

141 FERC ¶ 61,113  
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.

Zephyr Wind, LLC

Docket Nos. ER12-2310-000  
ER12-2310-001

ORDER GRANTING MARKET-BASED RATE AUTHORIZATION AND REQUESTS  
FOR WAIVERS

(Issued November 13, 2012)

1. In this order, the Commission grants Zephyr Wind, LLC (Zephyr Wind) authority to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates, effective September 25, 2012, as requested. We grant Zephyr Wind waiver of the obligation to file an Open Access Transmission Tariff (OATT), to establish and maintain an Open Access Same-Time Information System (OASIS), and other waivers commonly granted to market-based rate sellers.
2. Additionally, we find that Zephyr Wind meets the criteria for a Category 1 seller in the Northeast, Northwest, Southeast, Southwest, Southwest Power Pool, and Central regions and is so designated.<sup>1</sup>

---

<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*, 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).

## I. Background

3. On July 26, 2012, as amended on September 14, 2012, pursuant to section 205 of the Federal Power Act (FPA),<sup>2</sup> Zephyr Wind 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>

4. Zephyr Wind states that it is a Delaware limited liability company engaged in the business of constructing a wind-powered electric facility (Facility) in Nobles County, Minnesota, and selling electric products exclusively at wholesale from the Facility. Zephyr Wind explains that the Facility is currently under construction and will have a capacity of approximately 30.75 megawatts (MW). Zephyr Wind states that it expects to begin selling test power from the Facility on or about September 25, 2012, and to commence commercial operations on or about October 31, 2012.

5. Zephyr Wind explains that the Facility is located in the Central region within the MISO market and that the Facility will consist of 15 wind turbines, each of 2.05 MW capacity, and will include associated interconnection facilities necessary to interconnect the Facility to the MISO grid. Specifically, the Facility will include an approximately 5-mile 34.5 kV generation tie line used to interconnect the Facility to the Nobles County Substation on Northern States Power Company's (Northern States) transmission system. Zephyr Wind states that, under three 20-year power purchase agreements, Northern States is entitled to all of the Facility's output and that, other than the Facility, Zephyr Wind does not own any other generation or transmission assets.<sup>4</sup>

6. Zephyr Wind states that the 5-mile generation tie-line is a limited and discrete facility and requests that the Commission waive the requirements under Order Nos. 888<sup>5</sup>

---

<sup>2</sup> 16 U.S.C. § 824d (2006).

<sup>3</sup> Zephyr Wind 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., Midwest Independent Transmission System Operator, Inc. (MISO), and California Independent System Operator Corporation. Zephyr Wind also requests authorization to engage in the sale of certain ancillary services as a third-party in other markets.

<sup>4</sup> Application at 4.

<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),

and 890<sup>6</sup> to file an OATT and the requirement under Order No. 889<sup>7</sup> to establish an OASIS. Zephyr Wind has also requested additional waivers and blanket approvals commonly granted to similar applicants with market-based rate authority.

7. Zephyr Wind states that it is 95 percent owned by CWS Wind Farm, LLC (CWS Wind), and 5 percent owned by Larkin-Summit Wind, Inc. (Larkin-Summit Wind). Zephyr Wind adds that CWS Wind, which is the managing member, is not engaged in any other business in the energy industry and that CWS Wind is a direct, wholly-owned subsidiary of juwi Wind, LLC (juwi Wind), which will operate the Facility. Zephyr Wind states that juwi Wind has ownership interests in other wind generating facilities under various stages of construction and development in U.S. regions outside of the MISO market and in Canada.<sup>8</sup> Zephyr Wind explains that juwi Wind is indirectly,

---

*order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

<sup>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> *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>8</sup> Application at 3, 10. Specifically, Zephyr Wind states that juwi Wind has ownership interests in the following power generation projects in various stages of construction and development in the United States: (1) a 200 MW wind project in Arizona; (2) a 50 MW wind project in New York; (3) a 99 MW wind project in Ohio; (4) a 100 MW wind project in Colorado; (5) a 65.6 MW wind project in Ohio; (6) a 135 MW wind project in Kansas; (7) a 19.8 MW wind project in Minnesota; (8) a 199.8 MW wind project in Indiana; and (9) a 99 MW wind project in Ohio. Zephyr Wind explains that, because these projects are not yet operational, they are not included in Zephyr Wind's horizontal market power analysis. However, Zephyr Wind commits that, to the extent these projects become operational, Zephyr Wind will make all necessary filings under the Commission's regulations at the appropriate time to notify the Commission of any change in status. *Id.* at 4 n.5.

wholly owned by juwi Wind GmbH, a German limited liability company that owns and operates electric utilities in Germany and which, in turn, is directly wholly owned by juwi Holding AG, a German stock corporation.

8. Zephyr Wind states that Larkin-Summit Wind is not engaged in any other business in the energy industry, and that Larkin-Summit Wind is wholly owned by Community Wind South, LLC (Community Wind South) which also is not engaged in any other business in the energy industry.<sup>9</sup> Zephyr Wind represents that Community Wind South is wholly owned by seven individuals and Thier Feedlots, Inc. (Thier Feedlots). Zephyr Wind explains that, with the exception of Thier Feedlots' less than one percent ownership interests in a wind project in Minnesota, as well as its less than one percent ownership interests in an ethanol plant in Iowa, none of Community Wind South's individual members have control over, or ownership interests in, or engage in any other business in, the energy industry.<sup>10</sup>

9. Zephyr Wind states that it and its affiliates lack horizontal market power because Zephyr Wind and its affiliates own or control only limited generation capacity in the relevant market, and that generation is fully committed under long-term contracts. Zephyr Wind adds that it and its affiliates lack vertical market power because they own only limited and discrete transmission facilities that are necessary to interconnect the Facility to the transmission grid, are not affiliated with a traditional franchised public utility, and do not own or control any inputs into power generation that would permit them to create barriers to the entry of competitive generation.

## **II. Notice of Filing**

10. Notice of Zephyr Wind's July 26, 2012 and September 14, 2012 filings were published in the *Federal Register*, 77 Fed. Reg. 46,431 (2012), with interventions and comments due on or before August 16, 2012 and October 5, 2012, respectively. None was filed.

11. Notice of Zephyr Wind's request for blanket authorization under Part 34 was separately published in the *Federal Register*, 77 Fed. Reg. 47,627 (2012), with interventions or protests due on or before August 24, 2012. None was filed.

---

<sup>9</sup> Amendment at 3.

<sup>10</sup> *Id.* at 3-4.

### III. Determination

#### 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>11</sup>

##### 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>12</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>13</sup>

14. Zephyr Wind represents that it will own and/or control approximately 30.75 MW of generation capacity in the MISO market and that it and its affiliates do not own or control any generation in the first-tier markets. Zephyr Wind adds that the entire capacity is committed to a non-affiliated third party under long-term sales agreements and that it and its affiliates do not control uncommitted generation through power purchase agreements.

15. Zephyr Wind represents that it relies on Tuscola Bay Wind, LLC's (Tuscola Bay) recently accepted market power analysis<sup>14</sup> to demonstrate that Zephyr Wind passes both the pivotal supplier and the wholesale market share screens for the MISO market. In addition, we note that Zephyr Wind's capacity in the MISO market is fully committed.

---

<sup>11</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 62, 399, 408, 440.

<sup>12</sup> *Id.* P 62.

<sup>13</sup> *Id.* PP 33, 62-63.

<sup>14</sup> See *Tuscola Bay Wind, LLC*, Docket No. ER12-1660-000 (Jun. 14, 2012) (delegated letter order) (granting Tuscola Bay market-based rate authority). Zephyr Wind explains that its market power analysis uses data from the most recent report made available by MISO, which was relied on by Tuscola Bay in its market power analysis. The MISO report is available at <https://www.midwestiso.org/Library/Repository/Study/Regulatory%20and%20Economic%20Standards/Market%20Based%20Rates%20MISO%20Process%20and%20Data.pdf>.

Accordingly, we find that Zephyr Wind's submittal satisfies the Commission's requirements for market-based rate authority 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>15</sup>

17. In this case, as discussed more fully below, the Commission will grant Zephyr Wind's request for waiver of the requirement to have an OATT on file for its transmission facilities.<sup>16</sup>

18. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.<sup>17</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>18</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>19</sup> The Commission adopted a rebuttable presumption that the ownership or control of, or affiliation with any entity that

---

<sup>15</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408.

<sup>16</sup> A generator lead line is a transmission facility. *See* 16 U.S.C. §§ 796(23), 824(a)-(b) (2006). Zephyr Wind 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>17</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 440.

<sup>18</sup> Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

<sup>19</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

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>20</sup>

19. Regarding other barriers to entry, Zephyr Wind states that neither it nor its affiliates own or control any inputs to electric power production that raise vertical market power concerns. Further, Zephyr Wind states that it does not own or control any sites in the United States for generation capacity development. Zephyr Wind adds that its affiliate, juwi Wind, has ownership interests in various generation projects throughout the United States.<sup>21</sup> Zephyr Wind states that neither it nor its affiliates own or control intrastate natural gas transportation, intrastate natural gas storage, or distribution facilities. Finally, Zephyr Wind states that neither it nor its affiliates own or control physical sources of coal supplies, or have ownership of, or control over, who may access transportation of coal supplies in the United States.

20. Consistent with Order No. 697, Zephyr Wind affirmatively states that Zephyr Wind and its affiliates have not erected barriers to entry into the relevant geographic market and will not erect barriers to entry into that market.

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

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

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

23. Order Nos. 888 and 890 and section 35.28 of the Commission's regulations<sup>22</sup> 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<sup>23</sup> require public utilities to establish and maintain an OASIS.

---

<sup>20</sup> *Id.* P 446.

<sup>21</sup> *See supra* note 8.

<sup>22</sup> 18 C.F.R. § 35.28 (2012).

<sup>23</sup> 18 C.F.R. Part 37 (2012).

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>24</sup> The criteria for waiver of these requirements are unchanged by Order No. 890.

24. The Commission has also determined that waiver of the requirement to establish an OASIS 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>25</sup> The Commission has held that waiver of Order No. 889 will remain in effect until the Commission takes action in response to a complaint to the Commission that an entity evaluating its transmission needs could not get the information necessary to complete its evaluation.<sup>26</sup>

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

26. The Commission will also grant Zephyr Wind waiver of the requirements of Order No. 889 and Part 37 of the Commission's regulations with respect to OASIS. We note that Zephyr Wind'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

---

<sup>24</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>25</sup> *Black Creek*, 77 FERC at 61,941. 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).

<sup>26</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)).

entity evaluating its transmission needs could not get the information necessary to complete its evaluation.<sup>27</sup>

27. Order Nos. 889, 2004,<sup>28</sup> and 717<sup>29</sup> and Part 358 of the Commission's regulations<sup>30</sup> require public utilities to abide by certain standards of conduct. Zephyr Wind did not request a waiver from the requirement to abide by the standards of conduct. Therefore, we note that, to the extent Zephyr Wind is subject to the standards of conduct requirements of Part 358, it must comply with them, although this is without prejudice to Zephyr Wind submitting a request for such a waiver in the future

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

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

---

<sup>27</sup> *Id.*

<sup>28</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>29</sup> *Standards of Conduct for Transmission Providers*, Order No. 717, FERC Stats. & Regs. ¶ 31,280 (2008), *order on reh'g*, Order No. 717-A, FERC Stats. & Regs. ¶ 31,297, *order on reh'g*, Order No. 717-B, 129 FERC ¶ 61,123 (2009), *order on reh'g*, Order No. 717-C, 131 FERC ¶ 61,045 (2010), *order on reh'g*, Order No. 717-D, 135 FERC ¶ 61,017 (2011).

<sup>30</sup> 18 C.F.R. Part 358 (2012).

<sup>31</sup> 16 U.S.C. § 824c (2006).

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

30. We will direct Zephyr Wind to submit a compliance filing containing revisions to the limitations and exemptions sections of its market-based rate tariff to include a citation to this order.<sup>33</sup>

### **C. Reporting Requirements**

31. 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>34</sup>

---

<sup>32</sup> We note that the Commission has examined and approved the continued applicability of the waiver of its accounting and reporting requirements in Parts 41, 101, and 141 of the Commission's regulations, as well as the continued applicability of the blanket authorization for the issuance of securities and the assumption of liabilities. See Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 984-985 (regarding waiver of Parts 41, 101, and 141), 999-1000 (regarding blanket approval under Part 34).

<sup>33</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. See also *Niagara Mohawk Power Corp.*, 121 FERC ¶ 61,275, at P 8 (2007). These tariff revisions may be filed the next time Zephyr Wind makes a market-based rate filing with the Commission.

<sup>34</sup> *Revised Public Utility Filing Requirements*, Order No. 2001, FERC Stats. & Regs. ¶ 31,127, *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reh'g denied*, Order No. 2001-B, 100 FERC ¶ 61,342, *order directing filing*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002), *order directing filing*, Order No. 2001-D, 102 FERC ¶ 61,334, *order refining filing requirements*, Order No. 2001-E, 105 FERC ¶ 61,352 (2003), *order on clarification*, Order No. 2001-F, 106 FERC ¶ 61,060 (2004), *order revising filing requirements*, Order No. 2001-G, 120 FERC ¶ 61,270, *order on reh'g and clarification*, Order No. 2001-H, 121 FERC ¶ 61,289 (2007), *order revising filing requirements*, Order No. 2001-I, FERC Stats. & Regs. ¶ 31,282 (2008). Attachments B and C of Order No. 2001 describe the required data sets for contractual and transaction information. Public utilities must submit EQRs to the Commission using the EQR

(continued...)

Public utilities must file EQRs no later than 30 days after the end of the reporting quarter.<sup>35</sup>

32. Additionally, Zephyr Wind 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>36</sup>

33. In Order No. 697, the Commission created two categories of sellers.<sup>37</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 issues.<sup>38</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>39</sup>

34. Zephyr Wind represents that it owns or controls or is affiliated with 500 MW or less of generation in aggregate per region. Zephyr Wind states that it does not own,

---

Submission System Software, which may be downloaded from the Commission's website at <http://www.ferc.gov/docs-filing/eqr.asp>.

<sup>35</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>36</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>37</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 848.

<sup>38</sup> 18 C.F.R. § 35.36(a) (2012).

<sup>39</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 850.

operate, or control transmission facilities other than its interest in discrete facilities necessary to connect its Facility to the electric grid. Zephyr Wind further states that it is not affiliated with any entity that owns, operates, or controls transmission facilities in the same region as its or its affiliates' generation assets. Zephyr Wind also states that it is not affiliated with a franchised public utility in the same regions as its or its affiliates' generation assets in the United States, and that it does not raise any other vertical market power issues. Based on Zephyr Wind's representations, and the Commission's decision herein to grant waiver of the OATT requirement, we designate Zephyr Wind as a Category 1 seller in the Northeast, Northwest, Southeast, Southwest, Central, and Southwest Power Pool regions; however, the Commission reserves the right to require an updated market power analysis at any time for any region.<sup>40</sup>

The Commission orders:

(A) Zephyr Wind's market-based rate tariff is hereby accepted for filing, effective September 25, 2012, as requested, as discussed in the body of this order.

(B) Zephyr Wind is hereby directed to revise the limitations and exemptions section of its tariff to include a citation to this order, as discussed in the body of this order.

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

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

(E) Blanket authorization under Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability is hereby granted. Zephyr Wind 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 Zephyr Wind, 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

---

<sup>40</sup> See *id.* P 853.

continued Commission approval of Zephyr Wind's issuance of securities or assumptions of liability.

(G) Zephyr Wind 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, and the requirements under Order No. 889 and Part 37 of the Commission's regulations to establish and maintain an OASIS, as discussed in the body of this order.

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

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.