

168 FERC ¶ 61,160  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

New Brunswick Energy Marketing Corporation

Docket Nos. ER14-225-005  
ER14-225-006  
EL19-68-000  
EL19-68-001

ORDER ACCEPTING NOTICE OF CHANGE IN STATUS, TERMINATING  
SECTION 206 PROCEEDING, AND GRANTING REQUEST FOR CLARIFICATION

(Issued September 19, 2019)

1. On May 24, 2019, the Commission issued an order addressing a notice of change in status filed by New Brunswick Energy Marketing Corporation (NB Energy Marketing).<sup>1</sup> In that order, the Commission instituted a proceeding under section 206 of the Federal Power Act (FPA)<sup>2</sup> to determine whether NB Energy Marketing's market-based rate authority in the New Brunswick System Operator (New Brunswick) balancing authority area remains just and reasonable. In this order, as discussed below, we find that NB Energy Marketing satisfies the Commission's standards for market-based rate authority. Accordingly, we accept NB Energy Marketing's notice of change in status and terminate the section 206 proceeding instituted in Docket No. EL19-68-000. Also in this order, as discussed below, we grant NB Energy Marketing's request for clarification of the May Order.

**I. Background**

2. NB Energy Marketing is a wholly owned subsidiary of New Brunswick Power Corporation (NB Power). On April 4, 2019, as amended on April 19, 2019, NB Energy Marketing filed a notice of change in status. NB Energy Marketing states that its affiliate, NB Power, acquired a 290 MW generation facility located in the Province of New Brunswick.

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<sup>1</sup> *New Brunswick Energy Marketing Corp.*, 167 FERC ¶ 61,172 (2019) (May Order).

<sup>2</sup> 16 U.S.C. § 824e (2018).

3. The notice of change in status includes a market power analysis for the ISO New England Inc. (ISO-NE) market and the New Brunswick balancing authority area. NB Energy Marketing represents that it passes the pivotal supplier and wholesale market share screens in the ISO-NE market. With respect to the New Brunswick balancing authority area, NB Energy Marketing represents that it passes the pivotal supplier screen but fails the wholesale market share indicative screen in all four seasons. NB Energy Marketing's filing also includes a delivered price test (DPT) analysis to rebut the presumption of horizontal market power in the New Brunswick balancing authority area.

4. In the May Order, the Commission found that NB Energy Marketing's failure of the wholesale market share screen in the New Brunswick balancing authority area establishes a rebuttable presumption of horizontal market power. Thus, the Commission instituted a proceeding pursuant to section 206 of the FPA concerning the justness and reasonableness of NB Energy Marketing's market-based rate authority in the New Brunswick balancing authority area.<sup>3</sup> The Commission directed NB Energy Marketing to show cause as to why the Commission should not revoke NB Energy Marketing's market-based rate authority in the New Brunswick balancing authority area.

5. On June 24, 2019, NB Energy Marketing filed a request for rehearing or, in the alternative, clarification, of the May Order. NB Energy Marketing requests rehearing or, in the alternative, clarification, of the May Order to clarify that the Commission's jurisdiction, as relevant in this proceeding, does not extend to any Canadian portions of the New Brunswick balancing authority area.<sup>4</sup>

6. On July 23, 2019, NB Energy Marketing filed a response to the May Order. NB Energy Marketing represents that the DPT and additional evidence submitted in the April 4 Filing sufficiently rebuts the presumption of horizontal market power in the New Brunswick balancing authority area.<sup>5</sup> NB Energy Marketing asks the Commission to conclude that on balance, after weighing the DPT and all relevant factors, NB Energy Marketing has effectively rebutted the presumption of market power in the Northern Maine Independent System Administrator portion of the New Brunswick balancing authority area.<sup>6</sup>

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<sup>3</sup> Notice establishing May 31, 2019 as the refund effective date in Docket No. EL19-68-000 was published in the *Federal Register*, 84 Fed. Reg. 25,249 (2019).

<sup>4</sup> NB Energy Marketing's June 24 Request at 8.

<sup>5</sup> NB Energy Marketing's July 23 Filing at 2.

<sup>6</sup> *Id.* at 5.

## **II. Notice of Filings**

7. Notice of NB Energy Marketing's April 4, 2019 filing was published in the *Federal Register*,<sup>7</sup> with interventions and protests due on or before April 25, 2019. None was filed.

8. Notice of the institution of the section 206 proceeding was published in the *Federal Register*,<sup>8</sup> with interventions due within 21 days of the date of issuance of the May Order. The Northern Maine Independent System Administrator, Inc. and Emera Maine filed timely motions to intervene. On June 3, 2019, the Maine Public Utilities Commission filed a notice of intervention. On June 21, 2019, Algonquin Energy Services Inc. and International Energy Partners, LLC filed motions to intervene out-of-time.

9. Notice of NB Energy Marketing's July 23, 2019 filing was published in the *Federal Register*,<sup>9</sup> with interventions and protests due on or before August 13, 2019. None was filed.

## **III. Discussion**

### **A. Procedural Matters**

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), the Maine Public Utilities Commission's notice of intervention and the Northern Maine Independent System Administrator, Inc.'s and Emera Maine's timely, unopposed motions to intervene serves to make them parties to the proceeding in Docket No. EL19-68-000.

11. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2019), the Commission will grant the late-filed motions to intervene in Docket No. EL19-68-000 filed by Algonquin Energy Services Inc. and International Energy Partners, LLC given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

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<sup>7</sup> 84 Fed. Reg. 14,359 (2019).

<sup>8</sup> 84 Fed. Reg. 25,249 (2019).

<sup>9</sup> 84 Fed. Reg. 36,909 (2019).

## **B. Substantive Matters**

12. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, horizontal and vertical market power.<sup>10</sup> As discussed below, we conclude that NB Energy Marketing satisfies the Commission's standards for market-based rate authority. In addition, we grant NB Energy Marketing's request for clarification of the May Order.

### **1. Request for Rehearing or Clarification**

13. NB Energy Marketing states that the New Brunswick balancing authority area consists of the Canadian Province of New Brunswick, the Canadian Province of Prince Edward Island, and a region of northern Maine (the Northern Maine Independent System Administrator region). NB Energy Marketing explains that the Commission found in an earlier proceeding that NB Energy Marketing must study the entire New Brunswick balancing authority area to maintain its market-based rate authority for wholesale sales in the Northern Maine Independent System Administrator region because the New Brunswick balancing authority area is a unique balancing authority area that encompasses both a small portion of northern Maine and portions of Canada and because NB Energy Marketing's affiliate owns generation in the Canadian portion of the balancing authority area.<sup>11</sup> NB Energy Marketing states that the Commission concluded that, even though the Northern Maine Independent System Administrator was not directly electrically interconnected to the United States electrical systems, wholesale sales in the Northern Maine Independent System Administrator region were subject to the Commission's jurisdiction because northern Maine "is in interstate commerce by virtue

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<sup>10</sup> *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, 119 FERC ¶ 61,295, at PP 62, 399, 408, 440, *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).

<sup>11</sup> NB Energy Marketing's June 24 Request at 2 (citing *Integritys Energy Services, Inc. v. New Brunswick Power Generation Corp.*, 127 FERC ¶ 61,232 (2009), *order on reh'g*, 134 FERC ¶ 61,243 (2011)).

of its connection with the rest of the United States through the transmission facilities of [NB Power].”<sup>12</sup>

14. NB Energy Marketing states that the May Order purports to revoke NB Energy Marketing’s market-based rate authority in the entirety of the New Brunswick balancing authority area, which includes a small section of northern Maine, but which consists primarily of the foreign provinces of New Brunswick and Prince Edward Island, Canada. NB Energy Marketing requests rehearing or, in the alternative, clarification, of the May Order to clarify that the Commission’s jurisdiction, as relevant in this proceeding, is limited to wholesale sales in the Northern Maine Independent System Administrator region and does not extend to any Canadian portions of the New Brunswick balancing authority area, such as the Canadian provinces of New Brunswick and Prince Edward Island.

15. As an initial matter, the May Order did not purport to revoke New Brunswick’s market-based rate authority but rather directed New Brunswick to show cause as to why the Commission should not revoke its market-based rate authority. We clarify here that the FPA section 206 proceeding instituted in Docket No. EL19-68-000 is to determine whether NB Energy Marketing’s market-based rate authority in the United States portion of the New Brunswick balancing authority area remains just and reasonable.<sup>13</sup>

## **2. Market-Based Rate Authorization**

### **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.<sup>14</sup> The Commission has stated that passage of both screens establishes a rebuttable presumption that the applicant does not possess horizontal market power, while failure of either screen creates a rebuttable presumption that the applicant has horizontal market power.<sup>15</sup> An applicant that fails one or both of the indicative screens is provided with several procedural options including the right to challenge the market power presumption by

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<sup>12</sup> NB Energy Marketing’s June 24 Request at 2 (quoting *Integritys Energy Services, Inc. v. New Brunswick Power Generation Corp.*, 134 FERC ¶ 61,243 at P 76)).

<sup>13</sup> Because we grant NB Energy Marketing’s alternative request for clarification, we dismiss as moot its request for rehearing.

<sup>14</sup> Order No. 697, 119 FERC ¶ 61,295 at P 62.

<sup>15</sup> *Id.* PP 33, 62-63.

submitting a DPT analysis, or, alternatively, sellers can accept the presumption of market power and adopt some form of cost-based market power mitigation.<sup>16</sup>

**i. Indicative Screens**

17. NB Energy Marketing prepared the pivotal supplier and wholesale market share screens for the ISO-NE market and the New Brunswick balancing authority area. NB Energy Marketing represents that it passes the pivotal supplier screen in each of these balancing authority areas. NB Energy Marketing represents that it passes the wholesale market share screen in the ISO-NE market<sup>17</sup> and fails the wholesale market share screen in the New Brunswick balancing authority area. Therefore, NB Energy Marketing performed a DPT for the New Brunswick balancing authority area.

18. We have reviewed NB Energy Marketing's pivotal supplier and wholesale market share screens and we find that NB Energy Marketing passes both the pivotal supplier and wholesale market share screens in the ISO-NE market. Accordingly, we find that NB Energy Marketing satisfies the Commission's requirements for market-based rate authority regarding horizontal market power in the ISO-NE market. NB Energy Marketing's DPT for the New Brunswick balancing authority area is discussed below.

**ii. Delivered Price Test**

19. As the Commission has previously explained, the DPT analysis identifies potential suppliers based on market prices, input costs, and transmission availability, and calculates each supplier's economic capacity and available economic capacity<sup>18</sup> for each season/load level.<sup>19</sup> The results of the DPT are used for pivotal supplier, market share,

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<sup>16</sup> *Id.* P 63.

<sup>17</sup> NB Energy Marketing's market shares for the ISO-NE market range from 5.2 to 5.5 percent.

<sup>18</sup> "Economic capacity" is the total generation capacity of a potential supplier that can compete in the destination market, given its costs and transmission availability. "Available economic capacity" is derived by subtracting each potential supplier's native load obligation from its total capacity and adjusting transmission availability accordingly. See Order No. 697, 119 FERC ¶ 61,295 at P 96 n.78.

<sup>19</sup> The seasons/load periods are as follows: super-peak, peak, and off-peak, for winter, shoulder, and summer periods and an additional highest super-peak for the summer.

and market concentration analyses.<sup>20</sup> Under the DPT, applicants must calculate market concentration using the Hirschman-Herfindahl Index (HHI).<sup>21</sup> An HHI of less than 2,500 in the relevant market for all season/load levels, in combination with a demonstration that the applicants are not pivotal and do not possess more than a 20 percent market share in any of the season/load levels, would constitute a showing of a lack of horizontal market power, absent compelling contrary evidence from interveners. A detailed description of the mechanics of the DPT analysis is provided in Order No. 697.<sup>22</sup>

20. As with the indicative screens, applicants and interveners may present evidence, such as historical sales and transmission data, which may be used to calculate market shares and market concentration and to refute or support the results of the DPT analysis. In Order No. 697, the Commission encouraged applicants to present the most complete analysis of competitive conditions in the market as the data allow.<sup>23</sup>

**(a) NB Energy Marketing's Delivered Price Test**

21. NB Energy Marketing's DPT analysis for the New Brunswick balancing authority area indicates that NB Energy Marketing is a pivotal supplier during eight seasons/load periods using the economic capacity measure, but is not pivotal in any season/load period using the available economic capacity measure. When the economic capacity measure is used, NB Energy Marketing reports market shares above 20 percent in all season/load periods and HHIs ranging from 2,020 to 4,404. When the available economic capacity measure is used, NB Energy Marketing reports market shares below 20 percent in all season/load periods, ranging from 0.1 percent to 16.7 percent, with HHIs ranging from 1,582 to 3,504.<sup>24</sup> NB Energy Marketing also filed two sensitivity analyses showing that when prices are increased or decreased by 10 percent, the results of the DPT change very little under both the economic capacity and available economic capacity measures.

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<sup>20</sup> See Order No. 697, 119 FERC ¶ 61,295 at P 106.

<sup>21</sup> The HHI is the sum of the squared market shares. For example, in a market with five equal size firms, each would have a 20 percent market share. For that market,  $HHI = (20)^2 + (20)^2 + (20)^2 + (20)^2 + (20)^2 = 400 + 400 + 400 + 400 + 400 = 2,000$ .

<sup>22</sup> Order No. 697, 119 FERC ¶ 61,295 at PP 104-117.

<sup>23</sup> *Id.* PP 71, 111.

<sup>24</sup> Under the available economic capacity measure, NB Energy Marketing exceeds the 2,500 HHI threshold in a total of 6 season/load periods.

22. NB Energy Marketing's DPT used simultaneous transmission import limits (SIL) for the New Brunswick balancing authority area that are based on the average daily peak hour simultaneous Total Transfer Capability (TTC). NB Energy Marketing states that it uses TTC values previously approved by the Commission in 2017,<sup>25</sup> with updates to reflect a 350 megawatt derating of the TTC from ISO-NE to New Brunswick in connection to the Maine Power Reliability Program projects, which included new transmission facilities and autotransformers in Maine.<sup>26</sup>

**(b) Commission Determination Concerning the  
New Brunswick Balancing Authority Area**

23. After weighing all of the relevant factors, we find that, on balance, NB Energy Marketing has rebutted the presumption of market power for the New Brunswick balancing authority area. The results of NB Energy Marketing's DPT analysis vary depending on whether the economic capacity or available economic capacity measure is used. The Commission has stated that the DPT does not function like the initial screens – i.e., failure of either the economic capacity or available economic capacity analyses does not result in an automatic failure of the test as a whole.<sup>27</sup> The Commission weighs the results of the economic capacity and the available economic capacity analyses and considers the arguments of the parties.<sup>28</sup> In the DPT analysis, available economic capacity accounts for native load requirements. As the Commission explained in Order No. 697:

[I]n markets where utilities retain significant native load obligations, an analysis of available economic capacity may more accurately assess an individual seller's competitiveness, as well as the overall competitiveness of a market, because available economic capacity recognizes the native load obligations of the sellers. On the other hand, in markets where the sellers have been predominantly relieved of their native load obligations, an analysis of economic capacity

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<sup>25</sup> *New Brunswick Energy Marketing Corp.*, 161 FERC ¶ 61,096 (2017).

<sup>26</sup> NB Energy Marketing's April 4 Filing, Solomon Aff. at 9.

<sup>27</sup> *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018, *order on reh'g*, 108 FERC ¶ 61,026, at P 26 (2004); *Kansas City Power and Light Co.*, 113 FERC ¶ 61,074, at P 30 (2005).

<sup>28</sup> Order No. 697, 119 FERC ¶ 61,295 at P 112.



may more accurately reflect market conditions and a seller's relative size in the market.<sup>29</sup>

24. Because NB Energy Marketing's affiliate, NB Power, has native load obligations, we find that the available economic capacity measure of the DPT more accurately captures conditions in the relevant market. As noted above, using the available economic capacity measure, NB Energy Marketing's study indicates that it is not pivotal, and has less than a 20 percent market share in all season/load periods. However, NB Energy Marketing exceeds the 2,500 HHI threshold in 6 of the 10 season/load periods. In these season/load periods NB Energy Marketing's market shares ranged from 0.2 to 0.7 percent. NB Energy Marketing states that while market concentration exceeds the 2,500 HHI threshold in several season/load periods, NB Energy Marketing is not significantly contributing to the market concentration and not the driver of market concentration, as shown by its corresponding market shares.<sup>30</sup>

25. In addition, NB Energy Marketing provided sensitivity analyses, which separately analyze what effect, if any, an increase of 10 percent or a decrease of 10 percent of the market price would have on the results of the DPT analysis. In the sensitivity analyses, market concentration, as measured by the HHI, continues to exceed the 2,500 threshold,<sup>31</sup> but market shares remain below 20 percent in all 10 season/load periods using the available economic capacity measure. In addition, NB Energy Marketing is not pivotal in either sensitivity when using the available economic capacity measure. NB Energy Marketing's sensitivity analyses indicate that the results from the DPT do not vary significantly in response to a small variation in price.<sup>32</sup>

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<sup>29</sup> *Id.*

<sup>30</sup> NB Energy Marketing's April 4 Filing, Solomon Aff. at 13.

<sup>31</sup> In the increase of 10 percent market price sensitivity, NB Energy Marketing exceeds the 2,500 HHI threshold in 5 season/load periods. In the decrease of 10 percent market price sensitivity, NB Energy Marketing exceeds the 2,500 HHI threshold in 6 season/load periods.

<sup>32</sup> We do not address the adjusted SIL values that NB Energy Marketing submitted with its DPT because the overall DPT outcomes do not change depending on which SIL values are used. The Commission has stated that a filer may propose SIL values that differ from Commission-accepted SIL values, but that "when the overall results of the screens would be unchanged, i.e., the seller would pass using either set of SIL values or fail using either set of SIL values, the order would be based on the Commission-accepted

**b. Vertical Market Power**

26. 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 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).<sup>33</sup>

27. NB Energy Marketing states that NB Power provides open and non-discriminatory access to its transmission system in accordance with the Electricity Act, which was passed by the New Brunswick Legislative Assembly and became effective on October 1, 2013, and NB Power's OATT, which has been reviewed by the Commission. NB Energy Marketing states that NB Power has made no changes to its OATT since it was last reviewed by the Commission.

28. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.<sup>34</sup> The Commission requires a seller to provide a description of its ownership or control of, or affiliation with an entity that owns or controls, intrastate natural gas transportation, storage or distribution facilities, and physical coal supply sources and ownership of or control over who may access transportation of coal supplies (collectively, inputs to electric power production).<sup>35</sup> The Commission also requires sellers to make an affirmative statement that they have not erected barriers to entry into the relevant market and will not erect barriers to entry into

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SIL values and would not address the seller-supplied SIL values.” *Southwestern Public Service Co.*, 166 FERC ¶ 61,054, at P 14 (2019).

<sup>33</sup> See *Open Access and 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 12-14 (2015).

<sup>34</sup> Order No. 697, 119 FERC ¶ 61,295 at P 440.

<sup>35</sup> Order No. 697-A, 123 FERC ¶ 61,055 at P 176. See also *Refinements to Policies and Procedures for Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 816, 153 FERC ¶ 61,065, at PP 207-212 (2015), *order on reh'g*, Order No. 816-A, 155 FERC ¶ 61,188 (2016).

the relevant market.<sup>36</sup> 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.<sup>37</sup>

29. NB Energy Marketing represents that neither it nor its affiliate, NB Power, owns or controls intrastate natural gas transportation or storage and that neither it nor its affiliate owns or controls sources of coal supplies or access to the transportation of coal supplies such as barges and rail cars in the United States.<sup>38</sup>

30. Finally, consistent with Order No. 697, NB Energy Marketing states that neither it nor its affiliate has erected barriers to entry into the relevant markets, and will not erect barriers to entry into the relevant markets.

31. Based on NB Energy Marketing's representations, we find that NB Energy Marketing satisfies the Commission's requirements for market-based rates regarding vertical market power.

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<sup>36</sup> Order No. 697, 119 FERC ¶ 61,295 at P 447. *See also* Order No. 816, 153 FERC ¶ 61,065 at PP 354, 356.

<sup>37</sup> Order No. 697, 119 FERC ¶ 61,295 at P 446.

<sup>38</sup> NB Energy Marketing's April 4 Filing at 11, Solomon Aff. at 3, 15.

### 3. Reporting Requirements

32. An entity with market-based rate authorization must file an Electric Quarterly Report (EQR) with the Commission, consistent with Order Nos. 2001<sup>39</sup> and 768,<sup>40</sup> to fulfill its responsibility under FPA section 205(c)<sup>41</sup> to have rates on file in a convenient form and place.<sup>42</sup> NB Energy Marketing must file EQRs electronically with the Commission consistent with the procedures set forth in Order No. 770.<sup>43</sup> Failure to timely and accurately file an EQR is a violation of the Commission's regulations for which NB Energy Marketing may be subject to refund, civil penalties, and/or revocation of market-based rate authority.<sup>44</sup>

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<sup>39</sup> *Revised Public Utility 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). *See also Filing Requirements for Electric Utility Service Agreements*, 155 FERC ¶ 61,280 (2016) (order clarifying reporting requirements and updating data dictionary).

<sup>40</sup> *Electricity Mkt. Transparency Provisions of Section 220 of the Federal Power Act*, Order No. 768, 140 FERC ¶ 61,232 (2012), *order on reh'g*, Order No. 768-A, 143 FERC ¶ 61,054 (2013).

<sup>41</sup> 16 U.S.C. § 824d(c).

<sup>42</sup> *See Revisions to Electric 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).

<sup>43</sup> Order No. 770, 141 FERC ¶ 61,120.

<sup>44</sup> 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.

33. NB Energy Marketing must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.<sup>45</sup>

34. Additionally, NB Energy Marketing must file updated market power analyses for all regions in which it is designated as a Category 2 seller in compliance with the regional reporting schedule. The Commission also reserves the right to require such an analysis at any intervening time.<sup>46</sup>

**4. Docket No. EL19-68-000**

35. Based on the above discussion, we find that there is no further need for the FPA section 206 proceeding instituted in Docket No. EL19-68-000. Accordingly, we will terminate this FPA section 206 proceeding.

The Commission orders:

(A) NB Energy Marketing's notice of change in status is hereby accepted, as discussed in the body of this order.

(B) NB Energy Marketing's request for clarification is hereby granted, as discussed in the body of this order.

(C) The section 206 proceeding in Docket No. EL19-68-000 is hereby terminated, as discussed in the body of this order.

(D) NB Energy Marketing is hereby directed to file updated market power analyses according to the regional reporting schedule, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>45</sup> *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 110 FERC ¶ 61,097, *order on reh'g*, 111 FERC ¶ 61,413 (2005); 18 C.F.R. § 35.42 (2019).

<sup>46</sup> Order No. 697, 119 FERC ¶ 61,295 at P 853.