ORDER ACCEPTING UPDATED MARKET POWER ANALYSIS

(issued February 15, 2018)

1. On July 13, 2016, as amended on December 23, 2016, April 28, 2017, and July 14, 2017, Deseret Generation & Transmission Co-operative, Inc. (Deseret) filed an updated market power analysis for the Northwest Region in compliance with the regional reporting schedule adopted in Order No. 697. Deseret also submitted an amended market-based rate tariff to request authority to engage in sales of ancillary services in

1 Deseret was granted an extension of the June 30, 2016 deadline to file its updated market power analysis for the Northwest region. See Deseret Generation and Transmission Co-operative, Inc., Docket No. ER10-1633-000 (July 12, 2016) (Notice of Extension of Time).

additional markets at market-based rates.\textsuperscript{3} In this order, we accept Deseret’s updated market power analysis and find that Deseret continues to satisfy the Commission’s standards for market-based rate authority. Additionally, we accept Deseret’s amended market-based rate tariff, effective September 12, 2016, as requested.

I. \textbf{Background}

2. Deseret represents that it is a generation and transmission electric cooperative that became a public utility in 1996 after paying off its Rural Utility Service Debt.\textsuperscript{4} Deseret received market-based rate authority in 1999.\textsuperscript{5} Deseret also maintains a service agreement on file with the Commission for each of its six members, under which Deseret supplies cost-based requirements service.\textsuperscript{6} Deseret’s owned generation resources consist of a 96 percent ownership interest in the 458 megawatt (MW) Bonanza I coal-fired steam-electric generating unit, and a 25 percent ownership interest in the 430 MW Hunter 2 coal-fired steam-electric generating unit. Deseret states that both generating units are in the PacifiCorp-East (PACE) balancing authority area, and that it does not operate its own balancing authority area.\textsuperscript{7}

3. Deseret states that within the PACE balancing authority area, Deseret has ownership rights in four transmission lines, a substation at Bonanza I, and certain facilities in the Upalco substation.\textsuperscript{8} Deseret states that the terminals of Deseret’s

\textsuperscript{3} Deseret requests authorization to sell ancillary services in the market administered by California Independent System Operator Corp. Deseret also requests authorization to engage in the sale of certain ancillary services as a third-party provider in other markets.

\textsuperscript{4} July 13, 2016 Filing at 2.

\textsuperscript{5} \textit{Id.} (citing MEP Investments, LLC, 87 FERC \textsuperscript{\textcopyright} 61,209 (1999)).

\textsuperscript{6} Deseret’s member cooperatives are Bridger Valley Electric Association, Dixie-Escalante Rural Electric Association, Inc., Flowell Electric Association, Inc., Garkane Energy, Moon Lake Electric Association (Moon Lake), and Mt. Wheeler Power, Inc.

\textsuperscript{7} July 13, 2016 Filing at 3.

\textsuperscript{8} Deseret states that the four transmission lines are: (1) the Bonanza-Mona 345-kV line; (2) the Bonanza-Upalco 138-kV line; (3) the Bonanza-Rangely 138-kV line; and (4) the Bonanza-Vernal 138-kV line. Deseret states that it owns a 94 percent interest in the first three lines and appurtenant facilities and a 100 percent interest in the fourth line.
four transmission lines are also within the PACE balancing authority area.\textsuperscript{9} Deseret states that any party seeking to use Deseret’s transmission system, including Deseret for any of its own wholesale sales, is required to obtain transmission service under Deseret’s Open Access Transmission Tariff (OATT). Deseret has a wholly-owned subsidiary, Blue Mountain Energy (Blue Mountain), which operates the Deserado coal mine near Rangely, Colorado, and a 35-mile electric railway to transport coal to the Bonanza I facility.

4. Deseret states that under resource integration requirements with each of its members, Deseret integrates the resources owned or purchased by its members with Deseret’s own coal-fired generation and its short-term purchases, if any.\textsuperscript{10} Resources owned or purchased by members of Deseret include long-term power purchase contracts with the Western Area Power Administration-Salt Lake Area Integrated Projects totaling 113 MW in the summer season and 126 MW in the winter season. Additionally, Deseret represents that resources owned or purchased by members of Deseret include less than 15 MW of behind-the-meter generation from small hydroelectric projects with capacity substantially less than the minimum hourly load for the respective member.

5. Deseret also represents that its members own or have long-term power purchase entitlements in the Intermountain Power Project (Intermountain) located in the generation-only balancing authority area of Los Angeles Department of Water and Power (LADWP), “but have laid off these purchase entitlements by contract to certain municipal systems located in Southern California, including LADWP.”\textsuperscript{11}

\textsuperscript{9} July 13, 2016 Filing at 4.

\textsuperscript{10} Id. at 5.

\textsuperscript{11} Deseret states that such entitlements can be recalled by its members, but with restrictions as to the amount of the recall and the requirement of a showing that certain criteria are met by the recall. Deseret states that to recall more than 50 MW in any season, in addition to meeting the recall provisions, requires at least 15 months’ advance written notice. Deseret’s members did not recall any portion of their Intermountain capacity during this period. Id. at 5-6.
6. Deseret states that it passes each indicative screen by an ample margin for the relevant geographic markets\textsuperscript{12} and continues to lack horizontal and vertical market power in those markets. Deseret asserts that it satisfies the Commission’s requirements for market-based rate authority.


II. Notice of Filings and Responsive Pleadings


\textsuperscript{12} Deseret states that the relevant geographic markets include PACE (the market where Deseret’s generation assets are located) and all first tier balancing authority areas, which include the Arizona Public Service Company (Arizona), Idaho Power Company (Idaho Power), NorthWestern Energy (Northwestern), NV Energy, Inc. (NV Energy), Western Area Power Administration Colorado Missouri (WACM), and Western Area Power Administration Lower Colorado (WALC) balancing authority areas.

III. Discussion

10. As discussed below, we will deny EP Energy’s request for a hearing regarding Deseret’s market-based rate authority, and we will accept Deseret’s updated market power analysis and market-based rate tariff revisions.

A. Procedural Matters


12. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2017), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept the answers submitted in this proceeding because they have provided information that assisted us in our decision-making process.

B. Market-Based Rate Authorization

13. 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.\(^\text{14}\)

1. Horizontal Market Power

a. Pass-Through Rates Charged to Moon Lake

i. EP Energy’s Protest

14. In its September 12, 2016 protest, EP Energy contends that Deseret has market power with respect to sales it makes to its members for delivery to its large industrial customers. Therefore, EP Energy requests that the Commission establish hearing procedures to revoke or limit Deseret’s market-based rate authority as to those sales.

15. According to EP Energy, the market-based rates charged to Moon Lake\(^\text{15}\) are passed through to its retail industrial customers – those with loads in excess of 2.5 MW –

\(^\text{14}\) Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 62, 399, 408, 440.

\(^\text{15}\) EP Energy is a retail customer of Deseret’s member distribution cooperative, Moon Lake.
while non-industrial retail customers are charged a pass through of the cost-based rates. EP Energy argues that the pass-through rates charged to Moon Lake’s retail industrial customers exceed the prevailing market price by 30 to 40 percent. Further, EP Energy argues that the rates charged to industrial load are significantly higher than the cost-based rates that are passed through to Moon Lake’s non-industrial customers, resulting in the subsidization of non-industrial customers by industrial customers. Therefore, EP Energy argues that Deseret exerts market power with respect to sales it makes to its member cooperatives for delivery to captive customers such as EP Energy, and that this market power “should be revoked or limited as to such sales.”

ii. **Answers**

16. In its September 23, 2016 answer, Deseret asserts that EP Energy’s concerns are not properly addressed before the Commission. Deseret argues that EP Energy has failed to rebut its demonstration that it lacks horizontal and vertical market power in the relevant markets, and claims that EP Energy’s real concern is about the non-jurisdictional retail rate EP Energy pays to Moon Lake. Deseret also argues that EP Energy’s arguments constitute an impermissible collateral attack on a 2006 Commission order. Deseret maintains that it satisfies the Commission’s requirements for continued authority to sell at market-based rates and renews its request for continued authorization to sell capacity, energy, and ancillary services at market-based rates.

17. In its October 11, 2016 response to Deseret, EP Energy maintains that it has made a prima facie case that Deseret holds market power in connection with its sale of electricity to Moon Lake for delivery to EP Energy. EP Energy asserts that Deseret’s market power is evidenced by the huge disparity between the rates Deseret seeks to impose on Moon Lake for electricity to be delivered to EP Energy, and the prevailing market prices.

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17 Id. at 4.

18 Id. at 6.

19 Id. at 5.


21 Id. at 15.
market price for equivalent power purchased at one of the proximate trading hubs and delivered to Moon Lake.\textsuperscript{22}

18. EP Energy also contends that its claims are properly before the Commission even though it is a retail customer of Moon Lake. EP Energy argues that it is directly affected by the rates Deseret charges Moon Lake for electricity to be delivered to EP Energy and that Rule 214 states on its face that a consumer has an “interest which may be directly affected by the outcome of the proceeding.”\textsuperscript{23} EP Energy adds that in many prior cases, the Commission has considered the concerns raised by the ultimate consumer regarding the rates charged by wholesale suppliers such as Deseret.\textsuperscript{24} As to Deseret’s collateral estoppel argument, EP Energy disagrees that the issues in the Deseret 2006 Order are the same as those raised in this proceeding.

19. In EP Energy’s May 19, 2017 answer,\textsuperscript{25} EP Energy reiterates its concern that Deseret’s rates are significantly higher than the prevailing three- to seven-year market price for firm power at the proximate trading hubs and renews its request that the Commission set this matter for hearing.\textsuperscript{26}

20. In its June 5, 2017 answer, Deseret claims that empirical data fully refutes EP Energy’s claim that Deseret is exerting market power over Moon Lake. According to Deseret, Energy Information Administration (EIA) data show that as energy prices at Palo Verde have fallen over the last six years, retail rates in the Mountain states (Arizona, Colorado, Idaho, Montana, Nevada, New Mexico and Wyoming) have generally been on the rise.\textsuperscript{27} Deseret maintains that this observed divergence between retail utility rates and wholesale energy trading is the result of changing market fundamentals and not the exercise of market power.\textsuperscript{28} Deseret adds that if one were to compare EP Energy’s “all in” rate for retail electric service from Moon Lake to the average retail rate for the

\textsuperscript{22} EP Energy October 11, 2016 Answer at 3-4.

\textsuperscript{23} Id. at 2 (citing 18 C.F.R. § 385.214(b)(2)(ii) (2017)).

\textsuperscript{24} Id.

\textsuperscript{25} EP Energy submitted this answer after Deseret filed its April 28, 2017 amendment.

\textsuperscript{26} EP Energy May 19, 2017 Answer at 1.

\textsuperscript{27} Deseret June 5, 2017 Answer at 3.

\textsuperscript{28} Id. at 10.
Mountain states reported by EIA, EP Energy’s rates are approximately 13 percent below the reported EIA average and are also below the rates paid for comparable service in other parts of the United States.29

21. In its June 20, 2017 answer, EP Energy maintains that its protest addresses wholesale rates and contends that Deseret has improperly attempted to reconfigure this proceeding as one involving retail rates. EP Energy also urges the Commission to reject the data submitted by Deseret regarding retail rates in the Mountain West and Texas.30

iii. Commission Determination

22. The concern raised in EP Energy’s protest about cross subsidies from captive customers is similar to an argument raised in the proceeding that gave rise to the 2006 Deseret Order, in which EP Energy’s predecessor argued that Deseret was mandating a market-based pricing mechanism that its member-owners would charge to potentially captive retail customers and that would result in cross subsidization from those customers to Deseret in the absence of the Commission’s affiliate sales restrictions.31 The Commission rejected that argument, finding that “affiliate abuse is not a concern for cooperatives owned by other cooperatives, where the cooperative ratepayers are its members. Accordingly, wholesale power sales to its members by Deseret, a cooperative whose customers are its member cooperatives, do not raise issues of affiliate abuse and do not require prior approval from the Commission as suggested by the protestors.”32

23. Similarly, in Order No. 697, the Commission dismissed requests from EP Energy that the Commission’s affiliate restrictions should apply to jurisdictional cooperatives, stating: “Where a cooperative is involved and the cooperative’s members are both the ratepayers and the shareholders, any profits earned by the cooperative will inure to the benefit of the cooperative’s ratepayers. As such, no potential danger exists of shifting benefits from the ratepayers to the shareholders.”33

24. EP Energy has not explicitly raised affiliate abuse concerns in the instant case but has alleged that the “market-based rate” Deseret charges Moon Lake that is passed on to

29 Id. at 3.


31 See Deseret 2006 Order, 115 FERC ¶ 61,306.

32 Id. P 14.

33 Order No. 697-A, FERC Stats. & Regs 31,268 at P 211.
EP Energy exceeds prevailing market prices. Accordingly, EP Energy is essentially asking the Commission to apply scrutiny under section 205 of the Federal Power Act to the sale between Deseret and Moon Lake, as would be required if Deseret was subject to the affiliate sales restrictions. We decline to do so because, as the Commission has stated in the Deseret 2006 Order and in Order No. 697, Deseret is not subject to the affiliate sales restrictions with respect to sales to its members.

b. **Indicative Screens**

25. The Commission has adopted two indicative screens for assessing horizontal market power: the pivotal supplier screen and the wholesale market share screen.\(^{34}\) 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.\(^{35}\)

26. Deseret states that it has prepared the pivotal supplier and wholesale market share screens for the Arizona, Idaho Power, PACE, NorthWestern, NV Energy, WACM, and WALC balancing authority areas. As discussed below, Commission staff issued several data requests relating to the screen, which precipitated amendments, as discussed below.

i. **Data Requests and Amendments**

27. On December 12, 2016, Commission staff requested that Deseret (1) make publicly available certain workpapers submitted in conjunction with its July 13, 2016 triennial market power update (or alternatively explain why such workpapers should remain confidential) and (2) represent or otherwise explain whether it owns, controls, or is affiliated with an entity that owns or controls intrastate natural gas storage facilities. On December 23, 2016, Deseret filed an amendment making the requested workpapers publicly available and stating that it does not own or control, and is not affiliated with an entity that owns or controls, intrastate natural gas storage facilities.

28. On March 28, 2017, Commission staff issued a data request stating that Deseret had included generators in its market power studies that are not physically located within the relevant balancing authority area, and requested that Deseret identify and justify why the full capacity of such generators was included as installed capacity rather than as a *pro-rata* import in the market power analysis. On April 28, 2017, Deseret filed an amendment stating that it found errors in all of its studies and submitted revised

\(^{34}\) *Id.* P 62.

\(^{35}\) *Id.* PP 33, 62-63.
indicative screens. Deseret states that it continues to pass the indicative screens after removing the generation.36

29. On June 19, 2017, Commission staff issued a data request directing Deseret to submit revised screens allocating the generation capacity of all jointly-owned power plants to the plant owner’s balancing authority area based on ownership percentage. On July 14, 2017, Deseret filed an amendment stating that instead of adjusting its data, it uses NorthWestern’s data, which allocates jointly-owned generating facilities to various balancing authority areas.37 Deseret represents that using NorthWestern’s data, it passes in all but the Idaho Power and WALC balancing authority areas. Deseret states that the results for the Idaho Power and WALC balancing authority areas are false positives. Deseret further states that using Idaho Power’s own market power analysis to study the Idaho Power balancing authority area,38 and Calpine’s market power analysis to study the WALC balancing authority area,39 Deseret passes the indicative screens in both balancing authority areas. Deseret also represents that 126 MW of capacity imported from Intermountain and located in LADWP was “laid off by Deseret under long-term contract to certain municipal systems located in southern California and was not recalled pursuant to any contract rights with those municipal systems.”40 Deseret states that it excluded this 126 MW of imports in the screens in this latest amendment because it previously was left in as a simplifying conservative assumption. Deseret states that when this 126 MW is removed, the indicative screens are “reduced significantly.”

ii. Answers to Amendments

30. In response to Deseret’s July 14, 2017 amendment, EP Energy states that Deseret’s screen failures in the Idaho Power and WALC balancing authority areas create a rebuttable presumption of horizontal market power and the Commission should institute a proceeding under section 206 of the FPA concerning the justness and reasonableness of

36 April 28, 2017 Amendment at 1, 2.


38 July 14, 2017 Amendment at 2 (citing Idaho Power Company, Docket No. ER16-2091-000 (filed June 30, 2016)).

39 Id. at 3 (citing Calpine Energy Services, L.P., Docket No. ER10-2042-021 (Nov. 2, 2016) (delegated letter order)).

40 Id. at 2.
Deseret’s market based rates.\textsuperscript{41} EP Energy states that the Commission should further require Deseret to submit a delivered price test and/or alternative evidence such as historical sales and transmission data to rebut the presumption that it has the ability to exercise horizontal market power in the WALC and Idaho Power balancing authority areas. EP Energy argues that if Deseret does not submit such evidence, the Commission should require Deseret to, in the alternative, (1) file a mitigation proposal tailored to its particular circumstances that would eliminate the ability to exercise market power or (2) inform the Commission that Deseret will adopt the Commission's default cost-based rates or propose other cost-based rates and submit cost support for such rates.\textsuperscript{42}

31. In its August 21 answer, Deseret contends that EP Energy’s claims have no merit, and asserts that it did not fail the screens in the Idaho Power and WALC balancing authority areas. Deseret states that it used the NorthWestern data because the Commission specifically referenced the Colstrip power plant in its data request, which included a citation to Deseret’s screens for the NorthWestern balancing authority area.\textsuperscript{43} Regarding the two balancing authority areas – Idaho Power and WALC – in which it initially did not pass, Deseret states that these results were not failures, but were instead the result of (1) simplifying assumptions initially made by Deseret and (2) concerns about the first-tier market data presented in NorthWestern’s triennial.\textsuperscript{44}

32. In response to Deseret’s August 21, 2017 answer, EP Energy reiterates its request that the Commission institute a proceeding under section 206 of the FPA and require Deseret to show cause as to why the Commission should not revoke Deseret’s market-based rate authority.\textsuperscript{45}

\textbf{iii. Commission Determination}

33. We have reviewed the horizontal market power screens submitted in Deseret’s July 14, 2017 amendment and, based on Deseret’s representations for the NV Energy, PACE, Arizona, and WACM balancing authority areas, Deseret passes both the pivotal supplier and wholesale market share screens in those balancing authority areas thereby giving rise to the presumption that Deseret does not possess horizontal market power in

\textsuperscript{41} EP Energy August 4, 2017 Comments at 2.

\textsuperscript{42} Id. at 4.

\textsuperscript{43} Deseret August 21, 2017 Answer at 3.

\textsuperscript{44} Id.

those balancing authority areas. However, we note several errors in the preparation of the indicative screens for the NorthWestern, Idaho Power and WALC balancing authority areas. When these errors are corrected, as discussed below, Deseret passes the indicative screens in these balancing areas as well.

34. We note two errors in the indicative screens submitted for the NorthWestern balancing authority area. First, Deseret incorrectly reported 7,806 MW of Non-affiliate Installed Capacity in the pivotal supplier screen. Using the corrected figure from NorthWestern’s study (1,826 MW), Deseret passes the pivotal supplier screen in the NorthWestern balancing authority area. Second, Deseret did not include any Non-affiliate Uncommitted Capacity Imports in its market share screen, which caused mathematical errors in calculating its market shares. However, using the Commission-accepted SIL value to calculate the correct Non-affiliate Uncommitted Capacity Imports, Deseret passes the market share screen in the NorthWestern balancing authority area.

35. With regard to the Idaho Power and WALC screens, Deseret represents that its screens rely on the data in Idaho Power’s screens for the Idaho Power balancing authority area as submitted in Docket No. ER16-2091-000. However, those screens have not been accepted by the Commission. For this reason, we use data from Avista’s recently accepted market power analysis of the Idaho Power balancing authority area. Similarly, Deseret uses Calpine’s screen data for the WALC balancing authority. However, because Calpine’s market-based rate authority is conditioned on the commitment that it does not sell energy in the WALC balancing authority area, the Commission did not make a finding accepting Calpine’s screen data for WALC. For this reason, we use data from PacifiCorp’s recently accepted market power analysis of the WALC balancing authority area. In order to facilitate processing of Deseret’s filing, we find it appropriate to

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46 See NorthWestern Corporation, Docket No. ER11-1858-006 at Exhibit JRS 4, Lines A and E (filed June 29, 2016); Black Hills, Docket No. ER11-4436-003 (Nov. 17, 2017) (delegated letter order) (accepting the 2016 triennial filings of the Northwest transmission owners).

47 For the market share screen, the SIL value is equal to the sum of the Seller’s Uncommitted Capacity Imports and Non-affiliate Uncommitted Capacity Imports. Deseret included the Seller’s Uncommitted Capacity Imports, so the Non-affiliate Uncommitted Capacity Imports was calculated using the Commission-approved SIL. See Avista Corporation, Docket No. ER10-2290-005 (July 19, 2017) (delegated letter order).


49 Id.
review Deseret’s screens for the Idaho Power and WALC balancing authority areas using the Avista and PacifiCorp studies, respectively.

36. Further, we find that Deseret did not provide sufficient information to support Deseret’s decision to deduct as long-term firm sales the 126 MW of imports “laid off by Deseret.” Without certainty of the nature of the related long-term contract, we will not allow Deseret to deduct the 126 MW as long-term firm sales. Instead, we have prorated the imports that had been deducted to reflect Deseret’s portion of the Commission-accepted SIL values for the Idaho Power and WALC balancing authority areas. Using the prorated amount of the previously subtracted imports, and substituting Avista’s data for the Idaho Power study and PacifiCorp’s data for the WALC study, Deseret passes the market share and pivotal supplier indicative screens in the Idaho Power and WALC balancing authority areas.

37. Finally, we disagree with EP Energy that Deseret’s “admitted” screen failures in Idaho Power and WALC justify a section 206 proceeding. Deseret did not fail the Idaho Power and WALC screens submitted to the Commission. Although there were errors in these screens, in identifying the errors and making the adjustments described above, we find that Deseret passes both indicative screens in all markets, thereby giving rise to the rebuttable presumption that Deseret lacks horizontal market power in these markets. Further, as discussed in section III.B.1.a above, EP Energy’s arguments concerning the pass-through rates charged to Moon Lake are unpersuasive and do not rebut this presumption.

2. **Vertical Market Power**

38. 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 before granting a seller market-based rate authorization. Deseret represents that it owns four transmission facilities in the PacifiCorp East balancing authority area and has an open access transmission tariff on file with the Commission, and therefore has mitigated any transmission market power.

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50 July 14, 2017 Amendment at 2.


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

53 *Deseret Generation & Transmission Co-operative, Inc.*, Docket
39. The Commission also considers a seller’s ability to erect other barriers to entry as part of the vertical market power analysis.\textsuperscript{54} The Commission requires a seller to provide a description of its ownership or control of, or affiliation with an entity that owns or controls, intrastate natural gas transportation, storage or distribution facilities; sites for generation capacity development; and physical coal supply sources and ownership of or control over who may access transportation of coal supplies (collectively, inputs to electric power production).\textsuperscript{55} 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.\textsuperscript{56} 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 erect barriers to entry but will allow intervenors to demonstrate otherwise.\textsuperscript{57}

40. Deseret states that it does not control, and is not affiliated with an entity that owns or controls, intrastate natural gas transportation, natural gas storage, or intrastate natural gas distribution facilities.\textsuperscript{58} Deseret states that since being granted market-based rate authority in 1999, Deseret has not expanded or changed in any significant regard its ownership or operation of its subsidiary Blue Mountain, which provides and transports coal to Deseret’s Bonanza I generation facility.\textsuperscript{59} Finally, consistent with Order No. 697, Deseret affirmatively states that it has not, possesses no ability to, and will not erect barriers to entry in the relevant markets, either directly or through an affiliate.

41. Based on Deseret’s representations, we find that Deseret satisfies the Commission’s requirements for market-based rates regarding vertical market power.

\textsuperscript{54} Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 440.

\textsuperscript{55} Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

\textsuperscript{56} Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

\textsuperscript{57} Id. P 446.

\textsuperscript{58} July 13, 2017 Filing at 9; December 23, 2016 Amendment at 2.

\textsuperscript{59} July 13, 2017 Filing at 9-10.
C. **Tariff Amendment**

42. Deseret seeks to amend its market-based rate tariff to engage in sales of ancillary services in additional markets at market-based rates. We find that Deseret’s tariff amendment is consistent with the directives of Order Nos. 697-A, 784, and 819 and is hereby accepted for filing, effective September 12, 2016, as requested.

D. **Reporting Requirements**

43. An entity with market-based rate authorization must file an Electric Quarterly Report (EQR) with the Commission, consistent with Order Nos. 2001 and 768 to

60 Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at Appendix C.


We note that Deseret 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 requirements to offer ancillary services to its own customers. If Deseret seeks such authority, it must make the required showing and receive Commission authorization prior to making such sales. Order No. 784, FERC Stats. & Regs. ¶ 31,349 at PP 200-202.


fulfill its responsibility under FPA section 205(c)\textsuperscript{66} to have rates on file in a convenient form and place.\textsuperscript{67} Applicant must file EQRs electronically with the Commission consistent with the procedures set forth in Order No. 770.\textsuperscript{68} 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.\textsuperscript{69}

44. Deseret 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.\textsuperscript{70}

45. Additionally, Deseret must file updated market power analyses in compliance with the regional reporting schedule adopted in Order No. 697. The Commission also reserves the right to require an analysis at any intervening time.\textsuperscript{71}

The Commission orders:

(A) Deseret’s updated market power analysis is hereby accepted for filing, as discussed in the body of this order.

\textsuperscript{66} 16 U.S.C. § 824d(c) (2012).


\textsuperscript{68} Order No. 770, FERC Stats. & Regs. ¶ 31,338.

\textsuperscript{69} The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2017). 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.

\textsuperscript{70} Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority, Order No. 652, FERC Stats. & Regs. ¶ 31,175 (Cross-referenced at 110 FERC ¶ 61,097), order on reh’g, 111 FERC ¶ 61,413 (2005); 18 C.F.R. § 35.42 (2017).

\textsuperscript{71} Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 853.
(B) Deseret’s proposed revisions to its market-based rate tariff are hereby accepted, effective September 12, 2016, as requested.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,
Deputy Secretary.