

171 FERC ¶ 61,117
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Bolt Energy Marketing, LLC

Docket No. ER20-660-000

ORDER GRANTING MARKET-BASED RATE AUTHORIZATION

(Issued May 18, 2020)

1. In this order, we grant Bolt Energy Marketing, LLC's (Applicant) request to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates, effective January 1, 2020. We also grant Applicant's request for certain waivers commonly granted to market-based rate sellers, except as noted herein.
2. In addition, we find that Applicant meets the criteria for a Category 1 seller in the Central, Northwest, and Southwest Power Pool (SPP) regions and a Category 2 seller in the Northeast, Southeast, and Southwest regions and is so designated.¹
3. Further, we provide notice that we intend to release affiliate² information for which Applicant has requested privileged treatment; therefore, we provide Applicant 10 calendar days of the date of this order in which to file revised versions of its December 20, 2019, March 19, 2020, and April 23, 2020 filings in accordance with our findings in this order. We provide notice pursuant to our regulations³ that if Applicant

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 848-50, *clarified*, 121 FERC ¶ 61,260 (2007) (Clarification Order), *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).

² "Affiliate" is defined in 18 C.F.R. § 35.39(a)(9) (2019).

³ 18 C.F.R. § 388.112(e) (2019).

does not file such revised versions within 10 calendar days, the Commission will place Applicant's December 20, 2019, March 19, 2020, and April 23, 2020 filings that were previously marked as privileged in the public record of this proceeding no sooner than 15 calendar days following the issuance of this order.

I. Background

4. On December 20, 2019, as amended March 19, 2020, pursuant to section 205 of the Federal Power Act (FPA),⁴ Applicant 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.⁵

5. Applicant states that it does not own or control any generation facilities and, upon acceptance of this Application, will be a power marketer. Applicant states that it is affiliated with entities that own or control generating facilities in the Northeast, Southeast, and Southwest regions.

6. Applicant states that it is an indirect subsidiary of LS Power Development, LLC (LSP Development).⁶ Applicant identifies the individuals who own more than 10% of the voting interests in LSP Development.⁷ Applicant states that through various subsidiaries, LSP Development develops, owns, and operates independent power projects and merchant transmission projects in the United States.⁸

7. Applicant states that all of the membership interests of Applicant are held by Bolt Energy Holdings, LLC (Bolt Holdings).⁹ Applicant states that the Limited Liability Company Agreement for Bolt Holdings provides that Bolt Energy, LLC (Bolt Energy) has all of the investment commitment obligations with respect to Bolt Holdings, while

⁴ 16 U.S.C. § 824d (2018).

⁵ Applicant requests authorization to sell ancillary services in all of the regional transmission organization or independent system operator markets for which the Commission has approved sales of specific ancillary services. Applicant also requests authorization to engage in the sale of certain ancillary services as a third-party provider in other markets.

⁶ December 20, 2019 Filing at 2.

⁷ March 19, 2020 Filing at 7.

⁸ December 20, 2019 Filing at 2.

⁹ *Id.*

Bolt Energy Management, LLC has management responsibility for Bolt Holdings.¹⁰ Applicant states that the membership interests of Bolt Energy are held by: (1) Bolt Energy Feeder BL, LLC (Bolt Feeder BL); (2) LSP Bolt Member, LLC; and (3) various investors owning passive ownership interests.¹¹ Applicant states that all of the membership interests of Bolt Feeder BL are held by Bolt Energy Feeder, LP.¹² Applicant's March 19, 2020 filing includes an organizational chart showing further detail with respect to the ownership information.

8. On February 18, 2020, Commission staff issued a letter under delegated authority asking for additional information concerning the ownership of Applicant.¹³ On March 19, 2020, Applicant filed a response to the letter.

9. Pursuant to the Freedom of Information Act (FOIA)¹⁴ and the Commission's regulations under 18 C.F.R. § 388.112(d), the Commission issued an order on April 14, 2020 notifying Applicant that the Commission received a request to make public the non-public version of the application for market-based rate authority.¹⁵ The Commission stated that because Applicant asserted a privileged and/or confidential interest in the information requested, the Commission was soliciting Applicant's comments regarding the request for public release of the information.

10. On April 23, 2020, Applicant provided a response to the April 14, 2020 order objecting to the release of non-public information in the Application, with the exception of the release of the names of the two individuals who own more than 10% of the voting interests in LSP Development.

II. Notice of Filings and Responsive Pleadings

11. Notice of Applicant's December 20, 2019 filing was published in the *Federal Register*,¹⁶ with interventions and protests due on or before January 10, 2020.

¹⁰ December 20, 2019 Filing at 2-3.

¹¹ *Id.* at 3.

¹² *Id.*

¹³ *Bolt Energy Mktg., LLC*, Docket No. ER20-660-000 (Feb. 18, 2020) (delegated order).

¹⁴ 5 U.S.C. § 552 (2018).

¹⁵ *Bolt Energy Mktg., LLC*, 171 FERC ¶ 61,019 (2020).

¹⁶ 84 Fed. Reg. 71,916 (Dec. 30, 2019).

On December 30, 2019, Public Citizen filed a motion to intervene. On January 13, 2020, Public Citizen filed a protest arguing that Applicant failed to respond to Public Citizen's multiple requests for the complete application.¹⁷

12. On February 10, 2020, Public Citizen filed comments requesting that the Commission compel the public release of the names of the individuals and various limited liability companies identified in the confidential portions of the market-based rate application.

13. Notice of Applicant's request for blanket authorization under Part 34 of the Commission's regulations was separately published in the *Federal Register*,¹⁸ with interventions and protests due on or before December 23, 2020. None was filed.

14. Notice of Applicant's March 19, 2020 filing was published the *Federal Register*,¹⁹ with interventions and protests due on or before April 9, 2020. None was filed.

III. Discussion

A. Procedural Matters

15. 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 Public Citizen a party to this proceeding.

B. Substantive Matters

16. As discussed below, we grant Applicant's request for authorization to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates and accept its market-based rate tariff, effective January 1, 2020.²⁰ In addition, we grant

¹⁷ On February 4, 2020, the Commission issued an order directing Applicant to provide Public Citizen with the privileged portions of the market-based rate application. *Bolt Energy Mktg., LLC*, 170 FERC ¶ 61,080 (2020). On February 5, 2020, Applicant submitted an informational filing informing the Commission that it had already provided Public Citizen with a full, un-redacted copy of its market-based rate application.

¹⁸ 84 Fed. Reg. 72,347 (Dec. 31, 2019).

¹⁹ 85 Fed. Reg. 17,050 (Mar. 26, 2020).

²⁰ We note that Applicant 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 Applicant seeks such authority, it must make the required showing and receive Commission authorization prior to making such sales. *See Third-Party*

Applicant's request for certain other waivers commonly granted to market-based rate sellers, except as noted herein.

1. Market-Based Rate Authorization

17. 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.²¹

a. Horizontal Market Power

18. The Commission has adopted two indicative screens for assessing horizontal market power: the pivotal supplier screen and the wholesale market share screen.²² 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.²³

19. Applicant states that in lieu of submitting the indicative market power screens for the ISO New England Inc., Midcontinent Independent System Operator, Inc., New York Independent System Operator, Inc., and PJM Interconnection, L.L.C. markets (including relevant sub-markets of those markets), Applicant is relying on Commission-approved market monitoring and mitigation to address potential horizontal market power that Applicant may have in those markets.²⁴

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).

²¹ Order No. 697, 119 FERC ¶ 61,295 at PP 62, 399, 408, 440.

²² *Id.* P 62.

²³ *Id.* PP 33, 62-63.

²⁴ *See* 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."); *see also Refinements to Horizontal Market Power Analysis for Sellers in Certain Reg'l Transmission Org. & Indep. Sys. Operator Mkts.*, Order No. 861, 168 FERC ¶ 61,040 (2019).

20. Applicant prepared the pivotal supplier and wholesale market share screens for the Duke Energy Carolinas, LLC (Duke) and Southern Company balancing authority areas, and the California Independent System Operator Corporation (CAISO) market.²⁵ Applicant states that it passes the pivotal supplier and wholesale market share screens in these balancing authority areas.²⁶

21. Based on Applicant's representations, we find that Applicant satisfies the Commission's requirements for market-based rates regarding horizontal market power.

b. Vertical Market Power

22. In cases where a public utility, or any of its affiliates, owns, operates, or controls transmission facilities, the Commission requires that there be a Commission-approved OATT on file or that the seller has received waiver of the OATT requirement under 18 C.F.R. § 35.28(d)(1) (2019) or satisfies the requirements for blanket waiver under 18 C.F.R. § 35.28(d)(2).²⁷

²⁵ Applicant's study of the Southern Company balancing authority area relies on South Carolina Electric & Gas Company's market power analysis, which has been accepted by the Commission. *See S.C. Elec. & Gas Co.*, Docket No. ER10-2498-004 (June 4, 2018) (delegated order). Applicant's study of the Duke balancing authority area relies on Lockhart Power Company's market power analysis, which has been accepted by the Commission. *See Lockhart Power Co.*, Docket No. ER10-2651-004 (June 25, 2018) (delegated order). Applicant's study of the CAISO market relies on Luminant Energy Company LLC's market power analysis, which has been accepted by the Commission. *See Luminant Energy Co. LLC*, 165 FERC ¶ 61,222 (2018). Applicant represents that there have been no significant changes in either generation or load in these markets since the study periods used for the screens, and that Applicant's market shares would not, therefore, be significantly higher if more recent study periods were used. December 20, 2019 Filing at 13 (citing Clarification Order, 121 FERC ¶ 61,260 at P 12).

²⁶ Applicant represents that its wholesale market shares range as follows: for the Duke balancing authority area, 2.2% to 3.4%; for the Southern Company balancing authority area, 1.7 to 2.4%; and for the CAISO market, 1.3% to 1.5%. December 20, 2019 Filing at 14.

²⁷ *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,

23. Applicant states that it does not own or control any transmission facilities. Applicant states that its affiliates that own, operate, or control operational, Commission-jurisdictional transmission facilities are eligible for exemption from the Commission's OATT, open access same-time information system, and standards of conduct requirements pursuant to section 35.28(d)(2) of the Commission's regulations. Applicant states that one of its affiliates, Great Basin Transmission, LLC, indirectly owns a passive economic interest in a 235-mile transmission line and that transmission service over the line is provided exclusively pursuant to NV Energy, Inc.'s Commission-approved OATT.

24. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.²⁸ 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).²⁹ 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.³⁰ 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.³¹

25. Applicant states that it and its affiliates do not own or control any intrastate natural gas transportation or intrastate natural gas storage or distribution facilities, any sources of physical coal supplies, and do not have ownership of or control over who may access transportation of coal supplies.

for entities that own interconnection facilities); *see also Oildale Energy, LLC*, 153 FERC ¶ 61,013, at PP 12-14 (2015).

²⁸ Order No. 697, 119 FERC ¶ 61,295 at P 440.

²⁹ Order No. 697-A, 123 FERC ¶ 61,055 at P 176; *see also* Order No. 816, 153 FERC ¶ 61,065 at PP 207-12.

³⁰ Order No. 697, 119 FERC ¶ 61,295 at P 447; *see also* Order No. 816, 153 FERC ¶ 61,065 at PP 354, 356.

³¹ Order No. 697, 119 FERC ¶ 61,295 at P 446.

26. Finally, Applicant affirmatively states that it and its affiliates have not erected, and will not erect, barriers to entry into the relevant markets.

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

2. Other Waivers, Approvals, and Authorizations

28. Applicant 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 (with the exception of the provisions of Part 101 that apply to hydropower licensees with respect to licensed hydropower projects), and 141 of the Commission's regulations, except sections 141.14 and 141.15; and (3) blanket authorization under section 204 of the FPA³² and Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability.

29. We grant the requested waivers and authorizations consistent with those granted to other entities with market-based rate authorizations.³³ Notwithstanding the waiver of the

³² 16 U.S.C. § 824c (2018).

³³ 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. Part 101 (2019) 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 984 & 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 *Trafalgar Power, Inc.*, 87 FERC ¶ 61,207, at 61,798 (1999) (noting that "all licensees are required to comply with the requirements of the

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

3. Request for Non-Public Treatment

30. Applicant objects to the public release of information it filed as privileged, with the exception of the release of the names of the two individuals who own more than 10% of the voting interests in LSP Development.

31. Applicant states that the courts have recognized that Exemption 4 of FOIA establishes a two-pronged test for exemption of confidential information that is either: (1) trade secret information or (2) commercial or financial information. Applicant states that under the second prong, Exemption 4 applies if the requested information is shown to be: (1) commercial or financial; (2) obtained from a person; and (3) privileged or confidential.³⁴ Applicant 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 "[a]t least where commercial or financial information is both customarily and actually treated as private by its owner and provided to the government under an assurance of privacy, the information is 'confidential' within the meaning of Exemption 4."³⁶

32. Applicant states that the information for which privileged and confidential treatment was requested in the Application consists of commercial or financial information. Applicant states that the non-public information was "obtained from a person."³⁷ Applicant states that information in the Application is "private" and qualifies as "confidential" under the Supreme Court's decision in *Argus*.³⁸

33. Applicant states that it and its affiliates have both customarily and actually treated the ownership information for which confidential treatment was requested as private and provided this information to the Commission under an assurance of privacy,

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").

³⁴ April 23, 2020 Filing at 2.

³⁵ 139 S. Ct. 2356 (2019) (*Argus*).

³⁶ April 23, 2020 Filing at 2 (citing *Argus*, 139 S. Ct. 2356).

³⁷ *Id.* (citing *Public Citizen Health Research Grp. v. FDA*, 704 F.2d 1280, 1290 (D.C. Cir. 1983)).

³⁸ *Id.* at 3.

notwithstanding the one instance in which a single piece of information was disclosed in a filing with the Public Utility Commission of Texas. Applicant states that it and its affiliates have consistently sought confidential treatment for this and similar information in filings with the Commission and other regulatory bodies and have otherwise treated it as private. Applicant asserts that the information was provided to the Commission under an assurance of privacy, namely the assurance of privacy afforded by section 388.112 of the Commission's regulations.

34. We have considered Applicant's arguments and we reject its claim of privilege regarding the identities of its affiliates. 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.

35. An applicant seeking market-based rate authority must provide certain information to the Commission, including identifying its affiliates and upstream owners with greater than a 10% ownership interest.³⁹ The Commission has discussed the need to have affiliate information in the public record, and has stated 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.⁴⁰

In addition, in Order No. 860,⁴¹ the Commission affirmed the importance of market-based rate sellers' affiliate information being public.

³⁹ Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 181 n.258.

⁴⁰ *Ambit N.E., LLC*, 166 FERC ¶ 61,066, *order on reh'g*, 167 FERC ¶ 61,237, at P 28 (2019) (footnotes omitted).

⁴¹ *Data Collection for Analytics & Surveillance & Market-Based Rate Purposes*, Order No. 860, 168 FERC ¶ 61,039, at P 129 (2019); *order on reh'g*, 170 FERC ¶ 61,129 (2020).

36. We disagree with Applicant that there was Commission assurance that the information regarding the identities of its affiliates will be kept confidential. First, we find that Applicant'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.⁴² Furthermore, the Commission's previous statements in *Ambit* and Order No. 860, which both pre-date Applicant's submissions in this docket, explain the Commission's position that this public disclosure of upstream affiliate information is important in market-based rate proceedings.⁴³ Our 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."⁴⁴ Thus, we deny Applicant's claim of privileged treatment for affiliate information included in its December 20, 2019, March 19, 2020, and April 23, 2020 non-public filings.

37. We recognize, however, that certain of the information Applicant previously submitted as privileged may not involve the identities of affiliates. To the extent that Applicant continues to wish to redact any information that does not involve the identity of affiliates, Applicant may resubmit within 10 calendar days of the date of this order public and non-public versions of its filings that redact only such non-affiliate information. Pursuant to 18 C.F.R. § 388.112(e), we provide notice that, if Applicant does not refile the privileged and non-privileged versions of the December 20, 2019, March 19, 2020, and April 23, 2020 filings within 10 calendar days of the date of this order, the Commission will place the filings previously marked as privileged in the public record of this proceeding no sooner than 15 calendar days from the date of this order.

⁴² 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.").

⁴³ Because we find that there was no Commission assurance that this information will be treated as confidential, we need not address Applicant's claim that it customarily treats this information as confidential.

⁴⁴ 18 C.F.R. § 388.112(c)(1).

4. Reporting Requirements

38. An entity with market-based rate authorization must file Electric Quarterly Reports (EQR) with the Commission, consistent with Order Nos. 2001⁴⁵ and 768,⁴⁶ to fulfill its responsibility under FPA section 205(c)⁴⁷ to have rates on file in a convenient form and place.⁴⁸ Applicant must file EQRs electronically with the Commission consistent with the procedures set forth in Order No. 770.⁴⁹ Failure to timely and accurately file an EQR is a violation of the Commission's regulations for which Applicant may be subject to refund, civil penalties, and/or revocation of market-based rate authority.⁵⁰

⁴⁵ *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).

⁴⁶ *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).

⁴⁷ 16 U.S.C. § 824d(c) (2018).

⁴⁸ *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).

⁴⁹ Order No. 770, 141 FERC ¶ 61,120.

⁵⁰ The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2019). Forfeiture of market-based rate authority may require a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

39. Applicant 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.⁵¹

40. In Order No. 697, the Commission created two categories of sellers.⁵² 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. 888⁵³); 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.⁵⁴ Sellers that do not fall into Category 1 are designated as Category 2 sellers and are required to file updated market power analyses.⁵⁵

41. In support of its designation as a Category 1 Seller for the Central, Northwest, and SPP regions, Applicant states that it: (1) does not own or control more than 500 MW of

⁵¹ 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).

⁵² Order No. 697, 119 FERC ¶ 61,295 at P 848.

⁵³ *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).

⁵⁴ 18 C.F.R. § 35.36(a) (2019).

⁵⁵ Order No. 697, 119 FERC ¶ 61,295 at P 850.

generation in any of the Central, Northwest, or SPP regions;⁵⁶ (2) does not own, operate, or control transmission facilities, other than limited equipment necessary to interconnect individual generating facilities to the transmission grid, in any of the Central, Northwest, or SPP regions; (3) is not affiliated with anyone that owns, operates, or controls transmission facilities (other than limited equipment necessary to interconnect individual generating facilities with the transmission grid) in any of the Central, Northwest, or SPP regions; (4) is not affiliated with any franchised public utility in any of the Central, Northwest, or SPP regions; and (5) does not present any other vertical market power concerns in any of the Central, Northwest, or SPP regions.

42. Based on Applicant's representations, we designate Applicant as a Category 1 seller in the Central, Northwest, and SPP regions and a Category 2 seller in the Northeast, Southeast, and Southwest regions. The Commission reserves the right to require an updated market power analysis at any time for any region.⁵⁷

The Commission orders:

(A) Applicant's market-based rate tariff is hereby accepted for filing, effective January 1, 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. Applicant 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 Applicant, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

⁵⁶ We interpret this representation to mean Applicant owns, controls and is affiliated with 500 MW or less of generation in aggregate in these regions. *See* 18 C.F.R. § 35.36(a)(2)(i).

⁵⁷ 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 Applicant's issuance of securities or assumptions of liability.

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

(G) Applicant's claim of privileged treatment with respect to affiliate information is denied, as discussed in the body of this order. Applicant may resubmit within 10 calendar days of the date of this order public and non-public versions. If Applicant does not do so, 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 15 calendar days from the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.