

144 FERC ¶ 61,010
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.

Arlington Valley Solar Energy II, LLC

Docket No. ER13-1430-000

ORDER CONDITIONALLY ACCEPTING AND SUSPENDING MARKET-BASED
RATE TARIFF, AND DENYING REQUEST FOR WAIVER OF PRIOR NOTICE

(Issued July 5, 2013)

1. In this order, the Commission conditionally accepts and suspends, for a nominal period, to become effective July 6, 2013, subject to refund and subject to the outcome of a pending proceeding in Docket No. ER13-630-000,¹ a proposed tariff filed by Arlington Valley Solar Energy II, LLC (Arlington Valley). The proposed tariff would permit Arlington Valley 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 denies Arlington Valley's request for waiver of prior notice and grants Arlington Valley's request for other waivers commonly granted to market-based rate sellers.

2. We also find that Arlington Valley meets the criteria for a Category 2 seller in the Southwest region and is so designated. Arlington Valley must file an updated market power analysis for the Southwest region in compliance with the regional reporting schedule adopted in Order No. 697.²

¹ Arizona Public Service Company (APS), Updated Market Power Analysis, Docket No. ER13-630-000 (filed on Dec. 27, 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, 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*, 133 S. Ct. 26 (2012).

I. Background

3. On May 6, 2013, pursuant to section 205 of the Federal Power Act (FPA),³ Arlington Valley 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 Southwest region.⁴

4. Arlington Valley is a Delaware limited liability company and an affiliate of LS Power Development, LLC (LSP Development). LSP Development is a Delaware limited liability company and is the general partner of LS Power Associates, L.P. (LSP Associates) and the principal operating company of its controlled subsidiaries. LSP Development develops, owns, and operates independent power projects in the United States.⁵

5. Arlington Valley further explains that GE Energy Financial Services (GE) is participating in Arlington Valley as a tax equity investor. Arlington Valley states that it has conservatively assumed for purposes of this application that it is affiliated with GE and its energy affiliates.

6. Arlington Valley states that it is constructing a 125 megawatt (MW) solar photovoltaic generating facility located in Maricopa County, Arizona (the Facility), with full commercial operations expected in December 2013. Arlington Valley further states that the entire output of the Facility will be sold to San Diego Gas & Electric Company (SDG&E), pursuant to a long-term power purchase agreement. Arlington Valley explains that the Facility is interconnected to the Hassayampa Switchyard, which is connected to both the APS and El Paso Electric Company (El Paso) transmission systems.

³ 16 U.S.C. § 824d (2006).

⁴ Arlington Valley requests authorization to sell ancillary services in the markets administered by the California Independent System Operator Corporation (CAISO), as well as authorization to engage in the sale of certain ancillary services as a third-party provider in other markets.

⁵ Arlington Valley states that, as indicated in a recent filing, LSP Development, Luminus Management, LLC, and their affiliates now own, collectively, less than 10 percent of Calpine Corporation's (Calpine) common stock. Arlington Valley May 6, 2013 Application (Application) at 3 n.5 (citing Submission of SEC Schedule 13D/A Filing, Docket No. EC08-126-000 (filed Apr. 18, 2013)). Consequently, for the purposes of this application, Arlington Valley does not treat Calpine or its subsidiaries as affiliates.

7. In addition, Arlington Valley explains that no LSP Development subsidiary owns or controls generation in the APS or El Paso balancing authority areas. Arlington Valley further states that LSP Development's subsidiary, Blythe Energy, LLC, owns and operates a natural gas-fired generation facility with a capacity of 514 MW in Blythe, California in the CAISO market.⁶

8. Arlington Valley further explains that neither GE nor its affiliates own or control any generating facilities in the APS or El Paso balancing authority areas. Arlington Valley states that GE affiliates currently control generation facilities in the CAISO market with a capacity of 690 MW, which is fully committed to Pacific Gas & Electric Company.⁷

9. Arlington Valley represents that it had inadvertently conducted preliminary, pre-commercial testing of an initial, less than 20 MW, portion of the Facility, beginning on April 9, 2013, without realizing that it was required to have a market-based rate tariff in effect prior to such testing. Arlington Valley explains that, upon discovering its oversight on April 29, 2013, it acted promptly and within an accelerated timeframe to prepare its market-based rate application and submit it to the Commission.

10. Arlington Valley requests that the Commission waive the 60-day prior notice requirement and accept Arlington Valley's market-based rate tariff with an effective date of May 7, 2013, one day after filing. Arlington Valley believes that good cause exists for granting its request because "the only unauthorized deliveries it made are of initial test power" from a portion of the Facility and Arlington Valley believes it acted promptly and in good faith to notify the Commission.⁸ In addition, Arlington Valley states that it is in the process of determining whether any refunds are required and commits to pay any required refunds in addition to filing with the Commission a refund report within twenty days of making any required refunds.

⁶ Application at 3 n.6 (citing *Blythe Energy, LLC*, 98 FERC ¶ 61,012 (2002) (granting EWG status); *Blythe Energy, LLC*, Docket No. ER02-2018-000 (September 12, 2002) (delegated letter order); and *Blythe Energy, LLC*, Docket No. EC13-89-000 (filed Apr. 2, 2013) (joint application by which 100 percent of the interests in Blythe will be indirectly acquired by AltaGas Power Holdings (U.S.) Inc.)).

⁷ Arlington Valley represents that GE-affiliate owned capacity is scheduled to increase to approximately 2,170 MW by the third quarter of 2013, of which GE affiliates will be deemed to control approximately 1,545 MW. Application at 4.

⁸ Application at 10-11.

II. Notice of Filing

11. Notice of Arlington Valley's May 6, 2013 filing was published in the *Federal Register*, 78 Fed. Reg. 29,126 (2013), with interventions and comments due on or before May 28, 2013. None was filed.

12. Notice of Arlington Valley's request for blanket authorization under Part 34 of the Commission's regulations was separately published in the *Federal Register*, 78 Fed. Reg. 28,836 (2013), with interventions or protests due on or before May 28, 2013. None was filed.

III. Discussion

13. As discussed below, we conditionally accept and suspend, for a nominal period, Arlington Valley's market-based rate tariff, to be effective July 6, 2013, subject to refund and subject to the outcome of a pending proceeding in Docket No. ER13-360-000.⁹ We also deny Arlington Valley's request for waiver of the Commission's prior notice requirement and grant Arlington Valley's request for certain other waivers.

A. 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.¹⁰

1. 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.¹¹ 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.¹²

16. Arlington Valley states that it relies on APS's recently-filed updated market power analysis to demonstrate that Arlington Valley passes both the pivotal supplier and the

⁹ Arlington Valley is reminded that it must submit required filings on a timely basis, or face possible sanctions by the Commission.

¹⁰ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 62, 399, 408, 440.

¹¹ *Id.* P 62.

¹² *Id.* PP 33, 62-63.

wholesale market share screens in the APS balancing authority area. Arlington Valley similarly indicates that it relies upon Tucson Electric's recently-filed updated market power analysis to demonstrate that Arlington Valley passes the pivotal supplier and wholesale market share screens in the El Paso balancing authority area.¹³ Arlington Valley represents that it passes the wholesale market share screen for the APS and El Paso balancing authority areas with market shares ranging from 0 to 1.7 percent in the APS balancing authority area and zero percent market share in the El Paso balancing authority area.¹⁴

17. Regarding the El Paso balancing authority area, Arlington Valley represents that it and its affiliates do not own or control any uncommitted capacity in the El Paso balancing authority area, including imports from the first-tier markets.¹⁵ Accordingly, we find that Arlington Valley's application satisfies the Commission's requirements for market-based rate authority regarding horizontal market power in the El Paso balancing authority area.

18. Regarding the APS balancing authority area, Arlington Valley represents that it and its affiliates own or control 66 MW of uncommitted capacity, including imports from the first-tier markets. However, the screen analysis on which Arlington Valley relies to support its argument that it does not possess horizontal market power in the APS balancing authority area is pending before the Commission in Docket No. ER13-630-000.¹⁶ The Commission will determine whether Arlington Valley passes the indicative screens in the APS balancing authority area upon completion of its review of Docket No. ER13-630-000. In this regard, we will direct Arlington Valley to make a compliance filing in the instant docket (Docket No. ER13-1430-000) updating the record in this proceeding to reflect the results of the Commission's determinations with respect to the horizontal market power analyses in Docket No. ER13-630-000, within 30 days after an order has been issued in that proceeding. Thus, our preliminary analysis indicates that Arlington Valley's request for market-based rate authorization has not been

¹³ Application at Attachment B (citing Tucson Electric's Triennial filing in Docket No. ER10-2564-002).

¹⁴ *Id.* at 5-6.

¹⁵ Given that Arlington Valley and its affiliates have no uncommitted capacity to study with respect to the El Paso balancing authority area, it was not necessary for Arlington Valley to submit screens for the El Paso balancing authority area; thus, those screens did not factor into the determination that Arlington Valley satisfied the Commission's requirements regarding horizontal market power.

¹⁶ Arizona Public Service Company, Updated Market Power Analysis, Docket No. ER13-630-000 (filed on Dec. 27, 2012).

shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, as discussed below, we will accept the proposed market-based rate tariff for filing, suspend it for a nominal period, and make it effective July 6, 2013, 61 days after filing, subject to refund and subject to the outcome of the pending proceeding in Docket No. ER13-630-000.

2. Vertical Market Power

19. 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 Open Access Transmission Tariff (OATT) on file or that the seller has received waiver of the OATT requirement before granting a seller market-based rate authorization.¹⁷

20. Arlington Valley states that neither it nor any of its affiliates, with the exception of GE, owns or controls any operational transmission facilities other than the transmission facilities necessary to interconnect their generation to the grid.¹⁸ Arlington Valley states that GE is affiliated with Linden VFT, LLC, a Delaware limited liability company that owns a variable frequency transformer system (Linden Facility) in Linden, New Jersey. Arlington Valley further states that operational control of the Linden Facility has been transferred to PJM Interconnection, L.L.C. (PJM), which provides transmission service over the system pursuant to PJM's OATT.¹⁹

21. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.²⁰ 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).²¹ The Commission also requires sellers to make an

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

¹⁸ Application at 6. Arlington Valley notes that LSP Development owns interests in the One Nevada Transmission Line and the Wyoming Colorado Intertie Project, each of which is currently under development. *Id.* at n.17.

¹⁹ Application at 6-7; *see PJM Interconnection, L.L.C.*, 127 FERC ¶ 61,240, at PP 4-8 (2009) (providing in PJM's OATT the terms and conditions for transmission service on the Linden Facility); *see also Pennsylvania-New Jersey-Maryland Interconnection*, 81 FERC ¶ 61,257 (1997).

²⁰ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 440.

²¹ Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

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.²² 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.²³

22. Regarding other barriers to entry, Arlington Valley represents that neither it nor any of its affiliates, with the exception of GE, owns or controls any intrastate natural gas transportation or intrastate natural gas storage or distribution facilities, owns or controls any sites for generation capacity development that can be used to erect barriers to entry, any sources of physical coal supplies, or control who may access transportation of coal supplies. Arlington Valley represents that GE is affiliated with: (1) Rocky Mountain Natural Gas LLC, which owns and operates an intrastate natural gas pipeline in western Colorado; (2) Arkansas Western Natural Gas Co., which provides local natural gas distribution service in Arkansas; and (3) SourceGas Distribution LLC, which provides local natural gas distribution services in Colorado, Nebraska, and Wyoming.

23. Finally, Arlington Valley states that it has not erected barriers to entry in the relevant market and will not erect barriers to entry into the relevant market.²⁴

24. Based on Arlington Valley's representations, we find that Arlington Valley satisfies the Commission's requirements for market-based rate authority regarding vertical market power.

B. Other Waivers, Approvals, and Authorizations

25. Arlington Valley 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 FPA²⁵ and Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability.

²² Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

²³ *Id.* P 446.

²⁴ We interpret this statement to apply to Arlington Valley and its affiliates, and our authorizations herein are predicated on Arlington Valley complying with this commitment. *See id.* P 447.

²⁵ 16 U.S.C. § 824c (2006).

26. The Commission will grant the requested waivers and authorizations consistent with those granted to other entities with market-based rate authorizations.²⁶ Notwithstanding the waiver of the accounting and reporting requirements, the Commission expects Arlington Valley to keep its accounting records in accordance with generally accepted accounting principles.

27. We direct Arlington Valley to submit a compliance filing containing revisions to the limitations and exemptions section of its market-based rate tariff to include a citation to this order.²⁷

C. Waiver of the Prior Notice Requirement and Refunds

28. Arlington Valley represents that it had inadvertently conducted preliminary, pre-commercial testing of an initial, less than 20 MW, portion of the Facility, beginning on April 9, 2013, without realizing that it was required to have a market-based rate tariff in effect prior to such testing. Arlington Valley describes that the test energy that has been delivered to the grid is “intermittent in nature, is not scheduled, and is not energy that is part of the power purchase agreement with SDG&E.”²⁸ Arlington Valley states that granting the requested waiver of prior notice will help ensure construction and testing of the facility proceeds as planned to allow the project to achieve its targeted December 2013 commercial operation date and will help SDG&E achieve its renewable portfolio goals. Arlington Valley states that good cause exists for granting its request for waiver of prior notice because it acted promptly and within an accelerated timeframe to prepare its market-based rate application and submit it to the Commission. In addition, Arlington Valley commits to putting in place additional internal compliance measures to ensure that no similar oversights occur in the future. Lastly, Arlington Valley commits to pay any required refunds in addition to filing with the Commission a refund report within 20 days of making any required refunds.

²⁶ 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); *id.* PP 999-1000 (regarding blanket approval under Part 34).

²⁷ *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at Appendix C, *order on reh’g*, 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 Arlington Valley makes a market-based rate filing with the Commission.

²⁸ Application at 10.

29. Section 205 of the FPA explicitly requires that, absent waiver, proposed rates be filed with the Commission at least 60 days in advance of their proposed effective date.²⁹ In this regard, the Commission has explained that it cannot “ignore its statutory duty to determine whether rates are just and reasonable by permitting utilities to submit filings whenever convenient,” and that it “must have the opportunity to examine proposed rates, terms, and conditions of jurisdictional service before that service commences.”³⁰ Thus, a public utility must timely file its rates—that is, absent waiver, file at least 60 days in advance of the proposed effective date—to allow the Commission to fulfill its statutory mandate, namely, timely determining whether the rates being charged are just and reasonable. The Commission has further made clear that, for market-based rates in particular, it “does not allow market-based rates to go into effect before a filing has been tendered with the Commission.”³¹ The Commission has explained that it would grant waiver of the prior notice requirement for proposals to charge market-based rates filed on or after the date service commenced only in extraordinary circumstances.³²

30. In *Central Hudson II*, the Commission elaborated that when a filing is made after the commencement of service, the filing utility must make a stronger showing of good cause than if the filing had been made sometime prior to the commencement of service.³³ The Commission acknowledged that, while it was sensitive to the dynamic nature of the wholesale power market and the need to compete for sales on short-notice, it has to balance that concern against the statutory requirement that utilities promptly file their rates and the need for prompt Commission review of filings.³⁴ We clarify here that,

²⁹ See *El Paso Elec. Co.*, 105 FERC ¶ 61,131, at PP 9-11 (2003).

³⁰ *Id.* P 14.

³¹ *El Segundo Power, LLC*, 84 FERC ¶ 61,011, at 61,060, *order on reh'g*, 85 FERC ¶ 61,123 (1998), *order on reh'g*, 87 FERC ¶ 61,208 (1999), *order on reh'g*, 90 FERC ¶ 61,036 (2000); see also *FC Landfill Energy, LLC*, 133 FERC ¶ 61,041 (2010) (citing *El Segundo Power, LLC*, 84 FERC ¶ 61,011); *BC Landfill Energy, LLC*, 127 FERC ¶ 61,113 (2009) (citing *El Segundo Power, LLC*, 84 FERC ¶ 61,011).

³² See *Cent. Hudson Gas & Elec. Co.*, 60 FERC ¶ 61,106 (*Central Hudson I*), *reh'g denied*, 61 FERC ¶ 61,089 (1992) (*Central Hudson II*); *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, at 61,984, *clarified*, 65 FERC ¶ 61,081 (1993).

³³ *Central Hudson II*, 61 FERC at 61,355-56 (finding the press of other business does not provide good cause for waiver where an agreement was filed seven days after service commenced).

³⁴ *Central Hudson II*, 61 FERC at 61,355-56.

absent extraordinary circumstances shown, we will deny waiver of prior notice when an applicant for initial market-based rate authority files on or after the day service has commenced. Thus, filing utilities' applications that request initial market-based rate authorization that are filed on or after the day service has commenced will become effective 61 days after the date of filing absent a showing of extraordinary circumstances.

31. Based on the information presented by Arlington Valley, Arlington Valley has failed to demonstrate extraordinary circumstances warranting waiver of the prior notice requirement. The Commission has previously stated that an applicant's lack of awareness does not constitute extraordinary circumstances.³⁵ Therefore, the Commission denies Arlington Valley's request for waiver of the prior notice requirement and conditionally accepts and suspends, for a nominal period, Arlington Valley's market-based rate tariff, to be effective July 6, 2013, 61 days after filing.

32. Further, the Commission has noted that, if a utility files a market-based rate tariff less than 60 days prior to the proposed effective date of new service, and waiver is denied, the Commission will require the utility to refund to its customers the time-value of the gross revenues collected, calculated pursuant to 18 C.F.R. § 35.19a of the Commission's regulations,³⁶ for the entire period that the rate was collected without Commission authorization.³⁷ In addition to returning the time value of the revenues collected for the period the rate was charged without Commission authorization, when dealing with market-based rates that are not timely filed, the Commission also has stated that:

The utility will be required to refund all revenues resulting from the difference, if any, between the market-based rate and the cost-justified rate. . . . The late-filing utility will receive the equivalent of a cost-based rate, less the time value remedy applicable to the unauthorized filing of cost-based rates, until the date of Commission authorization.³⁸

³⁵ *Trigen-St. Louis Energy Corp.*, 120 FERC ¶ 61,044 (2007); *see also OREG 1, Inc.*, 135 FERC ¶ 61,150 (2011), *order denying rehearing*, 138 FERC ¶ 61,110 (2012).

³⁶ 18 C.F.R. § 35.19a (2012).

³⁷ *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC at 61,980.

³⁸ *Id.*; *see* 16 U.S.C. § 825h (2000); *see also So. Cal. Water Co.*, 106 FERC ¶ 61,305, at PP 15-16, *reh'g denied*, 108 FERC ¶ 61,168 (2004).

33. Whether or not an individual customer actually suffered any harm is irrelevant to our inquiry here. The injury being remedied by refunds for late filing is not merely redress for that customer but particularly “the Commission’s ability to enforce FPA section 205’s requirement that there be prior notice and that the rates charged be just and reasonable at the time they are being charged.”³⁹

34. Arlington Valley is directed to make refunds, with interest, within 30 days of the date of this order. Additionally, Arlington Valley is directed to submit a refund report within 20 days thereafter, regarding the basis for and calculations of the refunds paid.⁴⁰ Such refunds shall include the period that market-based rates were collected without Commission authorization. If no refunds are necessary, Arlington Valley is directed to file a report to that effect within 30 days of the date of this order.

D. Reporting Requirements

35. 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

³⁹ *El Paso Elec. Co.*, 105 FERC ¶ 61,131 at P 21 (footnote omitted) (citing *Carolina Power Co.*, 87 FERC ¶ 61,083, at 61,356 (1999)).

⁴⁰ When submitting its report, Arlington Valley should use Type of Filing Code 1190 – Refund Report.

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>.

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

36. Additionally, Arlington Valley 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

37. 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. 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. 888⁴⁵); 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

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 (2012).

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

⁴⁵ *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).

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

38. Arlington Valley represents that it is a Category 2 seller in the Southwest region because it and its affiliates own or control more than 500 MW of electric generation in the Southwest region.

39. Based on Arlington Valley's representations, we designate Arlington Valley as a Category 2 seller in the Southwest region; thus, Arlington Valley must file an updated market power analysis for the Southwest region in compliance with the regional reporting schedule adopted in Order No. 697.⁴⁸ Further, the Commission also reserves the right to require such an analysis at any time.⁴⁹

The Commission orders:

(A) Arlington Valley's market-based rate tariff is hereby conditionally accepted for filing, and suspended for a nominal period, to become effective July 6, 2013, 61 days after filing, subject to refund and subject to the outcome of the proceeding in Docket No. ER13-630-000, as discussed in the body of this order.

(B) Arlington Valley 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. ER13-630-000, as discussed in the body of this order.

(C) Arlington Valley 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.

(D) Arlington Valley's request for waiver of the prior notice requirement is denied, as discussed in the body of this order.

(E) Arlington Valley is hereby ordered to make refunds with interest, within 30 days of the date of this order, as discussed in the body of this order. Such refunds shall include the period that market-based rates were collected without Commission authorization, i.e., from April 9, 2013 until July 6, 2013. Arlington Valley is hereby

⁴⁶ 18 C.F.R. § 35.36(a) (2012).

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

⁴⁸ *Id.* P 882.

⁴⁹ *Id.* P 853.

directed to submit a refund report within 20 days thereafter, regarding the basis for and calculations of the refunds paid.

(F) 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.

(G) 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.

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

(I) 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 Arlington Valley's issuance of securities or assumptions of liability.

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

(K) Arlington Valley is hereby directed to file updated market power analyses according to the regional reporting schedule adopted in Order No. 697.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.