

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

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

Flat Ridge 2 Wind Energy LLC

Docket No. ER12-1400-000

ORDER GRANTING MARKET-BASED RATE AUTHORIZATION AND REQUESTS
FOR WAIVERS

(Issued May 29, 2012)

1. In this order, the Commission grants Flat Ridge 2 Wind Energy LLC (Flat Ridge 2) authority to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates, effective May 29, 2012, as requested. Also, as we discuss below, we grant Flat Ridge 2 waiver of the obligation to file an Open Access Transmission Tariff (OATT), to comply with the Commission's Standards of Conduct, and to establish and maintain an Open Access Same-Time Information System (OASIS). We also grant Flat Ridge 2's request for other waivers commonly granted to market-based rate sellers.
2. Additionally, we find that Flat Ridge 2 meets the criteria for a Category 1 seller in the Northeast, Northwest, Southeast, Southwest, Southwest Power Pool, and Central regions and is so designated.¹

¹ 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 PP 848-850, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010), *aff'd sub nom. Montana Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011).

I. Background

3. On March 30, 2012, pursuant to section 205 of the Federal Power Act (FPA),² Flat Ridge 2 filed an application for market-based rate authority with an accompanying tariff providing for the sale of electric energy, capacity, and ancillary services at market-based rates.³ Flat Ridge 2 explains that it is developing a 419 megawatt (MW) wind-powered electric generation facility located in Kansas (Facility) within the Westar Energy, Inc. (Westar) balancing authority area. Flat Ridge 2 states that the Facility will interconnect with the transmission system owned by Westar, which is under the operational control of Southwest Power Pool, Inc. (SPP), through a 42-mile 345 kilovolt (kV) generator interconnection line. Flat Ridge 2 states that it will be selling the entire⁴ electric output of the Facility to unaffiliated parties, pursuant to long-term power purchase agreements (collectively, Agreements).

4. Flat Ridge 2 states that its generator interconnection line is limited and discrete, and that Flat Ridge 2 will use it solely to interconnect the Facility to the transmission system. With respect to this line, Flat Ridge 2 requests that the Commission waive the requirements under Order Nos. 888,⁵ 889,⁶ 890,⁷ 717,⁸ 2004,⁹ section 35.28,¹⁰ and Parts

² 16 U.S.C. § 824d (2006).

³ Flat Ridge 2 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., and California Independent System Operator Corp. (CAISO). Flat Ridge 2 also requests authorization to engage in the sale of certain ancillary services as a third-party provider in other markets.

⁴ While the entire output of the Facility is committed to be sold on a long-term basis, Flat Ridge 2 has discretion to sell energy on a short-term basis under limited circumstances. Specifically, one or more of the Agreements allows Flat Ridge 2 to sell energy to third parties or into the SPP markets: (1) if needed to mitigate a breach or default by the power purchaser for failure or refusal to pay; (2) if the Facility produces in excess of the amount committed under the Agreements; and (3) if the power purchaser asks Flat Ridge 2 to curtail. Flat Ridge 2 represents that any such sales would be *de minimis*.

⁵ *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

(continued...)

37¹¹ and 358¹² of the Commission's regulations to file an OATT, establish an OASIS and to comply with the Standards of Conduct.

¶ 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).

⁶ *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).

⁷ *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).

⁸ *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).

⁹ *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).

¹⁰ 18 C.F.R. § 35.28 (2011).

¹¹ 18 C.F.R. Part 37 (2011)

¹² 18 C.F.R. Part 358 (2011).

5. Flat Ridge 2 states that it is a wholly-owned subsidiary of Flat Ridge 2 Wind Holdings LLC, whose owners, in turn, are Flat Ridge 2 Holdings LLC (FR2 Holdings) (50 percent) and Flat Ridge 2 Wind, LLC (FR2 Wind) (50 percent).
6. Further, Flat Ridge 2 states that FR2 Holdings is a direct, wholly-owned subsidiary of BP Wind Energy North America Inc., which is an indirect, wholly-owned subsidiary of BP p.l.c. (BP). Flat Ridge 2 notes that BP is a company organized under the laws of England and Wales and that BP's indirect, wholly-owned subsidiary, BP Energy Company (BP Energy), participates as a seller and buyer in wholesale natural gas and electricity markets and certain retail markets in the United States and has received market-based rate authority from the Commission.¹³ Flat Ridge 2 states that BP Energy does not own or operate any power generating or transmission facilities, nor any natural gas transportation, distribution, or storage assets in the Westar balancing authority area.
7. Flat Ridge 2 states that FR2 Wind is a wholly-owned indirect subsidiary of Sempra Generation, which is a wholly-owned indirect subsidiary of Sempra Energy. Flat Ridge 2 states that Sempra Energy is a public utility holding company based in San Diego, California, providing, through various subsidiaries and affiliates, a wide spectrum of electric, natural gas, and energy-related products and services to a diverse range of customers. Flat Ridge 2 states that Sempra Energy's wholly-owned subsidiary San Diego Gas & Electric Company (San Diego Gas & Electric) is a public utility with a franchised service territory that provides electric and natural gas service in San Diego County and southern Orange County, California. Flat Ridge 2 explains that San Diego Gas & Electric owns transmission facilities in the market operated by CAISO, which has an OATT on file with the Commission.¹⁴
8. Flat Ridge 2 represents that its affiliate, Flat Ridge Wind Energy LLC (Flat Ridge), owns and operates a 50 MW generation facility in the Westar balancing authority area. Flat Ridge 2 represents that the output from that facility is fully committed to an unaffiliated power purchaser on a long-term basis.

¹³ *Amoco Energy Trading Corporation*, Docket No. ER99-2895-000 (Jun. 17, 1999) (delegated letter order); *see also BP Energy Company*, Docket No. ER00-3614-000 (Oct. 18, 2000) (delegated letter order).

¹⁴ *Pacific Gas and Electric Co.*, 81 FERC ¶ 61,122 (1997); *see also California Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274 (2006), *order on reh'g*, 119 FERC ¶ 61,076 (2007).

9. Flat Ridge 2 states that it is affiliated with a number of other entities that own and operate electric generating facilities throughout the United States.

II. Notice of Filing

10. Notice of Flat Ridge 2's March 30, 2012 filing was published in the Federal Register,¹⁵ with interventions and comments due on or before April 20, 2012. None was filed.

11. Notice of Flat Ridge 2's request for blanket authorization under Part 34 was separately published in the Federal Register,¹⁶ with interventions or protests due on or before April 23, 2012. None was filed.

III. Determination

12. As discussed below, we will grant Flat Ridge 2's request for authorization to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates and we will accept Flat Ridge 2's market-based rate tariff, effective May 29, 2012, as requested. We will also grant Flat Ridge 2's request for certain waivers.

A. Market-Based Rate Authorization

13. 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.¹⁷

1. Horizontal Market Power

14. The Commission has adopted two indicative screens for assessing horizontal market power: the pivotal supplier screen and the wholesale market share screen.¹⁸ The Commission has stated that passage of both screens establishes a rebuttable presumption

¹⁵ 77 Fed. Reg. 20,813 (2012).

¹⁶ 77 Fed. Reg. 21,555 (2012).

¹⁷ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 62, 399, 408, 440.

¹⁸ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 62.

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.¹⁹

15. Flat Ridge 2 represents that it and its affiliates will own or control approximately 469 MW of generation in the Westar balancing authority area, and neither Flat Ridge 2 nor any of its affiliates owns any generation capacity in the first tier markets. Flat Ridge 2 represents that it and its affiliates do not have any uncommitted capacity in the Westar balancing authority area because long-term power purchase agreements fully commit to unaffiliated parties the electric output of the Facility, as well as its affiliate's facilities, except in limited circumstances.²⁰ Because the Facility has no uncommitted capacity available except in limited circumstances, Flat Ridge 2 states that it would therefore lack horizontal market power.

16. Based on Flat Ridge 2's representations that the Agreements fully commit the Facility's capacity except under limited circumstances,²¹ we find that Flat Ridge 2 satisfies the Commission's requirements for market-based rates regarding horizontal market power.

2. Vertical Market Power

17. 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.²²

18. In this case, as discussed more fully below, the Commission will grant Flat Ridge 2's request for waiver of the requirement to have an OATT on file for its transmission facilities.²³

¹⁹ *Id.* PP 33, 62-63.

²⁰ *See supra* note 4.

²¹ *Id.*

²² Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408.

²³ A generator lead line is a transmission facility. *See* 16 U.S.C. §§ 796(23), 824(a)-(b) (2006). Flat Ridge 2 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

19. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.²⁴ 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).²⁵ 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.²⁶ 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.²⁷

20. Regarding other barriers to entry, Flat Ridge 2 represents that neither it nor any of its affiliates own or control any intrastate natural gas transportation, storage, or distribution facilities in the Westar balancing authority area. Flat Ridge 2 represents that neither it nor any of its affiliates owns or controls any sources of coal supply or the transportation of coal supplies in any region. Flat Ridge 2 states that its affiliates own or control four potential sites for new generation capacity development within the Westar balancing authority area, and others around the country.

21. Consistent with Order No. 697, Flat Ridge 2 affirmatively states that it and its affiliates have not and will not erect barriers to entry into the relevant market.

22. Based on Flat Ridge 2's representations, and our determinations discussed below, we find that Flat Ridge 2 satisfies the Commission's requirements for market-based rates regarding vertical market power.

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, at P 15 n.18 (2011).

²⁴ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 440.

²⁵ Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

²⁶ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

²⁷ *Id.* P 446.

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

23. As explained above, Flat Ridge 2 seeks waiver of the requirements to file an OATT, establish and maintain an OASIS, and abide by the Standards of Conduct with respect to its generator interconnection line. In support of its request for waiver, Flat Ridge 2 states that the generator interconnection line is limited and discrete, and will be used solely by Flat Ridge 2 to interconnect the Facility to the transmission system.

24. Order Nos. 888 and 890 and section 35.28 of the Commission's regulations²⁸ 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 of the Commission's regulations²⁹ 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.³⁰ In prior orders, the Commission has enunciated the standards for exemption from some or all of the requirements of Order Nos. 888 and 889.³¹ The criteria for waiver of these requirements are unchanged by Order Nos. 890, 2004, and 717.³²

25. 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

²⁸ 18 C.F.R. § 35.28 (2011).

²⁹ 18 C.F.R. Part 37 (2011).

³⁰ 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.

³¹ 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*).

³² See *Alcoa Power Generating Inc.*, 120 FERC ¶ 61,035, at P 3 (2007); Order No. 717, FERC Stats. & Regs. ¶ 31,280 at PP 31-33.

of the request, and must comply with any additional requirements that are effective on the date of the request.³³

26. 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 other circumstances are present that indicate that a waiver would not be justified.³⁴ 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).³⁵

27. Based on the statements in Flat Ridge 2's application, we find that its transmission facilities qualify as limited and discrete. The facilities will be used solely by Flat Ridge 2 to interconnect its Facility to the transmission grid, and the Facility is not located near the San Diego Gas & Electric transmission system. Accordingly, we will grant Flat Ridge 2 waiver of the requirements of Order Nos. 888 and 890 and section 35.28 of the Commission's regulations to have an OATT on file. However, if Flat Ridge 2 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.

³³ *Black Creek*, 77 FERC ¶ 61,232 at 61,941.

³⁴ *Id.* Although the Commission originally precluded waiver of the requirements for OASIS and the Standards of Conduct for a small public utility that is a member of a tight power pool, in *Black Hills Power, Inc.*, 135 FERC ¶ 61,058, at PP 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.

³⁵ *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)).

28. The Commission will also grant Flat Ridge 2 waiver of the requirements of Order No. 889 and Part 37 of the Commission's regulations with respect to OASIS and Order Nos. 889, 2004, and 717 and Part 358 with respect to the Standards of Conduct. We note that Flat Ridge 2'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.³⁶ Likewise, Flat Ridge 2's waiver of the Standards of Conduct will remain in effect unless and until the Commission takes action on a complaint by an entity that Flat Ridge 2 has unfairly used its access to information to unfairly benefit itself or its affiliate.³⁷

2. Other Waivers, Approvals, and Authorizations

29. Flat Ridge 2 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 FPA³⁸ and Part 34 for all future issuances of securities and assumptions of liability.

30. The Commission will grant the requested waivers and authorizations consistent with those granted other entities with market-based rate authorizations.³⁹ Notwithstanding the waiver of the accounting and reporting requirements, the Commission expects Flat Ridge 2 to keep its accounting records in accordance with generally accepted accounting principles.

³⁶ *Id.*

³⁷ *Id.* Flat Ridge 2 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).

³⁸ 16 U.S.C. § 824c (2006).

³⁹ 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 PP 984-985 (regarding waiver of Parts 41, 101, and 141), 999-1000 (regarding blanket approval under Part 34).

31. We will direct Flat Ridge 2 to submit a compliance filing containing revisions to the limitations and exemptions sections of its market-based rate tariff to include a citation to this order.⁴⁰

C. Reporting Requirements

32. 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 (one year or longer) market-based power sales during the most recent calendar quarter.⁴¹ Public utilities must file EQRs no later than 30 days after the end of the reporting quarter.⁴²

⁴⁰ See Order No. 697, FERC Stats. & Regs. ¶ 31,252 at Appendix C; Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 384. See also *Niagara Mohawk Power Corporation*, 121 FERC ¶ 61,275, at P 8 (2007). These tariff revisions may be filed the next time Flat Ridge 2 makes a market-based rate filing with the Commission.

⁴¹ *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>.

⁴² 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.

33. Additionally, Flat Ridge 2 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.⁴³

34. In Order No. 697, the Commission created two categories of sellers.⁴⁴ We do not require Category 1 sellers 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 affiliates of anyone that owns, operates, or controls transmission facilities in the same region as the seller's generation assets; that are not affiliates of a franchised public utility in the same region as the seller's generation assets; and that do not raise other vertical market power issues.⁴⁵ Sellers that do not fall into Category 1 we designate as Category 2 sellers and are required to file updated market power analyses.⁴⁶

35. Flat Ridge 2 represents that it meets the criteria for Category 1 seller status in all regions. Flat Ridge 2 states that it does not own, operate, or control 500 MW or more of generation capacity in aggregate in any region. Flat Ridge 2 further states that it does not own, operate, or control transmission facilities in any region, other than those limited and discrete facilities that are necessary to interconnect their generation facilities to the transmission grid. Further, Flat Ridge 2 states that it is not an affiliate of a franchised public utility in any region and does not raise any other vertical market power concerns. Based on Flat Ridge 2's representations and the Commission's decision herein to grant waiver of the OATT requirement, we designate Flat Ridge 2 as a Category 1 seller 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.⁴⁷

⁴³ *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).

⁴⁴ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 848.

⁴⁵ 18 C.F.R. § 35.36(a) (2011).

⁴⁶ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 850.

⁴⁷ *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 853.

The Commission orders:

(A) Flat Ridge 2's market-based rate tariff is hereby accepted for filing, effective May 29, 2012, as requested, as discussed in the body of this order.

(B) Flat Ridge 2 is hereby directed to revise the limitations and exemptions section of its tariff to include a citation to this order, 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, with the exception of sections 141.14 and 141.15, is hereby granted.

(E) Blanket authorization under Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability is hereby granted. Flat Ridge 2 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 Flat Ridge 2, 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 Flat Ridge 2's issuance of securities or assumptions of liability.

(G) Flat Ridge 2 is hereby granted waiver of the requirements under Order Nos. 888 and 890 and section 35.28 of the Commission's regulations to file an OATT, the requirements under Order No. 889 and Part 37 of the Commission's regulations to establish and maintain an OASIS, and the requirements under Order Nos. 889, 2004, and 717, and Part 358 to comply with the Standards of Conduct, as discussed in the body of this order.

(H) Flat Ridge 2 is required to file EQRs in compliance with Order No. 2001. If the effective date of Flat Ridge 2's market-based rate tariff falls within a quarter of the year that has already expired, Flat Ridge 2'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.