10</sup> Post Rock represents that the output of the facility is fully committed to Westar under a long-term contract.

4. Further, Post Rock states that it will own and operate generator interconnection facilities including a 32-mile, 230 kilovolt (kV) lead line from the project substation to the point of interconnection. Post Rock states that the planned generator lead line will be designed and constructed solely to carry the output of the facility to the grid. Post Rock further states that it does not believe that the Commission's OATT and related requirements apply to it as a result of ownership of this line. However, to the extent the Commission deems necessary, Post Rock alternatively requests waiver of the requirements of Order Nos. 888 and 890 to have an OATT on file, the requirements of Order No. 889 with respect to OASIS, and the requirements of Order Nos. 889, 2004, and 717 and Part 358 of the Commission's regulations with respect to the Standards of Conduct.

5. Post Rock states that it is a direct, wholly-owned subsidiary of Lincoln County Wind Project Holdco, LLC, which is a direct, wholly-owned subsidiary of Lincoln County Wind Project Finco, LLC (Finco). Finco is a direct, wholly-owned subsidiary of Lincoln County Wind Project Holdings, LLC, which, in turn, is a direct, wholly-owned subsidiary of Wind Capital Group, LLC (Wind Capital Group). Wind Capital Group is a

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<sup>8</sup> 16 U.S.C. § 824d (2006).

<sup>9</sup> Post Rock requests authorization to sell ancillary services in the markets administered by PJM Interconnection, L.L.C., New York Independent System Operator, Inc., ISO New England Inc., California Independent System Operator Corp., and Midwest Independent Transmission System Operator, Inc. Post Rock also requests authorization to engage in the sale of certain ancillary services as a third-party provider in other markets.

<sup>10</sup> The facility is expected to commence commercial operations during the third quarter of 2012.

direct, wholly-owned subsidiary of Wind Capital Ventures, LLC (Wind Capital Ventures).

6. Wind Capital Ventures is owned in part by NTR US Wind, Inc., which holds a 58.7 percent interest in Wind Capital Ventures, and TSC Wind Investments, LLC (TSC Wind Investments), which holds a 31.1 percent interest.<sup>11</sup> NTR US Wind, Inc. is an indirect, wholly-owned subsidiary of NTR plc (NTR). TSC Wind Investments is a wholly-owned subsidiary of WC Investment Management, LLC (WC Investment), which is owned by a trust that is wholly-owned by an individual.<sup>12</sup>

## **II. Notice of Filing**

7. Notice of Post Rock's June 30, 2011 Filing was published in the *Federal Register*, 76 Fed. Reg. 41,776 (2011), with interventions and comments due on or before July 21, 2011. None was filed.

8. Notice of Post Rock's request for blanket authorization under Part 34 was separately published in the *Federal Register*, 76 Fed. Reg. 41,238 (2011), with interventions or protests due on or before July 27, 2011. None was filed.

9. Notice of Post Rock's July 28, 2011 Filing was published in the *Federal Register*, 76 Fed. Reg. 46,789 (2011), with interventions and comments due on or before August 18, 2011. None was filed.

## **III. Determination**

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

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<sup>11</sup> The remaining interests in Wind Capital Ventures are held by MW Wind Investments LLC, which holds a 2.7 percent interest, COB LLC, which holds a 2.2 percent interest, and Wind Capital Ventures Class C Holding Company, L.P., which holds a 5.3 percent interest.

<sup>12</sup> Post Rock states that neither the trust nor the owner of the trust owns or controls a ten percent or greater interest in any energy industry-related companies in the United States, other than interests discussed in the June 30, 2011 and July 28, 2011 filings.

## A. Market-Based Rate Authorization

11. 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>13</sup> As discussed below, we find that Post Rock satisfies the Commission's standards for market-based rate authority and we will accept Post Rock's market-based rate tariff filed July 28, 2011, effective August 29, 2011, as requested.<sup>14</sup>

### 1. Horizontal Market Power

12. The Commission has adopted two indicative screens for assessing horizontal market power: the pivotal supplier screen and the wholesale market share screen.<sup>15</sup> 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.<sup>16</sup>

13. As stated above, Post Rock represents that the facility is located in the Midwest Energy transmission area within the Westar balancing authority area, and that the full output of the facility is committed to Westar under a long-term contract. Post Rock states that it does not have uncommitted capacity available to sell in the Westar balancing authority area or Midwest Energy transmission area and therefore cannot exercise market power in these areas.

14. Nevertheless, Post Rock conservatively includes the committed capacity as uncommitted in its analysis for the Westar balancing authority area. Post Rock's market share screen indicates that its market share in the Westar balancing authority area ranges from 3.9 to 5.3 percent.<sup>17</sup> Post Rock's pivotal supplier screen analysis indicates that the

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<sup>13</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 62, 399, 408, 440.

<sup>14</sup> We note that when Post Rock submitted a revised tariff on July 28, 2011 through the eTariff filing system, Post Rock did not properly target the tariff that it had filed. Therefore, the tariff filed on June 30, 2011 remained pending before the Commission despite the July 28, 2011 Filing. Accordingly, we will reject the tariff filed on June 30, 2011 as moot and accept the tariff filed on July 28, 2011.

<sup>15</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 62.

<sup>16</sup> *Id.* P 33, 62-63.

<sup>17</sup> We note that Post Rock's analysis of the Westar balancing authority area relies on Simultaneous Transmission Import Limit values approved by the Commission in *AEP Service Corp.*, 131 FERC ¶ 61,146 (2010).

net uncommitted supply in the Westar balancing authority area exceeds Post Rock's uncommitted capacity.

15. The Commission has reviewed Post Rock's pivotal supplier and wholesale market share screens and has determined that Post Rock passes both screens in the Westar balancing authority area. Additionally, we note that its capacity is committed under long-term contract. Accordingly, we find that Post Rock satisfies the Commission's requirements for market-based rates regarding horizontal market power.

## 2. Vertical Market Power

16. In cases where a public utility, or any of its affiliates, owns, operates, or controls transmission facilities, the Commission requires that there be a Commission-approved OATT on file or that the seller has received waiver of the OATT requirement before granting a seller market-based rate authorization.<sup>18</sup>

17. In this case, as discussed more fully below, the Commission will grant Post Rock's request for waiver of the requirement to have an OATT on file for its transmission facilities.<sup>19</sup>

18. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.<sup>20</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 generation capacity development; and physical coal supply sources and ownership of or control over who may access transportation of coal supplies (collectively, inputs to electric power production).<sup>21</sup> The Commission also requires sellers to make an affirmative statement that they have not erected barriers to entry into the relevant market

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<sup>18</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408.

<sup>19</sup> A generator lead line is a transmission facility. *See* 16 U.S.C. §§ 796(23), 824(a)-(b) (2006). Post Rock is subject to the requirement under Order Nos. 888 and 890 to file an OATT, or seek a waiver of the requirement to file an OATT unless and until it receives a request for transmission service. *See Milford Wind Corridor, LLC*, 129 FERC ¶ 61,149, at P 24 (2009) (noting that designation as a "generator lead line" does not render a line exempt from the Commission's regulation of transmission facilities). *See also Evergreen Wind Power III, LLC*, 135 FERC ¶ 61,030 (2011).

<sup>20</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 440.

<sup>21</sup> Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

and will not erect barriers to entry into the relevant market.<sup>22</sup> 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.<sup>23</sup>

19. Regarding other barriers to entry, Post Rock represents that neither Post Rock nor any of its affiliates owns or controls any intrastate natural gas transportation, storage, or distribution facilities, or physical coal supply sources or other essential resources or inputs to power production that could be used to erect barriers to entry. Post Rock represents that neither Post Rock nor any of its affiliates owns or controls railroad cars or barges for the transportation of coal or otherwise controls who may access transportation of coal supplies. Post Rock states that neither Post Rock nor any affiliate owns or controls any sites for the construction of new generating capacity other than for their own projects. Post Rock additionally states that its affiliate, Lost Creek Wind, LLC, has site control of land areas for the development of new generating projects and, in Post Rock's July 28, 2011 Filing, Post Rock provides additional information pertaining to the reporting of these land acquisitions.

20. Finally, consistent with Order No. 697, Post Rock affirmatively states it and its affiliates have not and will not erect barriers to entry into the relevant market.

21. Based on Post Rock's representations, and our determinations discussed below, we find that Post Rock satisfies the Commission's requirements for market-based rates regarding vertical market power.

## **B. Waiver Requests**

### **1. Waiver of Order Nos. 888, 889, and 890**

22. As explained above, Post Rock seeks waiver of the requirements to file an OATT, establish and maintain an OASIS, and abide by the Standards of Conduct. In support of its request for waiver, Post Rock states that it does not own, operate, or control any transmission-related equipment other than the limited facilities interconnecting the facility to the transmission grid. As noted above, Post Rock states that the planned generator lead line will be designed and constructed solely to carry the output of the facility to the grid.

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<sup>22</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

<sup>23</sup> *Id.* P 446.

23. Order Nos. 888 and 890 and section 35.28<sup>24</sup> of the Commission's regulations require public utilities that own, operate, or control facilities used for the transmission of electric energy in interstate commerce to file an OATT. Order No. 889 and Part 37<sup>25</sup> of the Commission's regulations require public utilities to establish and maintain an OASIS. Order Nos. 889, 2004, and 717 and Part 358 of the Commission's regulations require public utilities to abide by certain Standards of Conduct.<sup>26</sup> In prior orders, the Commission has enunciated the standards for exemption from some or all of the requirements of Order Nos. 888 and 889.<sup>27</sup> The criteria for waiver of these requirements are unchanged by Order Nos. 890, 2004, and 717.<sup>28</sup>

24. The Commission may grant requests for waiver of the obligation to file an OATT to public utilities that can show that they own, operate, or control only limited and discrete transmission facilities (facilities that do not form an integrated transmission grid), until such time as the public utility receives a request for transmission service. Should the public utility receive such a request, the Commission has determined that the public utility must file with the Commission a *pro forma* tariff within 60 days of the date of the request, and must comply with any additional requirements that are effective on the date of the request.<sup>29</sup>

25. The Commission has also determined that waiver of the requirement to establish an OASIS and abide by the Standards of Conduct would be appropriate for a public utility if the applicant: (1) owns, operates, or controls only limited and discrete transmission facilities (rather than an integrated transmission grid); or (2) is a small public utility that owns, operates, or controls an integrated transmission grid, unless it is a member of a tight power pool or other circumstances are present that indicate that a

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<sup>24</sup> 18 C.F.R. § 35.28 (2011).

<sup>25</sup> 18 C.F.R. Part 37 (2011).

<sup>26</sup> Order No. 889, FERC Stats. & Regs. ¶ 31,035 at 31,590; Order No. 2004, FERC Stats. & Regs. ¶ 31,155 at P 16; Order No. 717, FERC Stats. & Regs. ¶ 31,280 at P 313.

<sup>27</sup> See, e.g., *Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232, at 61,941 (1996) (*Black Creek*); *Entergy Mississippi, Inc.*, 112 FERC ¶ 61,228, at P 22 (2005) (*Entergy*).

<sup>28</sup> See *Alcoa Power Generating Inc.*, 120 FERC ¶ 61,035, at P 3 (2007); Order No. 717, FERC Stats. & Regs. ¶ 31,280 at P 31-33.

<sup>29</sup> *Black Creek*, 77 FERC at 61,941.

waiver would not be justified.<sup>30</sup> The Commission has held that waiver of Order No. 889 will remain in effect until the Commission takes action in response to a complaint to the Commission that an entity evaluating its transmission needs could not get the information necessary to complete its evaluation (for OASIS waivers) or an entity complains that the public utility has unfairly used its access to information about transmission to benefit the utility or its affiliate (for Standards of Conduct waivers).<sup>31</sup>

26. Based on the statements in Post Rock's application, we find that Post Rock's facilities qualify as limited and discrete. The facilities will be used solely by Post Rock to interconnect its facility to the transmission grid. Accordingly, we will grant Post Rock waiver of the requirements of Order Nos. 888 and 890 to have an OATT on file.<sup>32</sup> However, if Post Rock receives a request for transmission service, it must file with the Commission a *pro forma* OATT within 60 days of the date of the request, and must comply with any additional requirements that are effective on the date of the request in compliance with Order Nos. 888 and 890.

27. The Commission will also grant Post Rock waiver from the requirements of Order No. 889 with respect to OASIS and Order Nos. 889, 2004, and 717 and Part 358 with respect to the Standards of Conduct. We note that Post Rock's waiver of the requirement to establish an OASIS will remain in effect until the Commission takes action in response to a complaint to the Commission that an entity evaluating its transmission needs could not get the information necessary to complete its evaluation.<sup>33</sup> Likewise, Post Rock's waiver of the Standards of Conduct will remain in effect unless and until the Commission

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<sup>30</sup> *Id.* In *Black Hills Power, Inc.*, 135 FERC ¶ 61,058, at P 2-3 (2011), the Commission explained that membership in a tight power pool is no longer a factor in the determination for waiver of Standards of Conduct. Additionally, size is not relevant to whether waivers are granted to public utilities that participate in a Commission-approved Independent System Operator or Regional Transmission Organization.

<sup>31</sup> *Entergy*, 112 FERC ¶ 61,228 at P 23 (citing *Central Minnesota Municipal Power Agency*, 79 FERC ¶ 61,260, at 62,127 (1997); *Easton Utilities Commission*, 83 FERC ¶ 61,334, at 62,343 (1998)).

<sup>32</sup> Consistent with *Black Creek*, Post Rock must file a *pro forma* OATT in compliance with Order Nos. 888 and 890 within 60 days of receiving a request for transmission service.

<sup>33</sup> *Entergy*, 112 FERC ¶ 61,228 at P 23 (citing *Central Minnesota Municipal Power Agency*, 79 FERC ¶ 61,260, at 62,127 (1997); *Easton Utilities Commission*, 83 FERC ¶ 61,334, at 62,343 (1998)).

takes action on a complaint by an entity that Post Rock has unfairly used its access to information to unfairly benefit itself or its affiliate.<sup>34</sup>

## 2. Other Waivers, Approvals, and Authorizations

28. Post Rock also requests the following waivers and authorizations: (1) waiver of the filing requirements of subparts B and C of Part 35, 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, and 141, except sections 141.14 and 141.15; and (3) blanket authorization under section 204 of the FPA<sup>35</sup> and Part 34 for all future issuances of securities and assumptions of liability.

29. The Commission will grant the requested waivers and authorizations consistent with those granted other entities with market-based rate authorizations.<sup>36</sup> Notwithstanding the waiver of the accounting and reporting requirements, the Commission expects Post Rock to keep its accounting records in accordance with generally accepted accounting principles.

## C. Reporting Requirements

30. Consistent with the procedures the Commission adopted in Order No. 2001, an entity with market-based rate authorization must electronically file an Electric Quarterly Report (EQR) with the Commission 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

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<sup>34</sup> *Id.* Post Rock must notify the Commission if there is a material change in facts that affect its waiver, within 30 days of the date of such change. *Material Changes in Facts Underlying Waiver of Order No. 889 and Part 358 of the Commission's Regulations*, 127 FERC ¶ 61,141, at P 5 (2009).

<sup>35</sup> 16 U.S.C. § 824c (2006).

<sup>36</sup> 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. *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 984-985 (regarding waiver of Parts 41, 101, and 141), 999-1000 (regarding blanket approval under Part 34).

(one year or longer) market-based power sales during the most recent calendar quarter.<sup>37</sup> Public utilities must file EQRs no later than 30 days after the end of the reporting quarter.<sup>38</sup>

31. Additionally, Post Rock 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>39</sup>

32. In Order No. 697, the Commission created two categories of sellers.<sup>40</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

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<sup>37</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, *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). Attachments B and C of Order No. 2001 describe the required data sets for contractual and transaction information. Public utilities must submit EQRs 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>38</sup> The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2011). 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>39</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 (2011).

<sup>40</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 848.

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>41</sup> Sellers that do not fall into Category 1 are designated as Category 2 sellers and are required to file updated market power analyses.<sup>42</sup>

33. Post Rock states that it meets the criteria for Category 1 seller status in all regions because it does not own or control, and is not affiliated with any entities that own or control, more than 500 MW of generation capacity in aggregate per region within the Northeast, Northwest, Southeast, Southwest, Southwest Power Pool, and Central regions. Post Rock further states that neither it nor any of its affiliates owns, operates or controls transmission facilities, other than those limited and discrete facilities that are necessary to interconnect their generation facilities to the grid, that it is not affiliated with any franchised public utility, and that Post Rock does not raise any vertical market power issues. Based on Post Rock's representations and the Commission's decision herein to grant waiver of the OATT requirement, we designate Post Rock as a Category 1 seller in the in the Northeast, Northwest, Southeast, Southwest, Southwest Power Pool, and Central regions; however, the Commission reserves the right to require an updated market power analysis at any time for these regions.<sup>43</sup>

The Commission orders:

(A) Post Rock's market-based rate tariff is hereby accepted for filing, effective August 29, 2011, as requested, as discussed in the body of this order.

(B) Post Rock's market-based rate tariff filed on June 30, 2011 is hereby rejected as moot, as discussed in the body of this order.

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

(D) Waiver of Parts 41, 101, and 141 of the Commission's regulations is hereby granted, with the exception of sections 141.14 and 141.15.

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<sup>41</sup> 18 C.F.R. § 35.36(a) (2011).

<sup>42</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 850.

<sup>43</sup> See Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 853.

(E) Blanket authorization under Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability is hereby granted. Post Rock 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 Post Rock, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(F) The Commission reserves the right to modify this order to require a further showing that neither the public nor private interests will be adversely affected by continued Commission approval of Post Rock's issuance of securities or assumptions of liability.

(G) Post Rock's request for waiver of the requirements under Order Nos. 888 and 890 to file an OATT, the requirements under Order No. 889 to establish an OASIS, and the requirements under Order Nos. 889, 2004, and 717, and Part 358 to comply with the Standards of Conduct is hereby granted, as discussed in the body of this order.

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

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.