

172 FERC ¶ 61,035
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick, Bernard L. McNamee,
and James P. Danly.

Paper Birch Energy, LLC

Docket Nos. ER20-1120-001
ER20-1120-002

ORDER GRANTING MARKET-BASED RATE AUTHORIZATION

(Issued July 16, 2020)

1. In this order, we grant Paper Birch Energy, LLC's (Paper Birch) request to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates in the New York Independent System Operator, Inc. (NYISO) and ISO New England Inc. (ISO-NE) markets, effective April 29, 2020. We also grant Paper Birch's request for certain waivers commonly granted to market-based rate sellers, except as noted herein.
2. Additionally, we find that Paper Birch meets the criteria for a Category 1 seller in the Northeast region and is so designated.¹
3. Further, we provide notice that we intend to release affiliate information for which Paper Birch has requested privileged treatment; therefore, pursuant to our regulations,² we will place Paper Birch's February 28, 2020 and April 13, 2020 filings that were

¹ See *Refinements to Policies & Procedures for Market-Based Rates for Wholesale Sales of Elec. Energy, Capacity & Ancillary Servs. by Pub. Utils.*, Order No. 816, 153 FERC ¶ 61,065, at P 320 (2015), *order on reh'g*, Order No. 816-A, 155 FERC ¶ 61,188 (2016); *Market-Based Rates for Wholesale Sales of Elec. Energy, Capacity & Ancillary Servs. by Pub. Utils.*, Order No. 697, 119 FERC ¶ 61,295, at PP 848-850, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, 123 FERC ¶ 61,055, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, 125 FERC ¶ 61,326 (2008), *order on reh'g*, Order No. 697-C, 127 FERC ¶ 61,284 (2009), *order on reh'g*, Order No. 697-D, 130 FERC ¶ 61,206 (2010), *aff'd sub nom. Mont. Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011), *cert denied sub nom. Public Citizen, Inc. v. FERC*, 567 U.S. 934 (2012).

² 18 C.F.R. § 388.112(e) (2019).

previously marked as privileged in the public record of this proceeding no sooner than 10 calendar days following the issuance of this order.

I. Background

4. On February 28, 2020, as amended on April 13, 2020, and June 23, 2020, pursuant to section 205 of the Federal Power Act (FPA),³ Paper Birch 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 NYISO and ISO-NE markets.⁴ Paper Birch states that it does not own or control any generation facilities and, upon acceptance of this Application, it will be a power marketer. Paper Birch states that it is a wholly owned direct subsidiary of Paper Birch Holdings, LLC, which is directly owned by two individuals.

5. On April 13, 2020, Paper Birch amended its application to provide information regarding its affiliates.⁵ The April 13 Amendment discloses that Paper Birch is affiliated with Burgess Biopower LLC (Burgess Biopower), the lessee of a 75 MW biomass-fueled electric generation facility located in the ISO-NE market, and CS Berlin Ops, Inc. (CS Berlin Ops), a power marketer operating solely within the ISO-NE and NYISO markets.

6. Pursuant to the Freedom of Information Act (FOIA)⁶ and the Commission's regulations under 18 C.F.R. § 388.112(d), the Commission issued an order on April 14, 2020 notifying Paper Birch that the Commission received a request to make public the non-public version of the application for market-based rate authority.⁷ The Commission stated that, because Paper Birch asserted a privileged and/or confidential interest in the information requested, the Commission solicited Paper Birch's comments regarding the request for public release of the information.

³ 16 U.S.C. § 824d (2018).

⁴ Paper Birch requests authorization to sell ancillary services in the NYISO and ISO-NE markets.

⁵ Paper Birch April 13, 2020 Amendment (April 13 Amendment).

⁶ 5 U.S.C. § 552 (2018).

⁷ *Paper Birch Energy, LLC*, 171 FERC ¶ 61,018 (2020) (April 14 Order).

7. On April 23, 2020, Paper Birch provided a response to the April 14 Order stating that Paper Birch objects to the public release of the information it submitted as privileged.⁸

8. On June 12, 2020, Commission staff issued a letter asking for additional information regarding Paper Birch's vertical market power representations.⁹ On June 23, 2020, Paper Birch amended its application to clarify that neither it nor any of its affiliates owns or controls any interests in transmission facilities that are used for the transmission of electricity in interstate commerce in the United States or outside of the United States that can be used to reach markets in the United States, except for the limited and discrete equipment necessary to interconnect individual generating facilities to the transmission grid that meet the requirements for the blanket waiver in 18 C.F.R. § 35.28(d)(2).¹⁰ Paper Birch also states that neither Paper Birch nor any of its affiliates own or control any interests in any inputs to electric power production in the United States, as defined in 18 C.F.R. § 35.36(a)(4).¹¹

II. Notice of Filings and Responsive Pleadings

9. Notice of Paper Birch's February 28, 2020 filing was published in the *Federal Register* with interventions and protests due on or before March 20, 2020.¹² On March 5, 2020, Public Citizen, Inc. (Public Citizen) filed a motion to intervene. On March 17, 2020, Public Citizen filed a protest asserting that Paper Birch failed to disclose that it is affiliated with generation capacity located in the United States.¹³ Public Citizen also objected to Paper Birch's request for confidential treatment of the names of Paper Birch's owners.

10. Notice of Paper Birch's request for blanket authorization under Part 34 of the Commission's regulations was separately published in the *Federal Register*,¹⁴ with interventions and protests due on or before March 23, 2020. None was filed.

⁸ Paper Birch April 23, 2020 Response (April 23 Response).

⁹ *Paper Birch Energy, LLC*, Docket No. ER20-1120-002 (June 12, 2020) (delegated letter order).

¹⁰ Paper Birch June 23, 2020 Amendment (June 23 Amendment) at 1.

¹¹ *Id.*

¹² 85 Fed. Reg. 12,914 (Mar. 5, 2020).

¹³ Public Citizen March 17, 2020 Protest at 1.

¹⁴ 85 Fed. Reg. 13,154 (Mar. 6, 2020).

11. Notice of Paper Birch's April 13 Amendment was published in the *Federal Register*,¹⁵ with interventions and protests due on or before May 4, 2020. None was filed.

12. Notice of Paper Birch's June 23 Amendment was published in the *Federal Register*,¹⁶ with interventions and protests due on or before July 14, 2020. On June 24, 2020, an errata notice was issued shortening the due date for interventions and protests to July 2, 2020.¹⁷ None was filed.

III. Discussion

A. Procedural Matters

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), Public Citizen's timely, unopposed motion to intervene serves to make it a party to this proceeding.

B. Substantive Matters

14. As discussed below, we grant Paper Birch's request for authorization to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates in the NYISO and ISO-NE markets, and we accept its market-based rate tariff, effective April 29, 2020, as requested.¹⁸ In addition, we grant Paper Birch's request for certain waivers commonly granted to market-based rate sellers, except as noted herein.

¹⁵ 85 Fed. Reg. 21,846 (Apr. 20, 2020).

¹⁶ 85 Fed. Reg. 38,883 (June 29, 2020).

¹⁷ Errata Notice Shortening Comment Period, *Paper Birch Energy, LLC*, Docket No. ER20-1120-002 (June 24, 2020).

¹⁸ We note that Paper Birch is not being granted authority to make third-party sales of operating reserves to a public utility that is purchasing ancillary services to satisfy its own Open Access Transmission Tariff (OATT) requirements to offer ancillary services to its own customers. If Paper Birch seeks such authority, it must make the required showing and receive Commission authorization prior to making such sales. *See Third-Party Provision of Ancillary Servs.; Accounting & Fin. Reporting for New Elec. Storage Techs.*, Order No. 784, 144 FERC ¶ 61,056, at PP 200-202 (2013), *order on clarification*, Order No. 784-A, 146 FERC ¶ 61,114 (2014).

1. Market-Based Rate Authorization

15. 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.¹⁹

a. Horizontal Market Power

16. The Commission has adopted two indicative screens for assessing horizontal market power: the pivotal supplier screen and the wholesale market share screen.²⁰ 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.²¹

17. Paper Birch states that, in lieu of submitting the indicative market power screens for the ISO-NE and NYISO markets, it is relying on Commission-approved market monitoring and mitigation to address potential horizontal market power that Paper Birch may have in those markets.²²

18. Based on Paper Birch's representations, we find that Paper Birch satisfies the Commission's requirements for market-based rate authority regarding horizontal market power.

b. 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 OATT on file, or that such entity has received waiver of the OATT requirement under

¹⁹ Order No. 697, 119 FERC ¶ 61,295 at PP 62, 399, 408, 440.

²⁰ *Id.* P 62.

²¹ *Id.* PP 33, 62-63.

²² Application at 5 (citing *Refinements to Horizontal Mkt. Power Analysis for Sellers in Certain Reg'l Transmission Org. & Indep. Sys. Operator Mkts.*, Order No. 861, 168 FERC ¶ 61,040 (2019); *see also* 18 C.F.R. § 35.37(c)(5) (2019) ("In lieu of submitting the indicative market power screens, Sellers studying regional transmission organization (RTO) or independent system operator (ISO) markets that operate RTO/ISO-administered energy, ancillary services, and capacity markets may state that they are relying on Commission-approved market monitoring and mitigation to address potential horizontal market power Sellers may have in those markets.")).

18 C.F.R. § 35.28(d)(1) or satisfies the requirements for blanket waiver under 18 C.F.R. § 35.28(d)(2).²³

20. Paper Birch states that it and its affiliates do not own or control any electric transmission facilities other than facilities that qualify for the blanket OATT waiver pursuant to 18 C.F.R. § 35.28(d)(2).²⁴

21. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.²⁵ 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, and physical coal supply sources and ownership of or control over who may access transportation of coal supplies (collectively, inputs to electric power production).²⁶ 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.²⁷ 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.²⁸

²³ See *Open Access & Priority Rights on Interconnection Customer's Interconnection Facilities*, Order No. 807, 150 FERC ¶ 61,211, at P 57, *order on reh'g*, Order No. 807-A, 153 FERC ¶ 61,047 (2015) (waiving the OATT requirements of 18 C.F.R. § 35.28, the Open Access Same-Time Information System requirements of Part 37, and the Standards of Conduct requirements of Part 358, under certain conditions, for entities that own interconnection facilities); see also *Oildale Energy, LLC*, 153 FERC ¶ 61,013, at PP 12-13 (2015).

²⁴ June 23 Amendment at 1.

²⁵ Order No. 697, 119 FERC ¶ 61,295 at P 440.

²⁶ Order No. 697-A, 123 FERC ¶ 61,055 at P 176; see also Order No. 816, 153 FERC ¶ 61,065 at PP 207-12.

²⁷ Order No. 697, 119 FERC ¶ 61,295 at P 447; see also Order No. 816, 153 FERC ¶ 61,065 at PP 354, 356.

²⁸ Order No. 697, 119 FERC ¶ 61,295 at P 446.

22. Paper Birch states that it and its affiliates do not own or control inputs to electric power production in the United States.²⁹ Paper Birch affirms that it and any affiliates have not erected, and will not erect, barriers to entry in any relevant market.³⁰

23. Based on Paper Birch's representations, we find that Paper Birch satisfies the Commission's requirements for market-based rate authority regarding vertical market power.

2. Other Waivers, Approvals, and Authorizations

24. Paper Birch 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 FPA section 204³¹ and Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability.

25. We grant the requested waivers and authorizations consistent with those granted to other entities with market-based rate authorizations.³² Notwithstanding the waiver of the

²⁹ June 23 Amendment at 1.

³⁰ April 13 Amendment at 7.

³¹ 16 U.S.C. § 824c.

³² 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 in Part 34 of the Commission's regulations. *See* Order No. 697, 119 FERC ¶ 61,295 at PP 984-985 (regarding waiver of Parts 41, 101, and 141) and PP 999-1000 (regarding blanket approval under Part 34). However, waiver of the provisions of Part 101 that apply to hydropower licensees is not granted with respect to licensed hydropower projects. Hydropower licensees are required to comply with the requirements of the Uniform System of Accounts pursuant to 18 C.F.R. pt. 101 to the extent necessary to carry out their responsibilities under Part I of the FPA. We further note that a licensee's status as a market-based rate seller under Part II of the FPA does not exempt it from its accounting responsibilities as a licensee under Part I of the FPA. *See* Order No. 816, 153 FERC ¶ 61,065 at PP 345-350; Order No. 697, 119 FERC ¶ 61,295 at P 983 & n.1126 (granting waiver of Subparts B and C of Part 35 of the Commission's regulations requiring the filing of cost-of-service information, except for 18 C.F.R §§ 35.12(a), 35.13(b), 35.15 and 35.16); *Seneca Generation, LLC*, 145 FERC ¶ 61,096, at P 23 n.20 (2013) (citing

accounting and reporting requirements, the Commission expects applicants to keep their accounting records in accordance with generally accepted accounting principles.

3. Affiliation Disclosures and Request for Non-Public Treatment

26. In Paper Birch's April 13 Amendment, Paper Birch states that it is affiliated with Burgess Biopower and CS Berlin Ops.³³

27. We find that the supplemental information contained in the April 13 Amendment adequately addresses the objections raised in Public Citizen's protest pertaining to Paper Birch's affiliation with Burgess Biopower and CS Berlin Ops through the two upstream owners.

28. In response to the Commission's April 14 Order, Paper Birch objects to the release of information that it filed as privileged, specifically the identities of the two private individuals who are direct owners of Paper Birch.

29. Paper Birch states that Exemption 4 of FOIA establishes a test for protection of confidential commercial or financial information submitted to the government by prohibiting their disclosure if they are "obtained from a person and privileged or confidential."³⁴ Paper Birch states that the Supreme Court's recent decision in *Food Marketing Institute v. Argus Leader Media*³⁵ further clarified the scope of Exemption 4, holding that commercial or financial information is confidential, and thus may not be disclosed, if it "[1] is both customarily and actually treated as private by its owner and [2] provided to the government under an assurance of privacy."³⁶

Trafalgar Power Inc., 87 FERC ¶ 61,207, at 61,798 (1999) (noting that "all licensees are required to comply with the requirements of the Uniform System of Accounts to the extent necessary to carry out their responsibilities under [s]ections 4(b), 10(d) and 14 of the FPA").

³³ April 13 Amendment at 2 and 3.

³⁴ April 23 Response at 2 (quoting 5 U.S.C. § 552(b)(4) (2018)).

³⁵ 139 S. Ct. 2356 (2019) (*Argus*).

³⁶ April 23 Response at 2 (quoting *Argus*, 139 S. Ct. 2356 at 2366).

30. Paper Birch argues that the information for which it is seeking privileged treatment “clearly relates to the business of Paper Birch and its ownership and control and thus constitutes commercial or financial information” as required by Exemption 4.³⁷

31. Paper Birch also asserts that the information for which it is seeking privileged treatment is private and qualifies as “confidential” under the Supreme Court’s decision in *Argus*. Paper Birch states that it and its affiliates have customarily treated this ownership information as private and that Paper Birch has consistently sought confidential treatment for this and similar information in filings with the Commission.³⁸

32. Paper Birch further contends that this information was provided to the Commission with an assurance of privacy, namely that afforded by section 388.112 of the Commission’s regulations. Paper Birch states that the “Commission customarily honors such [confidentiality] requests, only permitting release of privileged and confidential information to intervenors in the proceeding that are subject to the Commission’s non-disclosure and protective agreement procedures.”³⁹ Paper Birch claims that, although an intervenor in this case received an unredacted copy of the filings, the intervenor only did so after it executed a non-disclosure certificate, based on a model protective agreement proffered by the Commission, which precludes that intervening party from disseminating the privilege-requested information. Paper Birch asserts that this constitutes an assurance that the material’s privacy would be maintained.⁴⁰

33. We have considered Paper Birch’s arguments and we reject its claim of privileged treatment regarding the identities of its two affiliated owners. Consistent with *Argus*, information submitted to a government agency such as the Commission will be protected from disclosure under Exemption 4 if: (1) the information is customarily treated as confidential by the submitter; and (2) the government agency provides assurance that the information will be treated as confidential.⁴¹

34. An applicant seeking market-based rate authority must provide certain information to the Commission, including identifying its affiliates and upstream owners with greater

³⁷ *Id.*

³⁸ *Id.* at 3.

³⁹ *Id.*

⁴⁰ *Id.* at 4.

⁴¹ *Argus*, 139 S. Ct. 2356.

than a 10% ownership interest.⁴² The Commission has discussed the need to have affiliate information in the public record, stating that:

The Commission must know the identity of a seller's upstream owners in order to examine the seller's ability to exercise market power in coordinated interaction with other sellers. A seller seeking to obtain or retain market-based rate authority must include affiliated generation in its required horizontal market power indicative screens and must also disclose affiliate assets in its vertical market power analysis and its required asset appendix. Because this information is central to the Commission's analysis, public disclosure enables members of the public to determine whether to participate in the proceeding to protect their interests and to understand what the Commission relies on in making its determination.⁴³

35. In addition, in Order No. 860, the Commission affirmed the importance of market-based rate sellers' affiliate information being public.⁴⁴

36. For the following reasons, we disagree with Paper Birch that there was Commission assurance that the identities of its two owners will be kept confidential.

37. First, we find that Paper Birch's reliance on section 388.112 is misplaced. Although section 388.112 describes procedures for submitting information with a request for privileged treatment, the regulation itself makes clear that a request for privileged treatment does not guarantee such treatment.⁴⁵ Furthermore, the Commission's previous determinations in *Ambit* and Order No. 860, which both pre-date Paper Birch's submissions in this docket, explain the Commission's position that this public disclosure

⁴² Order No. 697-A, 123 FERC ¶ 61,055 at P 181 n.258.

⁴³ *Ambit Northeast, LLC*, 167 FERC ¶ 61,237, at P 28 (2019) (*Ambit*) (footnotes omitted).

⁴⁴ *Data Collection for Analytics & Surveillance & Market-Based Rate Purposes*, Order No. 860, 168 FERC ¶ 61,039, at P 129 (2019); *order on reh'g*, Order No. 860-A, 170 FERC ¶ 61,129 (2020).

⁴⁵ See 18 C.F.R. § 388.112(c) ("The documents for which privileged treatment is claimed will be maintained in the Commission's document repositories as non-public until such time as the Commission may determine that the document is not entitled to the treatment sought and is subject to disclosure consistent with § 388.108. By treating the documents as nonpublic, the Commission is not making a determination on any claim of privilege status.").

of upstream ownership information is important in market-based rate proceedings.⁴⁶ The Commission's regulations clearly provide that "[t]he Commission retains the right to make determinations with regard to any claim of privilege status, and the discretion to release information as necessary to carry out its jurisdictional responsibilities."⁴⁷ Thus, we deny Paper Birch's claim of privileged treatment for ownership information contained in its February 28, 2020 and April 13, 2020 filings. Pursuant to 18 C.F.R. § 388.112(e), we provide notice that the Commission will place these filings in the public record of this proceeding no sooner than 10 calendar days from the date of this order.

4. Reporting Requirements

38. Consistent with the procedures adopted by the Commission, Paper Birch must file an Electric Quarterly Report (EQR) with the Commission, consistent with Order Nos. 2001⁴⁸ and 768.⁴⁹ Paper Birch must file EQRs electronically with the Commission consistent with the procedures set forth in Order No. 770.⁵⁰ Failure to timely and accurately file an EQR is a violation of the Commission's regulations for which Paper

⁴⁶ Because we find that there was no Commission assurance that this information would be treated as confidential, we need not address Paper Birch's claim that it customarily treats this information as confidential.

⁴⁷ 18 C.F.R. § 388.112(c)(1).

⁴⁸ *Revised Pub. Util. Filing Requirements*, Order No. 2001, 99 FERC ¶ 61,107, *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, 125 FERC ¶ 61,103 (2008).

⁴⁹ *Elec. Mkt. Transparency Provisions of Section 220 of the Fed. Power Act*, Order No. 768, 140 FERC ¶ 61,232 (2012), *order on reh'g*, Order No. 768-A, 143 FERC ¶ 61,054 (2013).

⁵⁰ *See Revisions to Elec. Quarterly Report Filing Process*, Order No. 770, 141 FERC ¶ 61,120, at P 3 (2012) (citing Order No. 2001, 99 FERC ¶ 61,107 at P 31).

Birch may be subject to refund, civil penalties, and/or revocation of market-based rate authority.⁵¹

39. Additionally, Paper Birch 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.⁵²

40. In Order No. 697, the Commission created two categories of sellers.⁵³ 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. 888⁵⁴); 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.⁵⁵ Sellers that do not fall into Category 1 are designated as Category 2 sellers and are required to file updated market power analyses.⁵⁶

⁵¹ The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b. Forfeiture of market-based rate authority may require a new application for market-based rate authority if the Paper Birch wishes to resume making sales at market-based rates.

⁵² 18 C.F.R. § 35.42 (2019); *see also Reporting Requirement for Changes in Status for Pub. Utils. with Market-Based Rate Auth.*, Order No. 652,110 FERC ¶ 61,097, *order on reh'g*, 111 FERC ¶ 61,413 (2005).

⁵³ Order No. 697, 119 FERC ¶ 61,295 at P 848.

⁵⁴ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Servs. by Pub. Utils.; Recovery of Stranded Costs by Pub. Utils. & Transmitting Utils.*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996) (cross-referenced at 75 FERC ¶ 61,080), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (cross-referenced at 78 FERC ¶ 61,220), *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).

⁵⁵ 18 C.F.R. § 35.36(a) (2019).

⁵⁶ Order No. 697, 119 FERC ¶ 61,295 at P 850.

41. As stated above, Paper Birch is seeking authorization to make power sales within the ISO-NE and NYISO markets in the Northeast region. Paper Birch states it meets the criteria for a Category 1 seller the Northeast region because in the Northeast region it does not own or control and is not affiliated with any entity that owns or controls more than 500 MW of generation; does not own, operate, or control any transmission facilities; is not affiliated with anyone that owns, operates or controls any transmission facilities; is not affiliated with a franchised public utility; and does not raise other vertical market power issues.⁵⁷

42. Based on Paper Birch's representations, we designate it as a Category 1 seller in the Northeast region. Given that Paper Birch is limiting its market-based rate authorization solely to the Northeast region, its proposed tariff does not include any category seller status for any other region. The Commission reserves the right to require an updated market analysis at any time for any region.⁵⁸

The Commission orders:

(A) Paper Birch's market-based rate tariff is hereby accepted for filing, effective April 29, 2020, as discussed in the body of this order.

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

(C) Waiver of Part 101 of the Commission's regulations is hereby granted, with the exception that waiver of the provisions of Part 101 that apply to hydropower licensees is not granted with respect to licensed hydropower projects. Waiver of Parts 41 and 141 of the Commission's regulations is hereby granted, with the exception of sections 141.14 and 141.15.

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

⁵⁷ April 13 Amendment at 10.

⁵⁸ Order No. 697, 119 FERC ¶ 61,295 at P 853.

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

(F) Paper Birch is hereby required to file EQRs in compliance with Order Nos. 2001 and 768. If the effective date of Paper Birch's market-based rate tariff falls within a quarter of the year that has already expired, its EQRs for the expired quarter are due within 30 days of the date of this order.

(G) Paper Birch's claim of privileged treatment with respect to affiliate information is hereby denied, as discussed in the body of this order. Pursuant to 18 C.F.R. § 388.112(e), the Commission will place filings previously marked as privileged in the public record of this proceeding no sooner than 10 calendar days from the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.