

140 FERC ¶ 61,159  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

AV Solar Ranch 1, LLC

Docket No. ER12-2178-000

ORDER GRANTING MARKET-BASED RATE AUTHORIZATION AND REQUEST  
FOR WAIVERS

(Issued August 30, 2012)

1. In this order, the Commission grants AV Solar Ranch 1, LLC (AV Solar) authority to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates, effective July 3, 2012, as requested. Also, as discussed below, we grant AV Solar 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). In addition, we grant AV Solar's request for waiver of the Commission's affiliate restrictions as well as other waivers commonly granted to market-based rate sellers.

2. Additionally, we find that AV Solar meets the criteria for a Category 1 seller in the Northwest region and is so designated. Further, we designate AV Solar as a Category 2 seller in the Northeast, Southeast, Southwest Power Pool, Central, and Southwest regions. Accordingly, AV Solar must file updated market power analyses for the regions in which it is designated as a Category 2 seller in compliance with the regional reporting schedule adopted in Order No. 697.<sup>1</sup>

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<sup>1</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 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*,

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## I. Background

3. On July 2, 2012, pursuant to section 205 of the Federal Power Act (FPA),<sup>2</sup> AV Solar 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>3</sup> AV Solar explains that it is constructing a 230 megawatt (MW) solar photovoltaic electric generation facility in Los Angeles County, California (Facility) located in the California Independent System Operator Corporation (CAISO) market.<sup>4</sup> AV Solar represents that the output of the Facility is fully committed to Pacific Gas and Electric Company (PG&E) pursuant to a long-term contract.

4. AV Solar states that the Facility will include a 230 kilovolt (kV) generator tie line approximately 5 miles in length that is shared with two unaffiliated generation facilities, subject to shared facilities agreements with the owners of the other two generating facilities. AV Solar states that its interest in the generator tie line is sized to permit interconnection of the Facility to the grid, and that it does not own excess capacity of the generator tie line.

5. AV Solar states that the generator tie line is limited and discrete and does not comprise an integrated transmission grid. AV Solar requests that the Commission waive the requirements under Order Nos. 888<sup>5</sup> and 890<sup>6</sup> and section 35.28 of the Commission's

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659 F.3d 910 (9th Cir. 2011), *cert. denied sub nom. Public Citizen, Inc. v. FERC*, 2012 U.S. LEXIS 4820 (U.S. June 25, 2012).

<sup>2</sup> 16 U.S.C. § 824d (2006).

<sup>3</sup> AV Solar requests authorization to sell ancillary services in the markets administered by the PJM Interconnection, L.L.C. (PJM), New York Independent System Operator, Inc., ISO New England Inc., CAISO, and Midwest Independent Transmission System Operator, Inc., as well as authorization to engage in the sale of certain ancillary services as a third-party provider in other markets.

<sup>4</sup> AV Solar states that the first portion of the Facility is scheduled to come online in October 2012 and that the Facility will be fully operational in late 2013.

<sup>5</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,

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regulations<sup>7</sup> to file an OATT, the requirements under Order No. 889<sup>8</sup> and Part 37 of the Commission's regulations<sup>9</sup> to establish an OASIS, and the requirements under Part 358 of the Commission's regulations<sup>10</sup> to comply with the Standards of Conduct.

6. In addition, AV Solar requests waiver of the Commission's affiliate restrictions<sup>11</sup> with respect to AV Solar's relationship with its franchised public utility affiliates. AV Solar represents that waiver is appropriate because its franchised public utility affiliates continue to have no captive wholesale or retail customers.

7. AV Solar states that it is an indirect, wholly owned subsidiary of Exelon Corporation (Exelon), a public utility holding company that provides, through various subsidiaries and affiliates, a wide spectrum of electric, natural gas, and energy-related products and services. AV Solar states that it is directly wholly owned by Exelon AVSR, LLC, which is directly wholly owned by Exelon AVSR Holding, LLC, which is, in turn, wholly owned by Exelon Generation Company, LLC (ExGen). ExGen is a direct wholly owned subsidiary of Exelon Ventures Company, LLC, which is directly wholly owned by Exelon. AV Solar states that Exelon indirectly owns or controls 389.2 MW of generation capacity in the CAISO market. AV Solar further states that it is affiliated with

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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>6</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).

<sup>7</sup> 18 C.F.R. § 35.28 (2012).

<sup>8</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>9</sup> 18 C.F.R. Part 37 (2012).

<sup>10</sup> 18 C.F.R. Part 358 (2012).

<sup>11</sup> 18 C.F.R. § 35.39 (2012).

125.6 MW of generation capacity in the PacifiCorp-West balancing authority area, which is first-tier to CAISO.

8. AV Solar represents that it is affiliated with the following franchised public utilities: Commonwealth Edison Company, Baltimore Gas and Electric Company, and PECO Energy Company (collectively, the Franchised Public Utilities). AV Solar states that the Franchised Public Utilities own transmission facilities in the Northeast region within PJM and each have transferred operational control over their transmission systems to PJM, and transmission service over those facilities is provided by PJM pursuant to PJM's OATT.<sup>12</sup>

## **II. Notice of Filing**

9. Notice of AV Solar's July 2, 2012 filing was published in the *Federal Register*,<sup>13</sup> with interventions and comments due on or before July 23, 2012. None was filed.

10. Notice of AV Solar's request for blanket authorization under Part 34 of the Commission's regulations was separately published in the *Federal Register*,<sup>14</sup> with interventions or protests due on or before July 26, 2012. None was filed.

## **III. Determination**

11. As discussed below, we will grant AV Solar's request for authorization to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates and we will accept its market-based rate tariff, effective July 3, 2012, as requested. We will also grant AV Solar's request for certain waivers.

### **A. Market-Based Rate Authorization**

12. 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>15</sup>

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<sup>12</sup> *Pennsylvania-New Jersey-Maryland Interconnection*, 81 FERC ¶ 61,257 (1997).

<sup>13</sup> 77 Fed. Reg. 41,179 (2012).

<sup>14</sup> 77 Fed. Reg. 41,400 (2012).

<sup>15</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 62, 399, 408, 440.

## 1. Horizontal Market Power

13. The Commission has adopted two indicative screens for assessing horizontal market power: the pivotal supplier screen and the wholesale market share screen.<sup>16</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>17</sup>

14. AV Solar states that it will own a 230 MW Facility in the CAISO market, and that the entire output of the Facility is fully committed under a long-term power purchase agreement with PG&E for a period of 25 years. In addition, AV Solar represents that its affiliates own 389 MW of generation capacity in the CAISO market. AV Solar relies on data submitted by Tenaska Power Management, LLC to demonstrate that it passes both the pivotal supplier and the wholesale market share screens for the CAISO market.<sup>18</sup> AV Solar's market share screen indicates that its market share in the CAISO market ranges from 3.7 to 3.9 percent. AV Solar's pivotal supplier screen analysis indicates that the net uncommitted supply in the CAISO market exceeds AV Solar's uncommitted capacity.

15. The Commission has reviewed AV Solar's pivotal supplier and wholesale market share screens and has determined that AV Solar passes both screens in the CAISO market. Accordingly, we find that AV Solar 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>19</sup>

17. In this case, as discussed more fully below, the Commission will grant AV Solar's request for waiver of the requirement to have an OATT on file for its transmission

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<sup>16</sup> *Id.* P 62.

<sup>17</sup> *Id.* PP 33, 62-63.

<sup>18</sup> *See* AV Solar's July 2, 2012 Filing at 7 (citing *Tenaska Power Management, LLC*, Docket No. ER12-60-000 (Dec. 5, 2011) (delegated letter order)).

<sup>19</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408.

facilities.<sup>20</sup> Also, as noted above, AV Solar states that the Franchised Public Utilities have each transferred operational control over their transmission systems to PJM, and transmission service over those facilities is provided by PJM pursuant to PJM's OATT. AV Solar represents that except for the Franchised Public Utilities, AV Solar and its affiliates do not own or control transmission facilities in any region other than the limited interconnection facilities necessary to interconnect their generating facilities to the electric grid.

18. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.<sup>21</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>22</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>23</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>24</sup>

19. Regarding other barriers to entry, AV Solar represents that it is affiliated with entities that own or control intrastate natural gas storage or distribution facilities and access to transportation of coal supplies. AV Solar states that none of these facilities is located in the CAISO market. AV Solar states that it and its affiliates do not own any

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<sup>20</sup> A generator lead line is a transmission facility. *See* 16 U.S.C. §§ 796(23), 824(a)-(b) (2006). AV Solar 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 the fact that the facilities merely tie a generator to the grid 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).

<sup>21</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 440.

<sup>22</sup> Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

<sup>23</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

<sup>24</sup> *Id.* P 446.

sites for generation capacity development other than the sites on which their existing or retired generation facilities are located or other than sites previously reported to the Commission.

20. Consistent with Order No. 697, AV Solar affirmatively states that it has not erected barriers to entry and will not erect barriers to entry into the relevant market.<sup>25</sup>

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

## **B. Waiver Requests**

### **1. OATT, OASIS, and Standards of Conduct**

22. As noted above, AV Solar 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 ownership interest in the generator tie line. In support of its request for waiver, AV Solar states that the generator tie line will consist of limited and discrete, radial interconnection facilities used to interconnect the Facility and the generating facilities of the other parties to the shared facilities agreements to the CAISO-controlled grid.

23. Order Nos. 888 and 890 and section 35.28 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 of the Commission's regulations require public utilities to establish and maintain an OASIS. Order Nos. 889, 2004,<sup>26</sup> and 717<sup>27</sup> and Part 358 of the Commission's regulations require

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<sup>25</sup> We interpret this statement to apply to AV Solar and its affiliates. *See id.* P 447.

<sup>26</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).

<sup>27</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*

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public utilities to abide by certain standards of conduct.<sup>28</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>29</sup> The criteria for waiver of these requirements are unchanged by Order Nos. 890, 2004, and 717.<sup>30</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>31</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 other circumstances are present that indicate that a waiver would not be justified.<sup>32</sup> The

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*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>28</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>29</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>30</sup> 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.

<sup>31</sup> *Black Creek*, 77 FERC at 61,941.

<sup>32</sup> *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. See 18 C.F.R. § 358.1(c) (2012).

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>33</sup>

26. Based on the statements in AV Solar's application, we find that its transmission facilities qualify as limited and discrete. Accordingly, we will grant AV Solar 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 AV Solar 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.

27. The Commission will also grant AV Solar 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 AV Solar'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>34</sup> Likewise, AV Solar'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 AV Solar has unfairly used its access to information to unfairly benefit itself or its affiliate.<sup>35</sup>

## 2. Affiliate Restrictions

28. AV Solar represents that waiver of the Commission's affiliate restrictions with respect to AV Solar's relationship with the Franchised Public Utilities is appropriate because the Franchised Public Utilities continue to have no captive wholesale or retail

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<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)).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* AV Solar 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).

customers.<sup>36</sup> AV Solar states that while the Franchised Public Utilities serve retail electric energy customers under cost-based rates in the states of Illinois, Pennsylvania and Maryland, all of their retail customers have the option to choose a competitive retail electric supplier. AV Solar notes that the Commission has previously found that the Franchised Public Utilities do not have any captive wholesale or retail customers.<sup>37</sup>

29. The Commission's affiliate restrictions govern the relationship between franchised public utilities with captive customers and their market-regulated power sales affiliates.<sup>38</sup> The Commission's regulations define "captive customers" as "any wholesale or retail electric energy customers served by a franchised public utility under cost-based regulation."<sup>39</sup> We find that the Franchised Public Utilities continue to not have any captive retail or wholesale customers. Accordingly, we will grant AV Solar's request for waiver of the affiliate restrictions with respect to AV Solar's relationship with the Franchised Public Utilities. This determination will remain in effect unless there is a change in status that would require a review of the waiver. Should circumstances change, AV Solar must make a change in status filing notifying the Commission of such change.<sup>40</sup>

30. We will direct AV Solar to submit a compliance filing revising the provision concerning the affiliate restrictions in the limitations and exemptions section of its market-based rate tariff to include a citation to this order.<sup>41</sup>

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<sup>36</sup> AV Solar's July 2, 2012 Filing at 10.

<sup>37</sup> *Id.* (citing *Exelon Generation Co.*, 126 FERC ¶ 61,031 (2009); *Exelon Generation Co.*, 93 FERC ¶ 61,140 (2000), *reh'g denied*, 95 FERC ¶ 61,309 (2001); *AmerGen Vt., LLC*, 90 FERC ¶ 61,307, *reh'g denied*, *Baltimore Gas & Elec. Co.*, 91 FERC ¶ 61,270 (2000)).

<sup>38</sup> 18 C.F.R. § 35.39 (2012).

<sup>39</sup> 18 C.F.R. § 35.36(a)(6) (2012).

<sup>40</sup> *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 551.

<sup>41</sup> *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at Appendix C; Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 384. These tariff revisions may be filed the next time AV Solar makes a market-based rate filing with the Commission.

### 3. Other Waivers, Approvals, and Authorizations

31. AV Solar also requests the following waivers and authorizations: (1) waiver of the filing requirements of subparts B and C of Part 35 of the Commission's regulations, except sections 35.12(a), 35.13(b), 35.15, and 35.16; (2) waiver of the accounting and other requirements of Parts 41, 101, and 141 of the Commission's regulations, except sections 141.14 and 141.15; and (3) blanket authorization under section 204 of the FPA<sup>42</sup> and Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability.

32. The Commission will grant the requested waivers and authorizations consistent with those granted to other entities with market-based rate authorizations.<sup>43</sup> Notwithstanding the waiver of the accounting and reporting requirements, the Commission expects AV Solar to keep its accounting records in accordance with generally accepted accounting principles.

33. We will direct AV Solar to submit a compliance filing revising the limitations and exemptions section of its market-based rate tariff pertaining to these waivers and authorizations to include a citation to this order.<sup>44</sup>

#### C. Reporting Requirements

34. 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.<sup>45</sup>

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<sup>42</sup> 16 U.S.C. § 824c (2006).

<sup>43</sup> We note that the Commission has examined and approved the continued applicability of the waiver of its accounting and reporting requirements (18 C.F.R. Parts 41, 101, and 141), as well as the 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 PP 984-985 (regarding waiver of Parts 41, 101, and 141) and PP 999-1000 (regarding blanket approval under Part 34).

<sup>44</sup> These tariff revisions may be filed the next time AV Solar makes a market-based rate filing with the Commission.

<sup>45</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*,

(continued...)

Public utilities must file EQRs no later than 30 days after the end of the reporting quarter.<sup>46</sup>

35. Additionally, AV Solar 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>47</sup>

36. In Order No. 697, the Commission created two categories of sellers.<sup>48</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

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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>46</sup> The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2012). 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>47</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 (2012).

<sup>48</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 848.

issues.<sup>49</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>50</sup>

37. AV Solar represents that it meets the criteria for Category 1 seller status in the Northwest because in the that region: (1) it and its affiliates do not own or control more than 500 MW of generation in aggregate; (2) neither it nor any of its affiliates own, operate, or control transmission facilities; (3) it is not affiliated with a franchised public utility; and (4) it does not raise any other vertical market power issues. AV Solar states that it accepts Category 2 seller status in the Northeast, Southeast, Central, Southwest Power Pool, and Southwest regions.

38. Based on AV Solar's representations, we grant AV Solar Category 1 seller status in the Northwest region; however, the Commission reserves the right to require an updated market power analysis at any time for any region.<sup>51</sup> Further, based on AV Solar's representations, we designate AV Solar as a Category 2 seller in the Northeast, Southeast, Central, Southwest Power Pool, and Southwest regions; thus, AV Solar must file updated market power analyses for the Northeast, Southeast, Central, Southwest Power Pool, and Southwest regions in compliance with the regional reporting schedule adopted in Order No. 697.

The Commission orders:

(A) AV Solar's market-based rate tariff is hereby accepted for filing, effective July 3, 2012, as requested, as discussed in the body of this order.

(B) AV Solar is hereby directed to revise the limitations and exemptions section of its market-based rate tariff, 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>49</sup> 18 C.F.R. § 35.36(a) (2012).

<sup>50</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 850.

<sup>51</sup> *Id.* 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. AV Solar 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 AV Solar, 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 AV Solar's issuance of securities or assumptions of liability.

(G) AV Solar 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 of the Commission's regulations to comply with the Standards of Conduct, as discussed in the body of this order.

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

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.