

143 FERC ¶ 61,195
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Imperial Valley Solar 1, LLC

Docket Nos. ER13-1139-000
ER13-1139-001

ORDER CONDITIONALLY ACCEPTING AND SUSPENDING MARKET-BASED
RATE TARIFF, AND GRANTING REQUESTS FOR WAIVER

(Issued May 31, 2013)

1. In this order, the Commission conditionally accepts and suspends, for a nominal period, to become effective March 22, 2013, subject to refund and subject to the outcome of a pending proceeding in Docket No. ER10-2474-003,¹ a proposed tariff filed by Imperial Valley Solar 1, LLC (IVS-1). The proposed tariff would permit IVS-1 to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates in the Southwest region. Our acceptance here is also subject to the compliance filing ordered herein. Additionally, as discussed below, the Commission grants IVS-1 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 IVS-1's request for other waivers commonly granted to market-based rate sellers.

2. Additionally, we find that IVS-1 meets the criteria for a Category 2 seller in the Southwest region and is so designated.²

¹ Nevada Power Co., Updated Market Power Analysis, Docket No. ER10-2474-003 (filed on Dec. 26, 2012).

² 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,

(continued...)

I. Background

3. On March 21, 2013, as amended on April 17, 2013, pursuant to section 205 of the Federal Power Act (FPA),³ IVS-1 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 in the markets administered by the California Independent System Operator, Corporation (CAISO). IVS-1 states that it will own a 200 megawatt (MW) solar photovoltaic electric generation facility located in Imperial County, California (Facility). IVS-1 further states that all of the output from the Facility will be sold to the San Diego Gas & Electric Company (SDG&E) pursuant to a 25-year power purchase agreement.

4. IVS-1 explains that the Facility will represent the first of four phases of a 600 MW photovoltaic facility.⁴ IVS-1 further states that Imperial Valley Solar 2, LLC (IVS-2) will own the second phase (150 MW of capacity expected to begin commercial operation by December 31, 2015); Imperial Valley Solar 3, LLC (IVS-3) will own the third phase (150 MW of capacity expected to begin commercial operation by March 31, 2016) and Imperial Valley Solar 4, LLC (IVS-4) will own the fourth phase (100 MW of capacity expected to begin commercial operation by June 30, 2016). IVS-1 refers to IVS-1, IVS-2, IVS-3, and IVS-4 as “Co-Tenants.” IVS-1 states that the Co-Tenants entered into a Large Generator Interconnection Agreement (LGIA) Co-Tenancy Agreement dated September 13, 2012, pursuant to which each Co-Tenant and Imperial Valley Solar, LLC (Imperial Valley Solar or the Manager) share in the rights and responsibilities under the LGIA.⁵

5. IVS-1 explains that the Co-Tenants and Imperial Valley Solar, LLC are parties to an LGIA with SDG&E and CAISO pursuant to which the Facility will interconnect with the CAISO-controlled transmission system at SDG&E’s Imperial Valley Substation.

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*, 133 S. Ct. 26 (2012). IVS-1 must file an updated market power analysis for all regions in which they are designated as Category 2 sellers in compliance with the regional reporting schedule adopted in Order No. 697.

³ 16 U.S.C. § 824d (2006).

⁴ IVS-1 March 21, 2013 Application (Application) at 4.

⁵ *Id.* at 4, 6.

IVS-1 explains that the interconnection arrangement is comprised of four segments, commencing at the Imperial Valley Substation, which is the Point of Interconnection in the LGIA, and extending to IVS-1's on-site substation. IVS-1 states that the first two segments are Participating Transmission Provider Interconnection Facilities, while the second two segments are Interconnection Customer's Interconnection Facilities (the second two stages are referred to as the "Gen-Tie"). Specifically, IVS-1 states: (1) the first segment (the SDG&E Line) is a 2.7 mile, 230 kV transmission line installed on existing SDG&E towers, which will be owned by SDG&E; (2) the second segment (East-West Connector) is a 2.25 mile, 230 kV transmission line that will connect to the SDG&E Line and extend east to the 230 kV Drew Switchyard; both the East-West Connector and the Drew Switchyard will be owned by SDG&E; (3) the third segment (IID North-South Line) is a one-mile, 230 kV transmission line connecting the Drew Switchyard to the 230 kV substation owned by CSolar IV South, LLC (CSolar);⁶ pursuant to a September 28, 2012 Co-Tenancy and Shared Use Agreement,⁷ CSolar and Imperial Valley Solar will share construction, ownership and use, as tenants-in-common, of the IID North-South Line and related facilities; and (4) the fourth segment is a five-mile, 230 kV transmission line that will connect the Facility to the CSolar substation; ownership and use of this segment is also governed by the CSolar Co-Tenancy and Shared Use Agreement.

6. IVS-1 states it will use the Gen-Tie solely to interconnect the Facility to SDG&E's transmission system. IVS-1 further represents that its Gen-Tie will not comprise an integrated transmission system and will not serve, and is not designed to serve, transmission service customers. IVS-1 requests with respect to the Gen-Tie that the

⁶ IVS-1 states that CSolar is developing a 200 MW solar voltaic project at a site near the IVS-1 project and the Co-Tenancy and Shared Use Agreement gives IVS-1 the right to transmit power from the Facility through the IID North-South Line to Drew Switchyard. Application at 5.

⁷ IVS-1 submitted for filing an executed Co-Tenancy and Shared Use Agreement, among CSolar, IVS-1, and Imperial Valley Solar, which was accepted effective October 5, 2012. *Imperial Valley Solar 1, LLC*, Docket No. ER13-24-000 (October 17, 2012) (delegated letter order). Subsequently, these parties filed a notice of termination of the Co-Tenancy and Shared Use Agreement stating that Commission acceptance of the Agreement was not required at this time and could interfere with the closing of financing for the project, which was scheduled during the week of October 22, 2012. The termination was accepted effective October 19, 2012. *Imperial Valley Solar 1, LLC*, Docket No. ER13-159-000 (October 19, 2012) (delegated letter order).

Commission waive the requirements under Order Nos. 888⁸ and 890⁹ and section 35.28 of the Commission's regulations¹⁰ to file an OATT, the requirements under Order No. 889¹¹ and Part 37 of the Commission's regulations¹² to establish an OASIS, and the requirements under Order Nos. 889, 2004,¹³ 717,¹⁴ and Part 358 of the Commission's

⁸ *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).

⁹ *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).

¹⁰ 18 C.F.R. § 35.28 (2012).

¹¹ *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).

¹² 18 C.F.R. pt. 37 (2012).

¹³ *Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs. ¶ 31,155 (2003), *order on reh'g*, Order No. 2004-A, FERC Stats. & Regs. ¶ 31,161, *order on reh'g*, Order No. 2004-B, FERC Stats. & Regs. ¶ 31,166, *order on reh'g*, Order No. 2004-C, FERC Stats. & Regs. ¶ 31,172 (2004), *order on reh'g*, Order No. 2004-D, 110 FERC ¶ 61,320 (2005), *vacated and remanded as it applies to natural gas pipelines sub nom. National Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831 (D.C. Cir. 2006); *see Standards of Conduct for Transmission Providers*, Order No. 690, FERC Stats. & Regs. ¶ 31,237, *order on reh'g*, Order No. 690-A, FERC Stats. & Regs. ¶ 31,243 (2007); *see also Standards of Conduct for Transmission Providers*, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,611 (2007); Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,630 (2008).

¹⁴ *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.

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regulations¹⁵ to comply with the Standards of Conduct. IVS-1 acknowledges that if it receives a request for transmission service on its Gen-Tie Line, it will file an OATT with the Commission and satisfy any other applicable requirements.

7. IVS-1 states that it is a wholly-owned, indirect subsidiary of AES Solar Power, LLC (AES Solar), which is a joint venture between The AES Corporation (AES) and Riverstone Holdings LLC (Riverstone).

8. IVS-1 represents that it owns and controls, or is affiliated with, a total of 4,595 MW of installed capacity in the CAISO market. IVS-1 also represents that its affiliate, AES, indirectly owns more than 6,000 MW of competitive generating capacity in the United States through public utility subsidiaries having market-based rate authority granted by the Commission under the FPA and through qualifying facilities under the Public Utility Regulatory Policies Act of 1978. In addition, AES owns (1) approximately 3,800 MW of generation in the PJM Interconnection, L.L.C. (PJM) footprint; and (2) approximately 3,500 MW of generation in the footprint of the Midwest Independent Transmission System Operator, Inc. (MISO).¹⁶

9. IVS-1 further represents that its affiliate, Riverstone, has two classes of membership interests. IVS-1 represents that the Class A membership interests convey full control over the operation and management of Riverstone and are held equally by two individuals. Other than their involvement with interests related to companies solely or partially controlled by affiliates of Riverstone, neither individual nor Riverstone owns or controls a 10 percent or greater interest in any: (1) electric generation, transmission or distribution facilities; (2) intrastate natural gas transportation, intrastate natural gas storage or distribution facilities, sites for generation capacity development, or entity that owns or controls physical coal supply sources or who may access transportation of coal supplies; or (3) franchised public utility. IVS-1 states that the Class B membership interests in Riverstone (held by senior investment professionals employed by Riverstone, or trusts established by them, and senior advisors of Riverstone) convey only economic

¶ 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).

¹⁵ 18 C.F.R. pt. 358 (2012).

¹⁶ Effective April 26, 2013, MISO changed its name from “Midwest Independent Transmission System Operator, Inc.” to “Midcontinent Independent System Operator, Inc.”

rights; therefore, none of the holders of Class B membership interests are affiliates of IVS-1.

II. Notice of Filing

10. Notice of IVS-1's March 21, 2013 filing was published in the *Federal Register*, 78 Fed. Reg. 19,477 (2013), with interventions and comments due on or before April 11, 2013. Imperial Irrigation District filed a timely motion to intervene. Notice of IVS-1's request for blanket authorization under Part 34 was separately published in the *Federal Register*, 78 Fed. Reg. 18,581 (2013), with interventions or protests due on or before April 10, 2013. None was filed.

11. Notice of IVS-1's April 17, 2013 filing was published in the *Federal Register*, 78 Fed. Reg. 25,073 (2013), with interventions and comments due on or before May 8, 2013. None was filed.

III. Determination

A. Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely, unopposed motion to intervene serves to make Imperial Irrigation District a party to this proceeding.

B. Analysis

13. As discussed below, we will conditionally accept and suspend, for a nominal period, IVS-1's market-based rate tariff, to be effective March 22, 2013, subject to refund and subject to the outcome of a pending proceeding in Docket No. ER10-2474-003. We will also grant IVS-1's request for certain waivers.

1. Market-Based Rate Authorization

14. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, horizontal and vertical market power.¹⁷

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

a. Horizontal Market Power

15. The Commission has adopted two indicative screens for assessing horizontal market power: the pivotal supplier screen and the wholesale market share screen.¹⁸ The Commission has stated that passage of both screens establishes a rebuttable presumption that the applicant does not possess horizontal market power, while failure of either screen creates a rebuttable presumption that the applicant has horizontal market power.¹⁹

16. IVS-1 states that it relies on Nevada Power Company's recently-filed market power analysis²⁰ to demonstrate that IVS-1 passes both the pivotal supplier and the wholesale market share screens for the CAISO market. However, the screen analysis on which IVS-1 relies to support its argument that it does not possess horizontal market power is pending before the Commission in Docket No. ER10-2474-003. The Commission will determine whether IVS-1 passes the indicative screens in the CAISO market upon completion of its review of Docket No. ER10-2474-003. In this regard, we will direct IVS-1 to make a compliance filing in these dockets (ER13-1139-000 and ER13-1139-001) updating the record in this proceeding to reflect the results of the Commission's determination(s) with respect to the horizontal market power analysis in Docket No. ER10-2474-003, within 30 days after an order has been issued in that proceeding. Thus, our preliminary analysis indicates that IVS-1's request for market-based rate authorization has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept the proposed market-based rate tariff for filing, suspend it for a nominal period, and make it effective March 22, 2013, subject to refund and subject to the outcome of the Nevada Power Company pending proceeding in Docket No. ER10-2474-003.

b. Vertical Market Power

17. In cases where a public utility, or any of its affiliates, owns, operates, or controls transmission facilities, the Commission requires that there be a Commission-approved

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

¹⁹ *Id.* PP 33, 62-63.

²⁰ IVS-1 March 21, 2013 Filing at Appendix C (citing Nevada Power Co., Updated Market Power Analysis, Docket No. ER10-2474-003 (filed on Dec. 26, 2012)).

OATT on file or that the seller has received waiver of the OATT requirement before granting a seller market-based rate authorization.²¹

18. In this case, as discussed more fully below, the Commission will grant IVS-1's request for waiver of the requirement to have an OATT on file for its transmission facilities.²²

19. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.²³ 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).²⁴ 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.²⁵ 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.²⁶

20. Regarding other barriers to entry, IVS-1 represents that it is affiliated with entities that own or control potential inputs to electric power production, including coal or other

²¹ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408.

²² A generator lead line (or Gen-Tie line) is a transmission facility. *See* 16 U.S.C. §§ 796(23), 824(a)-(b) (2006). IVS-1 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, at P 15 n.18 (2011).

²³ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 440.

²⁴ Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

²⁵ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

²⁶ *Id.* P 446.

fuels that could be used to generate electricity,²⁷ intrastate natural gas transportation, storage or distribution facilities,²⁸ and sites for the potential development of electricity generation. Within the CAISO market, Wild Goose controls an intrastate gas storage facility. In addition, AES Solar controls or has options to acquire sites in the CAISO market that have the cumulative potential for 740 MW of commercially feasible new generation capacity.

21. Finally, consistent with Order No. 697, IVS-1 affirmatively states that neither it nor any of its affiliates has erected barriers to entry into the CAISO market, and that neither it nor any of its affiliates will erect barriers to entry into the CAISO market.

22. Based on IVS-1's representations, and our determinations discussed below, we find that IVS-1 satisfies the Commission's requirements for market-based rates regarding vertical market power in the Southwest region.

²⁷ These include: (1) Enviva Holdings, LP, which acquires, develops, and operates facilities in Mississippi and North Carolina that collect, process, and transform wood-based biomass into renewable energy feedstock, primarily wood pellets; (2) Green Earth Fuels, LLC, which owns and operates a biodiesel production facility located on the Houston Ship Channel and which has entered into a joint venture to create Sustainable Oils, Inc., a Seattle-based producer and marketer of camelina seeds and camelina oil; (3) Foresight Reserves, LP (Foresight) which owns or controls through its subsidiaries more than three billion tons of coal reserves in the Illinois and Northern Appalachian coal basins and which has a strategic relationship with and owns both limited partner and general partner interests in Natural Resource Partners, L.P., a master limited partnership that owns and manages mineral reserve properties; (4) Targe Energy LLC, which is based in Pittsburgh, Pennsylvania, and operates surface coal and limestone mines in Pennsylvania and reclaims coarse and wet waste coal mines in Pennsylvania and West Virginia; and (5) PVR Partners, L.P. (PVR), which owns approximately 900 million tons of proven coal reserves in Northern and Central Appalachia and the Illinois and San Juan Basins.

²⁸ These include: (1) Foresight, which owns or controls two natural gas gathering pipelines located, respectively, in the PJM and MISO markets; (2) Salt Plains Storage, LLC (Salt Plains), which owns or controls an intrastate gas storage facility located in the Western Farmers Electric Cooperative balancing authority area in the Southwest Power Pool, Inc. market; (3) Wild Goose Storage, LLC (Wild Goose), which owns or controls an intrastate gas storage facility located in the CAISO market; and (4) PVR, which owns and operates midstream natural gas assets in Texas, Pennsylvania and Oklahoma.

2. Waiver Requests

a. OATT, OASIS, and Standards of Conduct

23. As explained above, IVS-1 seeks waiver of the requirements to file an OATT, establish and maintain an OASIS, and abide by the Standards of Conduct with respect to the Gen-Tie line. In support of its request for waiver, IVS-1 states that it will utilize the Gen-Tie solely to interconnect the Facility with SDG&E's transmission system. IVS-1 states that the Gen-Tie line will not comprise an integrated transmission system, and will not serve, and is not designed to serve, transmission service customers.

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

25. The Commission may grant requests for waiver of the obligation to file an OATT to public utilities that can show that they own, operate, or control only limited and discrete transmission facilities (facilities that do not form an integrated transmission grid), until such time as the public utility receives a request for transmission service. Should the public utility receive such a request, the Commission has determined that the public utility must file with the Commission a *pro forma* tariff within 60 days of the date

²⁹ 18 C.F.R. § 35.28 (2012).

³⁰ Order No. 889, FERC Stats. & Regs. ¶ 31,035 at 31,590; Order No. 2004, FERC Stats. & Regs. ¶ 31,155 at P 16; Order No. 717, FERC Stats. & Regs. ¶ 31,280 at P 313.

³¹ See, e.g., *Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232, at 61,941 (1996) (*Black Creek*); *Entergy Mississippi, Inc.*, 112 FERC ¶ 61,228, at P 22 (2005) (*Entergy*).

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

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

26. The Commission has also determined that waiver of the requirement to establish an OASIS and abide by the Standards of Conduct would be appropriate for a public utility if the applicant: (1) owns, operates, or controls only limited and discrete transmission facilities (rather than an integrated transmission grid); or (2) is a small public utility that owns, operates, or controls an integrated transmission grid, unless other circumstances are present that indicate that a waiver would not be justified.³⁴ The Commission has held that waiver of Order No. 889 will remain in effect until the Commission takes action in response to a complaint to the Commission that an entity evaluating its transmission needs could not get the information necessary to complete its evaluation (for OASIS waivers) or an entity complains that the public utility has unfairly used its access to information about transmission to benefit the utility or its affiliate (for Standards of Conduct waivers).³⁵

27. Based on the statements in IVS-1's application, we find that its Gen-Tie transmission facilities qualify as limited and discrete. Accordingly, we will grant IVS-1 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.³⁶ However, if IVS-1 receives a request for transmission service, it must file with the Commission a *pro forma* OATT within 60 days of the date of the request, and must comply with any additional requirements that are effective on the date of the request.

³³ *Black Creek*, 77 FERC at 61,941.

³⁴ *Id.* Although the Commission originally precluded waiver of the requirements for OASIS and the Standards of Conduct for a small public utility that is a member of a tight power pool, in *Black Hills Power, Inc.*, 135 FERC ¶ 61,058, at P 2-3 (2011), the Commission explained that membership in a tight power pool is no longer a factor in the determination for waiver of Standards of Conduct. Additionally, size is not relevant to whether waivers are granted to public utilities that participate in a Commission-approved Independent System Operator or Regional Transmission Organization.

³⁵ *Entergy*, 112 FERC ¶ 61,228 at P 23 (citing *Cent. Minn. Mun. Power Agency*, 79 FERC ¶ 61,260, at 62,127 (1997); *Easton Utilities Comm'n*, 83 FERC ¶ 61,334, at 62,343 (1998)).

³⁶ We note that this waiver does not apply to those segments of the generator lead line owned by SDG&E.

28. The Commission will also grant IVS-1 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 IVS-1'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.³⁷ Likewise, IVS-1'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 IVS-1 has unfairly used its access to information to unfairly benefit itself or its affiliate.³⁸

b. Other Waivers, Approvals, and Authorizations

29. IVS-1 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 FPA³⁹ and Part 34 for all future issuances of securities and assumptions of liability.

30. The Commission will grant the requested waivers and authorizations consistent with those granted other entities with market-based rate authorizations.⁴⁰ Notwithstanding the waiver of the accounting and reporting requirements, the Commission expects IVS-1 to keep its accounting records in accordance with generally accepted accounting principles.

³⁷ *Id.*

³⁸ *Id.* IVS-1 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).

³⁹ 16 U.S.C. § 824c (2006).

⁴⁰ 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).

3. 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.⁴¹ Public utilities must file EQRs no later than 30 days after the end of the reporting quarter.⁴²

32. Additionally, IVS-1 must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.⁴³

33. In Order No. 697, the Commission created two categories of sellers.⁴⁴ Category 1 sellers are not required to file regularly scheduled updated market power analyses.

⁴¹ *Revised Public Utility Filing Requirements*, Order No. 2001, FERC Stats. & Regs. ¶ 31,127, *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reh'g denied*, Order No. 2001-B, 100 FERC ¶ 61,342, *order directing filing*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002), *order directing filing*, Order No. 2001-D, 102 FERC ¶ 61,334, *order refining filing requirements*, Order No. 2001-E, 105 FERC ¶ 61,352 (2003), *order on clarification*, Order No. 2001-F, 106 FERC ¶ 61,060 (2004), *order revising filing requirements*, Order No. 2001-G, 120 FERC ¶ 61,270, *order on reh'g and clarification*, Order No. 2001-H, 121 FERC ¶ 61,289 (2007), *order revising filing requirements*, Order No. 2001-I, FERC Stats. & Regs. ¶ 31,282 (2008). Attachments B and C of Order No. 2001 describe the required data sets for contractual and transaction information. Public utilities must submit EQRs to the Commission using the EQR Submission System Software, which may be downloaded from the Commission's website at <http://www.ferc.gov/docs-filing/eqr.asp>.

⁴² The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (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.

⁴³ *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005); 18 C.F.R. § 35.42 (2011).

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.⁴⁵ Sellers that do not fall into Category 1 are designated as Category 2 sellers and are required to file updated market power analyses.⁴⁶

34. Based on IVS-1's representations, we find that it meets the criteria for a Category 2 seller in the Southwest Region and is so designated based on the fact that it and its affiliates own or control more than 500 MW of installed capacity in the CAISO. Thus, IVS-1 must file an updated market power analysis for the Southwest region in compliance with the regional reporting schedule adopted in Order No. 697.⁴⁷ The Commission also reserves the right to require such an analysis at any time for any region.⁴⁸

The Commission orders:

(A) IVS-1's market-based rate tariff is hereby conditionally accepted for filing and suspended for a nominal period, to become effective March 22, 2013, as requested, subject to refund and subject to the outcome of the proceedings in Docket No. ER10-2474-003, as discussed in the body of this order.

(B) IVS-1 is hereby directed to submit a compliance filing, within 30 days from the date an order has been issued for the pending proceeding in Docket No. ER10-2474-003.

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

⁴⁵ 18 C.F.R. § 35.36(a) (2011).

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

⁴⁷ *Id.* P 882.

⁴⁸ *Id.* P 853.

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

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

(E) Blanket authorization under Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability is hereby granted. IVS-1 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 IVS-1, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(F) The Commission reserves the right to modify this order to require a further showing that neither the public nor private interests will be adversely affected by continued Commission approval of IVS-1's issuance of securities or assumptions of liability.

(G) IVS-1 is hereby granted waiver of the requirements under Order Nos. 888 and 890 and section 35.28 of the Commission's regulations to file an OATT, the requirements under Order No. 889 and Part 37 of the Commission's regulations to establish and maintain an OASIS, and the requirements under Order Nos. 889, 2004, and 717, and Part 358 to comply with the Standards of Conduct, as discussed in the body of this order.

(H) IVS-1 is required to file EQRs in compliance with Order No. 2001. If the effective date of IVS-1's market-based rate tariff falls within a quarter of the year that has already expired, IVS-1'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.