

141 FERC ¶ 61,013
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.

Mehoopany Wind Energy LLC

Docket Nos. ER12-2200-000
ER12-2200-001

ORDER GRANTING MARKET-BASED RATE AUTHORIZATION AND REQUEST
FOR WAIVERS

(Issued October 4, 2012)

1. In this order, the Commission grants Mehoopany Wind Energy LLC (Mehoopany) authority to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates, effective September 1, 2012, as requested. Also, as discussed below, we grant Mehoopany 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 Mehoopany's request for other waivers commonly granted to market-based rate sellers.

2. Additionally, we find that Mehoopany meets the criteria for a Category 1 seller in the Southeast, Central, Southwest, Northwest, and Southwest Power Pool regions and is so designated. Further, we designate Mehoopany as a Category 2 seller in the Northeast region; therefore, Mehoopany must file updated market power analyses for the Northeast region in compliance with the regional reporting schedule adopted in Order No. 697.¹

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), *cert. denied sub nom. Pub. Citizen, Inc. v. FERC*, 2012 U.S. LEXIS 4820 (U.S. June 25, 2012).

I. Background

3. On July 3, 2012, as amended on August 6, 2012, pursuant to section 205 of the Federal Power Act (FPA),² Mehoopany 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 Mehoopany explains that it is constructing a 140 megawatt (MW) wind-powered generating facility (Facility) in Pennsylvania. Mehoopany represents that the entire output of the Facility is fully committed to two unaffiliated third parties under two long-term power purchase agreements. Mehoopany also provides details regarding several affiliates in the PJM market, each of which sells the entire output from its generating facility pursuant to long-term agreements.⁴ Specifically, Mehoopany discloses that these affiliates own interconnection facilities within the PJM market.⁵

4. Mehoopany states that it will also own an approximately nine-mile 115 kV generator interconnection line (Interconnection Line) that will be wholly owned and solely utilized by Mehoopany to interconnect the Facility to transmission facilities owned by Pennsylvania Electric Company and operated by PJM in the PJM market. Mehoopany states that the Interconnection Line is designed and will be operated solely to serve as a generator interconnection facility, and that it will not be a networked transmission facility designed or operated to provide transmission service. Mehoopany states that the

² 16 U.S.C. § 824d (2006).

³ Mehoopany requests authorization to sell ancillary services in the markets administered by PJM Interconnection, L.L.C. (PJM), New York Independent System Operator, Inc., ISO New England Inc., and California Independent System Operator Corp. Mehoopany also requests authorization to engage in the sale of certain ancillary services as a third-party provider in other markets.

⁴ Mehoopany also describes the holdings of its other affiliates outside of the PJM market. Mehoopany notes that an affiliate, Whiting Clean Energy, Inc. (Whiting) has uncommitted generating capacity in the Midwest Independent Transmission System Operator, Inc. (MISO) market, which is first tier to the PJM market.

⁵ Mehoopany states that its affiliates, Fowler Ridge Wind Farm LLC, Fowler Ridge II Wind Farm LLC and Fowler Ridge III Wind Farm LLC individually own generation facilities connected by a set of jointly-owned common interconnection facilities (Common Facilities). Mehoopany also states that another affiliate, BP America Production Company (BP America Production), owns a small qualifying cogeneration facility and limited generator interconnection facilities.

Interconnection Line is a limited and discrete facility and requests that the Commission grant waiver of the requirements of Order Nos. 888,⁶ 889,⁷ 890,⁸ 717,⁹ 2004¹⁰ and

⁶ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

⁷ *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).

⁸ *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).

⁹ *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).

¹⁰ *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).

section 35.28,¹¹ Part 37,¹² and Part 358¹³ of the Commission's regulations with respect to the Interconnection Line. Mehoopany has also requested additional waivers and blanket approvals commonly granted to similar applicants with market-based rate authority.

5. Mehoopany represents that it is a wholly-owned subsidiary of Mehoopany Wind Holdings LLC, which is 50 percent owned by Mehoopany Holdings LLC, and 50 percent owned by Mehoopany Wind, LLC. According to Mehoopany, Mehoopany Wind Holdings LLC 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. Mehoopany states that Mehoopany Wind, LLC is a wholly-owned subsidiary of Sempra Generation, which, in turn, is a wholly-owned indirect subsidiary of Sempra Energy.¹⁴

II. Notice of Filing

6. Notice of Mehoopany's July 3, 2012, filing was published in the *Federal Register*,¹⁵ with interventions and comments due on or before July 24, 2012. None was filed.

7. Notice of Mehoopany's request for blanket authorization under Part 34 of the Commission's regulations was separately published in the *Federal Register*,¹⁶ with interventions or protests due on or before July 26, 2012. None was filed.

¹¹ 18 C.F.R. § 35.28 (2012).

¹² 18 C.F.R. Part 37 (2012).

¹³ 18 C.F.R. Part 358 (2012).

¹⁴ Mehoopany states that Sempra Energy is the ultimate parent company of San Diego Gas & Electric Company (SDG&E), a public utility with a franchised service territory that provides electric and natural gas service in San Diego County and southern Orange County, California. Mehoopany represents that SDG&E owns transmission facilities in the market operated by the California Independent System Operator Corporation, which has an OATT on file with the Commission. According to Mehoopany, Sempra Energy also is the ultimate parent of Sempra Energy Trading, LLC, an entity that has a market-based rate wholesale power sales tariff on file with the Commission and formerly was a wholesale power marketer but that no longer is active.

¹⁵ 77 Fed. Reg. 41,398 (2012).

¹⁶ 77 Fed. Reg. 41,400 (2012).

8. Notice of Mehoopany's August 6, 2012, amended filing was published in the *Federal Register*,¹⁷ with interventions or protests due on or before August 27, 2012. None was filed.

III. Determination

9. As discussed below, we will grant Mehoopany'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 1, 2012, as requested. We will also grant Mehoopany'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 power.¹⁸

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.¹⁹ 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.²⁰

12. Mehoopany represents that neither it nor any of its affiliates has any uncommitted generating capacity in the PJM market. Mehoopany submitted indicative screens for the PJM market. For purposes of the screens, Mehoopany states that it conservatively assumed that the full 525 MW output of the generating facility of its affiliate, Whiting, could be delivered to the PJM market. Mehoopany's market share screen indicates that its market share in the PJM market ranges from 0.72 to 0.90 percent. Mehoopany's pivotal supplier screen indicates that the net uncommitted supply in the PJM market exceeds Mehoopany's uncommitted capacity.

¹⁷ 77 Fed. Reg. 48,511 (2012).

¹⁸ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 62, 399, 408, 440.

¹⁹ *Id.* P 62.

²⁰ *Id.* PP 33, 62-63.

13. The Commission has reviewed Mehoopany's pivotal supplier and wholesale market share screens and has determined that Mehoopany passes both screens in the PJM market.²¹ Accordingly, we find that Mehoopany satisfies the Commission's requirements for market-based rates 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.²²

15. In this case, as discussed more fully below, the Commission will grant Mehoopany's request for waiver of the requirement to have an OATT on file for its Interconnection Line.²³ Mehoopany states that neither Mehoopany nor any of its affiliates owns or controls any transmission facilities in the PJM market other than: (1) the Interconnection Line that Mehoopany will own; (2) the Common Facilities which have been granted waiver of the OATT requirement;²⁴ and (3) the limited interconnection

²¹ We note that the horizontal market power screens Mehoopany submitted for the PJM market are not consistent with the requirements of Order No. 697. Although the output of the Facility is fully committed, the capacity from the Facility should be included in Row A (Installed Capacity) and the long-term firm sale of that capacity should be reflected in Row C (Long-Term Firm Sales). However, because these line items would zero out, the error does not have an impact on the screen results.

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). Mehoopany 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).

²⁴ Mehoopany notes that the Commission has "provided waivers of its [OATT], OASIS, and standards of conduct requirements with respect to the Common Facilities." July 1, 2012 filing at p. 5 (citing *BP Wind Energy North America Inc.*, 129 FERC ¶ 61,207 (2009)).

facilities owned by BP America Production.²⁵ As noted above, Mehoopany states that the transmission owned by its affiliate SDG&E in the Southwest region has an OATT on file with the Commission. In addition to the Common Facilities and the SDG&E transmission, Mehoopany identifies in its transmission asset appendix additional facilities owned by affiliates in the Northwest and Southwest and Southwest Power Pool regions that have been found to be limited and discrete facilities that do not constitute an integrated transmission system.²⁶

16. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.²⁷ 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).²⁸ 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.²⁹ 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.³⁰

²⁵ Mehoopany references a few other facilities used by affiliates solely to interconnect their facilities to the transmission system.

²⁶ Mehoopany July 3, 2012 Filing, Asset Appendix, Table 2. According to Mehoopany, these entities have either requested OATT waiver or been granted OATT waivers (citing *Cedar Creek Wind Energy, LLC*, 134 FERC ¶ 61,130 (2011) and *Mesquite Solar 1, LLC*, 138 FERC ¶ 61,074 (2012); *Termoelectricia U.S., LLC*, 105 FERC ¶ 61,087 (2003) (orders granting waivers of the OATT requirements) and OATT waiver requests then pending by Flat Ridge 2Wind Energy LLC in Docket No. ER12-1400-000 and Copper Mountain Solar 2 LLC in Docket No. ER12-1566). The Commission has since granted the OATT waiver in *Flat Ridge 2 Wind Energy LLC*, 139 FERC ¶ 61,160 (2012) and *Copper Mountain Solar 2, LLC*, 140 FERC ¶ 61,074 (2012).

²⁷ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 440.

²⁸ Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

²⁹ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

³⁰ *Id.* P 446.

17. Regarding other barriers to entry, Mehoopany states that it and its affiliates do not own or control intrastate natural gas transportation, intrastate natural gas storage, or natural gas distribution facilities located in PJM and references intrastate gas facilities in other regions in its asset appendix. According to the asset appendix, Southern California Gas Company and SDG&E own 3,128 miles of transmission pipeline and 134 Bcf of gas storage capacity in the Southwest region; Southern Gas Transmission owns approximately 50 miles of intrastate pipeline in the Southeast region; Mobile Gas Service Corp. owns approximately 53 miles of intrastate pipeline and 0.8 Bcf of gas storage capacity in the Southeast region; and Bay Gas Storage Company, Ltd. owns approximately 11.4 Bcf of gas storage capacity in the Southeast region. Mehoopany represents that it and its affiliates do not own or control, either within PJM or in any other region, coal supplies or coal transportation infrastructure such as barges and rail cars.³¹ Mehoopany states that it and its affiliates do not own or control any resources that would permit it to create barriers to the entry of competitive generation.

18. Consistent with Order No. 697, Mehoopany affirmatively states that it and its affiliates have not erected barriers to entry and will not erect barriers to entry in the future.

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

B. Waiver Requests

1. OATT, OASIS, and Standards of Conduct

20. As noted above, Mehoopany 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 tie-line. In support of its request for waiver, Mehoopany states that its Interconnection Facility does not comprise an integrated transmission system and it does not serve, and is not designed to serve, other customers.

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.

³¹ We interpret this statement to include physical coal supply sources and ownership or control over who may access transportation of coal supplies, consistent with the representation required under 18 C.F.R. § 35.37(e)(3).

Order Nos. 889, 2004, and 717 and Part 358 of the Commission's regulations require public utilities to abide by certain standards of conduct.³² In prior orders, the Commission has enunciated the standards for exemption from some or all of the requirements of Order Nos. 888 and 889.³³ The criteria for waiver of these requirements are unchanged by Order Nos. 890, 2004, and 717.³⁴

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 of the request, and must comply with any additional requirements that are effective on the date of the request.³⁵

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 other circumstances are present that indicate that a waiver would not be justified.³⁶ The

³² 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.

³³ See, e.g., *Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232, at 61,941 (1996) (*Black Creek*); *Entergy Miss., Inc.*, 112 FERC ¶ 61,228, at P 22 (2005) (*Entergy*).

³⁴ 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.

³⁵ *Black Creek*, 77 FERC at 61,941.

³⁶ *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).³⁷

24. Based on the statements in Mehoopany's application, we find that its Interconnection Line qualifies as limited and discrete. Accordingly, we will grant Mehoopany 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 Mehoopany receives a request for transmission service, it must file with the Commission a *pro forma* OATT within 60 days of the date of the request, and must comply with any additional requirements that are effective on the date of the request in compliance with Order Nos. 888 and 890.

25. The Commission will also grant Mehoopany 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 Mehoopany'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.³⁸ Likewise, Mehoopany'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 Mehoopany has unfairly used its access to information to unfairly benefit itself or its affiliate.³⁹

26. We note that Mehoopany has failed to list the Interconnection Line in Table 2 of its asset appendix. We direct Mehoopany to make a compliance filing including this transmission in its asset appendix within 30 days of the date of this order and to include

³⁷ *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)).

³⁸ *Id.*

³⁹ *Id.* Mehoopany 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).

this transmission in any future asset appendices in accordance with 18 C.F.R. § 35.37(a)(2).

2. Other Waivers, Approvals, and Authorizations

27. Mehoopany 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 FPA⁴⁰ and Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability.

28. The Commission will grant the requested waivers and authorizations consistent with those granted to other entities with market-based rate authorizations.⁴¹ Notwithstanding the waiver of the accounting and reporting requirements, the Commission expects Mehoopany to keep its accounting records in accordance with generally accepted accounting principles.

C. Reporting Requirements

29. 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.⁴²

⁴⁰ 16 U.S.C. § 824c (2006).

⁴¹ 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).

⁴² *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

(continued...)

Public utilities must file EQRs no later than 30 days after the end of the reporting quarter.⁴³

30. Additionally, Mehoopany 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.⁴⁴

31. In Order No. 697, the Commission created two categories of sellers.⁴⁵ 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

(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>.

⁴³ 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.

⁴⁴ *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).

⁴⁵ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 848.

issues.⁴⁶ Sellers that do not fall into Category 1 are designated as Category 2 sellers and are required to file updated market power analyses.⁴⁷

32. Mehoopany represents that it meets the criteria for Category 1 Seller status in the Southeast, Central, Southwest Power Pool, Southwest, and Northwest regions because: (1) the facilities that Mehoopany will own will be located only in the Northeast region and Mehoopany will not, and does not, own any physical electric assets located in any other region; (2) Mehoopany will own only its generating facility equipment and limited interconnection facilities that are part of the Facility and necessary to connect its facilities to the transmission system; (3) Mehoopany does not own facilities in any region in which its affiliates own, operate, or control transmission facilities other than limited facilities necessary to interconnect generation to the transmission system; (4) Mehoopany does not own facilities in any region in which an affiliate serves as a franchised public utility; and (5) there are no other vertical market power concerns.

33. Mehoopany states that because it and its affiliates own in aggregate more than 500 MW of generation in the Northeast region, it is a Category 2 Seller in that region.

34. Based on Mehoopany's representations, we designate Mehoopany as a Category 2 seller in the Northeast region and a Category 1 seller in the Southeast, Central, Southwest Power Pool, Southwest, and Northwest regions. Thus, Mehoopany must file updated market power analyses for the Northeast region in compliance with the regional reporting schedule adopted in Order No. 697. However, the Commission reserves the right to require an updated market power analysis at any time for any region.⁴⁸

The Commission orders:

(A) Mehoopany's market-based rate tariff is hereby accepted for filing, effective September 1, 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.

⁴⁶ 18 C.F.R. § 35.36(a) (2012).

⁴⁷ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 850.

⁴⁸ *Id.* P 853.

(C) 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.

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

(F) Mehoopany 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) Mehoopany is required to make a compliance filing within 30 days of the date of this order updating its asset appendix to include the Interconnection Line, as discussed in the body of this order.

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