

140 FERC ¶ 61,233
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.

Meadow Creek Project Company LLC

Docket No. ER12-2205-002

ORDER GRANTING MARKET-BASED RATE AUTHORIZATION AND REQUEST
FOR WAIVERS

(Issued September 24, 2012)

1. In this order, the Commission grants Meadow Creek Project Company LLC (Meadow Creek) authority to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates, effective September 5, 2012, as requested. Also, as discussed below, we grant Meadow Creek 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 Meadow Creek's request for other waivers commonly granted to market-based rate sellers. Additionally, we find that Meadow Creek meets the criteria for a Category 1 seller in the Northeast, Southeast, Central, Southwest, Northwest, and Southwest Power Pool regions and is so designated, as discussed below.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. Mont. Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011), *cert. denied sub nom. Pub. Citizen, Inc. v. FERC*, 2012 U.S. LEXIS 4820 (U.S. June 25, 2012).

I. Background

2. On July 5, 2012, as amended on July 26, 2012, pursuant to section 205 of the Federal Power Act (FPA),² Meadow Creek 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 Meadow Creek explains that it is constructing an approximately 120 megawatt (MW) wind energy project (the Meadow Creek Project) that consists of two separate qualifying small power production facilities (QFs), the North Point Project and the Five Pine Project located more than one mile apart.⁴ According to Meadow Creek, the Meadow Creek Project is located in Bonneville County, Idaho within the PacifiCorp East balancing authority area (BAA) and is expected to be placed in-service November 2012.

3. Meadow Creek states that the output of the Meadow Creek Project will be sold to PacifiCorp under two 20-year power purchase agreements, one for each QF. Meadow Creek explains that output from the Meadow Creek Project will travel from the Meadow Creek Substation through a wholly-owned, 7-mile, 161 kV tie-line (MCPC Tie-Line) to the Jolly Hill Substation, which Meadow Creek will co-own pursuant to a Shared Facilities Agreement, with Ridgeline Alternative Energy, LLC (Ridgeline), Goshen Phase II LLC (Goshen), and AE Power Services LLC (AE Power).⁵ Meadow Creek states the Jolly Hill Substation interconnects to another 7-mile, 161 kV tie-line (the Shared-Tie-

² 16 U.S.C. § 824d (2006).

³ Meadow Creek 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. Meadow Creek also requests authorization to engage in the sale of certain ancillary services as a third-party provider in other markets.

⁴ Meadow Creek states that the facilities comply with 18 C.F.R. § 292.203(a) (2012).

⁵ The Shared Facilities Agreement was filed unexecuted with the Commission under section 205 of the FPA and has been accepted for filing, with an effective date to occur when the parties execute the Shared Facilities Agreement and make a compliance filing with the Commission. *Goshen Phase II LLC*, Letter Order, Docket No. ER12-1292-000, May 17, 2012. The Commission approved the necessary transfer of jurisdictional assets pursuant to section 203 of the FPA, 16 U.S.C. § 824b (2006). *Goshen Phase II LLC, et al.*, 139 FERC ¶ 62,047 (2012).

Line), which interconnects to the Wolverine Substation at the beginning of an approximately 18-mile, 161 kV tie-line (WCGI Interconnection Facilities) owned by Wolverine Creek Goshen Interconnection, LLC (Wolverine Creek). Meadow Creek states that it is a party to a Common Facilities Agreement that will provide it with proportional ownership of and right to use the WCGI Interconnection Facilities.⁶ According to Meadow Creek, the WCGI Interconnection Facilities connect to the Goshen Substation owned by PacifiCorp, the point at which the Meadow Creek Project's electrical output will be sold.

4. Meadow Creek requests waiver of the Commission's regulations applicable to transmitting utilities that may otherwise be applicable as a result of Meadow Creek's generation interconnection facilities, including its ownership of the MCPC Tie-Line, and ownership interest in the Jolly Hill Substation and Shared Tie-Line, and Wolverine Creek and WCGI Interconnection (collectively, Total Connection Facilities).

5. Meadow Creek represents that it is wholly owned by Ridgeline, which in-turn is wholly indirectly owned by EOLFI S.A. (EOLFI), a French Corporation. Meadow Creek states that EOLFI is indirectly owned by a number of French entities and neither EOLFI, nor any of the French entities, owns, operates, or controls electric generation or transmission facilities in the United States other than those disclosed in its filing.⁷ According to Meadow Creek, Ridgeline holds interests in three public utilities under section 201(e) of the FPA.⁸ Specifically, Ridgeline owns a 20 percent indirect interest in

⁶ The Common Facilities Agreement, as amended and restated, has been filed unexecuted with the Commission under section 205 of the FPA and accepted for filing, subject to a compliance filing after execution. *Wolverine Creek Energy LLC, et al.*, Letter Order, Docket Nos. ER12-1280-000 and ER12-1281-000, May 9, 2012; *errata*, May 10, 2012. The Commission approved the necessary transfer of jurisdictional assets pursuant to section 203 of the. *Ridgeline Alternative Energy, LLC, et al.*, 139 FERC ¶ 62,043 (2012).

⁷ Meadow Creek states that EOLFI S.A. is 71.49 percent owned by Veolia S.A., which owns a 50 percent indirect interest in an affiliate, Dalkia, that indirectly owns generation facilities in the United States, none of which are traditional public utilities with captive customers. and none of which owns electric generation in the PacifiCorp East BAA. Meadow Creek included assets owned by Dalkia affiliates in its asset appendix.

⁸ 16 U.S.C § 824(e) (2006). *See* Application of Meadow Creek Project Company LLC for Order Accepting Initial Tariff, Granting Blanket Approvals, Including Blanket Approval Under 18 C.F.R. Part 34 for Issuances of Securities and Assumptions of Liabilities and Granting Waivers, Docket No. ER12-2205-002, July 5, 2012.

Rockland Wind Farm LLC (Rockland), which owns an approximately 80 MW wind energy project in the Idaho Power Company BAA. Ridgeline also indirectly holds a 12.5 percent interest in Goshen, which owns an approximately 125 MW wind-powered generation facility in the PacifiCorp East BAA.⁹ Last, Ridgeline directly, and through Meadow Creek, owns an interest in Wolverine Creek, the public utility that owns and operates the WCGI Interconnection Facilities.

II. Notice of Filing

6. Notice of Meadow Creek's July 5, 2012 Filing was published in the Federal Register,¹⁰ with interventions or protests due on or before July 26, 2012. None was filed.

7. Notice of Meadow Creek's request for blanket authorization under Part 34 of the Commission's regulations was separately published in the Federal Register,¹¹ with interventions or protests due on or before August 1, 2012. None was filed.

8. Notice of Meadow Creek's July 26, 2012 amended filing was published in the Federal Register,¹² with interventions or protests due on or before August 16, 2012. None was filed.

III. Discussion

9. As discussed below, we will grant Meadow Creek'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 September 5, 2012, as requested. We also will grant Meadow Creek's request for certain waivers.

A. Market-Based Rate Authorization

10. 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

⁹ Meadow Creek states that Goshen will own an interest in the Shared Tie-Line under the Shared Facilities Agreement.

¹⁰ 77 Fed. Reg. 41,397 (2012).

¹¹ 77 Fed. Reg. 42,301 (2012).

¹² 77 Fed. Reg. 46,431 (2012).

power.¹³ As discussed below, we find that Meadow Creek satisfies the Commission's standards for market-based rate authority.

1. Horizontal Market Power

11. The Commission has adopted two indicative screens for assessing horizontal market power: the pivotal supplier screen and the wholesale market share screen.¹⁴ 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.¹⁵

12. Meadow Creek has prepared the pivotal supplier and wholesale market share screens for the PacifiCorp East BAA consistent with the requirements of Order No. 697.¹⁶ Meadow Creek's market share screen indicates that its market shares in the PacifiCorp East BAA range from 4.5 to 5.6 percent. Meadow Creek's pivotal supplier screen analysis indicates that the net uncommitted supply in the PacifiCorp East BAA exceeds Meadow Creek's uncommitted capacity.

13. The Commission has reviewed Meadow Creek's horizontal market power screens, and has determined that Meadow Creek passes both the pivotal supplier and wholesale market share screens in the PacifiCorp East BAA. Accordingly, we find that Meadow Creek satisfies the Commission's requirements for market-based rate authority regarding horizontal market power.

2. Vertical Market Power

14. 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.¹⁷

¹³ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 62, 399, 408, 440.

¹⁴ *Id.* P 62.

¹⁵ *Id.* PP 33, 62-63.

¹⁶ *Id.* PP 62, 399, 408, 440.

¹⁷ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408.

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

16. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.¹⁹ 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).²⁰ 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.²¹ 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.²²

17. Regarding other barriers to entry, Meadow Creek represents that neither it nor any of its affiliates owns or controls any intrastate natural gas transportation, storage, or distribution facilities or physical coal supply sources. Meadow Creek represents that neither it nor any of its affiliates owns or controls facilities used in the transportation of coal supplies. Meadow Creek states that it and its affiliates through Ridgeline own or

¹⁸ A generator lead line is a transmission facility. *See* 16 U.S.C. §§ 796(23), 824(a)-(b) (2006). Meadow Creek 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).

¹⁹ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 440.

²⁰ Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

²¹ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

²² *Id.* P 446.

control sites for generation capacity development. Meadow Creek states that all of the sites have been previously reported to the Commission by its affiliate Rockland.²³

18. Consistent with Order No. 697, Meadow Creek affirmatively states it and its affiliates have not and will not erect barriers to entry into wholesale electric markets.

19. Based on Meadow Creek's representations, and our determinations discussed below, we find that Meadow Creek 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

20. As noted above, Meadow Creek 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, Meadow Creek states that it does not own, operate, or control any transmission-related equipment other than the Total Interconnection Facilities. They further state the Total Interconnection Facilities comprise only limited and discrete facilities that do not comprise an integrated transmission system. Specifically, Meadow Creek states that the Total Interconnection Facilities will serve only to deliver the Meadow Creek Project's electric power output to make wholesale sales in interstate commerce, and to deliver start-up, back-up, and maintenance power to the Meadow Creek Project for its own use; no other entities will use the Total Interconnection Facilities.²⁴ Meadow Creek states that the Total Interconnection

²³ See *Rockland Wind Farm LLC*, Docket No. ER11-4475-002, Amendment to Amended Application for Market-Based Rate Authority and Request for Waiver of the Commission's OATT, OASIS, and Standards of Conduct Requirements, Oct. 7, 2011; *Rockland Wind Farm LLC*, Docket Nos. LA11-4-000 (Jan. 23, 2012), LA12-1-000 (Apr. 27, 2012).

²⁴ Meadow Creek states that: (1) it will share in the use of the Shared Tie-Line pursuant to the Shared Facilities Agreement with RAE and Goshen; (2) in connection with the use of the Shared Tie-Line under the Shared Facilities Agreement, the Commission granted Goshen and RAE the same waivers under Order Nos. 888, 889, and 890, and section 35.28, Part 37 and Part 358 of the Commission's regulations as requested by Meadow Creek (*see Goshen Phase II, LLC, et al.*, 133 FERC ¶ 61,090 (2010)); and (3) the Commission granted similar regulatory waivers to WCGI (*see Wolverine Creek Goshen Interconnection LLC, et al.*, Letter Order, Docket Nos. ER06-267-000, OA06-1-000 and TS06-4-000 (Jan. 13, 2006; *errata*, Jan. 27, 2010).

Facilities are radial in nature and will not form an integrated transmission system.²⁵ Meadow Creek states that, if it receives a request for transmission service from a third party, Meadow Creek will file an OATT with the Commission and will satisfy all other applicable regulatory requirements. Meadow Creek requests that the Commission waive the requirements under Order Nos. 888, 889 and 890, and sections 35.28, Part 37 and Part 358 of the Commission's regulations.²⁶

21. 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, and 717 and Part 358 of the Commission's regulations require public utilities to abide by certain standards of conduct.²⁷ In prior orders, the Commission has enunciated the standards for exemption from some or all of the requirements of Order Nos. 888 and 889.²⁸ The criteria for waiver of these requirements are unchanged by Order Nos. 890, 2004, and 717.²⁹

22. 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

²⁵ Meadow Creek represents that the Total Interconnection Facilities do not form any loops or multiple points of interconnection with the regional integrated transmission system, or otherwise permit flows of electric energy as part of an integrated transmission network.

²⁶ 18 C.F.R. § 35.28 and 18 C.F.R. Parts 37 and 358 (2012).

²⁷ 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.

²⁸ 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*).

²⁹ 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.³⁰

23. 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 waiver would not be justified.³¹ 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).³²

24. Based on the statements in Meadow Creek's application, we find that Meadow Creek's facilities qualify as limited and discrete. Accordingly, we will grant Meadow Creek waiver of the requirements of Order Nos. 888 and 890 to have an OATT on file. However, if Meadow Creek 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.

25. The Commission will also grant Meadow Creek 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. Meadow Creek's waiver of the requirement to

³⁰ *Black Creek*, 77 FERC at 61,941.

³¹ *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).

³² *Entergy*, 112 FERC ¶ 61,228 at P 23 (citing *Central Minnesota Municipal Power Agency*, 79 FERC ¶ 61,260, at 62,127 (1997); *Easton Utils. Comm'n*, 83 FERC ¶ 61,334, at 62,343 (1998)).

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.³³ Likewise, Meadow Creek'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 Meadow Creek has unfairly used its access to information to unfairly benefit itself or its affiliate.³⁴

2. Other Waivers, Approvals, and Authorizations

26. Meadow Creek 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 FPA³⁵ and Part 34 for all future issuances of securities and assumptions of liability.

27. The Commission will grant the requested waivers and authorizations consistent with those granted other entities with market-based rate authorizations.³⁶ Notwithstanding the waiver of the accounting and reporting requirements, we expect Meadow Creek to keep its accounting records in accordance with generally accepted accounting principles.

C. Reporting Requirements

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

³³ *Id.*

³⁴ *Id.* Meadow Creek 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).

³⁵ 16 U.S.C. § 824c (2006).

³⁶ 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).

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.³⁷ Public utilities must file EQRs no later than 30 days after the end of the reporting quarter.³⁸

29. Additionally, Meadow Creek 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.³⁹

30. In Order No. 697, the Commission created two categories of sellers.⁴⁰ 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,

³⁷ *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>.

³⁸ 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.

³⁹ *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).

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

operate, or control transmission facilities other than limited equipment necessary to connect individual generation facilities to the transmission grid (or have been granted waiver of the requirements of Order No. 888); that are not affiliated with anyone that owns, operates, or controls transmission facilities in the same region as the seller's generation assets; that are not affiliated with a franchised public utility in the same region as the seller's generation assets; and that do not raise other vertical market power issues.⁴¹ Sellers that do not fall into Category 1 are designated as Category 2 sellers and are required to file updated market power analyses.⁴²

31. Meadow Creek states that 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 within the Northeast, Northwest, Southeast, Southwest, Southwest Power Pool, and Central regions. Meadow Creek further states that neither it nor any of its affiliates owns, operates or controls transmission facilities in the same region as generation assets owned or controlled by Meadow Creek or its affiliates, other than those limited and discrete facilities that are necessary to interconnect their generation facilities to the grid; that neither it nor its affiliates is affiliated with a franchised public utility in the same region as generation assets owned or controlled by Meadow Creek or its affiliates; and that neither it nor its affiliates raise any vertical market power issues.

32. Based on Meadow Creek's representations and the Commission's decision herein to grant Meadow Creek waiver of the OATT requirement, we designate Meadow Creek as a Category 1 seller in the Northeast, Northwest, Southeast, Southwest, Southwest Power Pool, and Central regions. The Commission reserves the right to require an updated market power analysis from any market-based rate seller at any time, including for those sellers that fall within Category 1.⁴³

The Commission orders:

(A) Meadow Creek's market-based rate tariff is hereby accepted for filing, effective September 5, 2012, as requested, as discussed in the body of this order.

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

⁴¹ 18 C.F.R. § 35.36(a) (2012).

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

⁴³ *Id.* P 853.

(C) 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.

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

(E) 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 Meadow Creek's issuance of securities or assumptions of liability.

(F) Meadow Creek 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.

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