

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

96WI 8ME, LLC) **Docket No. ER17-____-000**

**PETITION OF 96WI 8ME, LLC FOR ACCEPTANCE OF
MARKET-BASED RATE TARIFF, WAIVERS AND BLANKET APPROVALS
AND REQUEST FOR EXPEDITED CONSIDERATION**

Pursuant to Section 205 of the Federal Power Act (“FPA”),¹ Part 35 of the regulations of the Federal Energy Regulatory Commission (“FERC” or “Commission”),² and the requirements of Order No. 697³ and Order No. 816,⁴ 96WI 8ME, LLC (variously “Midway II,” “Applicant,” or “Seller”) hereby petitions for authorization to make market-based sales of energy, capacity, and certain ancillary services under a market-based rate tariff. Midway II respectfully requests acceptance of its market-based rate schedule, FERC Electric Tariff Original Volume No. 1 (“Tariff”) with an effective date of January 1, 2017, and waiver of the notice period. Midway II also requests waiver of

¹ 16 U.S.C. § 824d (2012).

² 18 C.F.R. Part 35 (2015).

³ *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252 (“Order No. 697”), *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh’g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 (“Order No. 697-A”), *clarified*, 124 FERC ¶ 61,055 (2008), *order on reh’g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh’g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh’g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010), *aff’d sub nom.* Mont. Consumer Counsel v. FERC, 659 F.3d 910 (9th Cir. 2011), *cert. denied*, 133 S. Ct. 26 (2012).

⁴ *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, FERC Stats. & Regs. ¶ 31,374 (2015)(“Order No. 816”), *order on reh’g*, Order No. 816-A, 155 FERC ¶ 61,188 (2016)(“Order No. 816-A”).

certain Commission regulations and a grant of certain blanket approvals, which are customarily granted to sellers with market-based rate authorization.

Midway II respectfully requests that the Commission issue an order granting market-based authority, accepting the proposed Tariff, and granting the requested waivers and blanket authorizations on or before January 1, 2017.

I. COMMUNICATIONS

Midway II requests that all correspondence, pleadings and other communication concerning this filing be served upon the following:

Latasha Terry Legal Counsel Solar Frontier Americas Development, LLC 50 California Street, Suite 820 San Francisco, CA 94111 (415) 814-5258 latasha.terry@solar-frontier.com	Andrea Wolfman Alston & Bird LLP 950 F Street, N.W. Washington, DC 20004 (202) 239-3300 andrea.wolfman@alston.com
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II. DESCRIPTION OF APPLICANT AND RELEVANT AFFILIATES

As required by Order Nos. 697 and 697-A (Appendix B) and Order Nos. 816 and 816-A, the generation and transmission assets of Applicant and its affiliates are set forth in Attachment A.

A. Applicant

Midway II is a Delaware limited liability company with its principal place of business in Imperial County, CA. Midway II has developed a 30 MW_{ac} (nameplate) solar-powered electric generation facility and related generation interconnection facilities to be located in Imperial County, California (the “Facility”). The Facility will be interconnected to the transmission system owned and operated by Imperial Irrigation District (“IID”). Therefore, the relevant market for the market power analysis is the

IID balancing authority area (“BAA”). All the electric energy and capacity from the Facility will be sold under a long-term power purchase agreement (“PPA”) to IID with a term of more than one year. Midway II has filed a notice of self-certification as an exempt wholesale generator (“EWG”).⁵

B. Upstream Ownership

Midway I is wholly owned by Solar Frontier Americas Holding LLC, which is wholly owned by Solar Frontier Americas, Inc. Solar Frontier Americas Inc., through its subsidiaries, develops and builds solar energy projects in the U.S. It is wholly owned by Solar Frontier K.K., a Japanese company engaged in the manufacture and sale of CIS thin-film solar panels, that is wholly owned by Showa Shell Sekiyu K.K., the shares of which are owned 15% by Saudi Aramco, 35% by Royal Dutch Shell, and the remaining 50% are publicly traded on the Tokyo Stock Exchange. Showa Shell Sekiyu K.K. has two main businesses: (i) the refining of oil and sale of the refined products, and (ii) an energy solutions business that includes the business of Solar Frontier K.K. and related business services.

With the exception of the direct and indirect ownership interests of Solar Frontier Americas, Inc., Showa Shell Sekiyu K.K. does not otherwise: (a) directly or indirectly own or control any generation or transmission facilities in the United States; (b) engage in wholesale sales of electric energy, or any other Commission jurisdictional transactions in the United States; (c) hold electric transmission rights and natural gas transportation rights in the United States; or (d) directly or indirectly own or control a franchised utility.

⁵ Notice of Self-Certification of Exempt Wholesale Generator Status, *96WI 8ME, LLC*, Docket No. EG17-16-000 (filed October 27, 2016).

In addition, Showa Shell Sekiyu K.K does not directly or indirectly own any physical natural gas transportation facilities or own or control other physical inputs to electric generation or transmission in the United States.

C. Affiliates in the IID Balancing Authority Area

In addition to Midway II in the IID BAA, Solar Frontier Americas Inc., through Solar Frontier Americas Holding, LLC, wholly-owns or controls 83WI 8me, LLC (“Midway I”), a California limited liability company that is developing a 50 MW_{ac} (nameplate) solar-powered electric generating facility in the IID BAA. The Midway I facility will be interconnected to the transmission system of IID and all the electric energy and capacity will be sold to the Pacific Gas and Electric Company under a long-term PPA. Therefore, Midway II and its affiliate Midway I will own or control approximately 80 MW of generation capacity in the IID BAA and all of the generation capacity is fully committed under long-term power purchase agreements.⁶

III. MARKET POWER ANALYSIS

The Commission permits sales of energy and capacity at market-based rates if the seller and its affiliates lack both horizontal and vertical market power in the relevant geographic market.⁷ Applicants must also comply with the Commission’s regulations regarding affiliate abuse restrictions.⁸ Midway II satisfies all requirements for Commission approval to sell at market-based rates.

⁶ Midway I has not yet filed an EWG self-certification or market-based rate tariff.

⁷ See 18 C.F.R. § 35.37; Order No. 697 at PP 12-32.

⁸ 18 C.F.R. § 35.39; Order No 697 at P 467.

A. Horizontal Market Power

Midway II lacks horizontal market power. As noted above, Midway II is located in the BAA operated by IID. Thus, the relevant geographic market is the IID BAA.

Typically, the Commission requires that an applicant for market-based rate authorization demonstrate its and its affiliates' lack of horizontal market power in the relevant market by showing that it and its affiliates pass two indicative screens: (1) the Pivotal Supplier Analysis screen; and (2) the Market Share Analysis screen. However, pursuant to Order 816, when all of a seller's generation capacity is sold on a long-term firm basis to one or more buyers and the seller had no uncommitted capacity the seller will not be required to file the indicative screens.⁹ A fully committed seller must commit the capacity to a non-affiliated buyer so that none of it is available to the seller or its affiliates for one year or longer. A seller claiming that all of its relevant capacity is fully committed must provide the following information: the amount of generation capacity that is fully committed, the names of the counterparties, the length of the long-term contract, the expiration date of the contract, and a representation that the contract is for firm sales for one year or longer.¹⁰ Additionally, in order to qualify as fully committed, the commitment of the generation capacity cannot be limited during that 12-month consecutive period in any way, such as limited to certain season, market conditions, or any other limited factor.¹¹

⁹ See Order No. 816 at P 39. ("Sellers may explain that their generation capacity is fully committed in lieu of including indicative screens in their filings in order to satisfy the Commission's market-based rate requirements regarding horizontal market power in instances where all generation owned or controlled by a seller and its affiliates in the relevant balancing authority areas or markets, including first-tier balancing authority areas or markets, is fully committed.")

¹⁰ *Id.*

¹¹ *Id.*

For purposes of this analysis, Midway II is affiliated with the Midway I generation facilities in the IID BAA. As noted above, Midway II, has a long-term PPA to sell the entire output of its generating facilities to IID for a term of more than one year. The Facility is projected to commence commercial operations in the first quarter of 2017.¹² Midway II's affiliate, Midway I, has a long-term PPA to sell all of the output of its facility to the Pacific Gas and Electric Company ending on a date 20 years after the commencement of operations of the Midway I facility. Therefore, pursuant to Order No. 816, Midway II represents that each of the long-term contracts described above is for firm sales for one year or longer to a non-affiliate. Accordingly, neither Midway II nor Midway I will control any uncommitted wholesale capacity in the IID BAA market.

The Commission has held that when all of the generating capacity of a seller and its affiliates in the relevant BAA(s) or market(s), including any relevant first-tier BAA(s) or market(s), is fully committed on a long-term, firm basis to one or more non-affiliated buyers, the seller has no uncommitted capacity and does not need to file the Commission's indicative market power screens.¹³ Thus, Midway II has not included indicative screens in this Application.

B. Vertical Market Power

Midway II and its relevant affiliates also lack vertical market power. To determine whether an applicant has vertical market power, the Commission considers the

¹² Pursuant to Order No. 816, Midway II will follow up with an informational filing to inform the Commission of the contract expiration date, within 30 days of the date becoming known. Order No. 816 at P 44; *see also* Order No. 816-A at P 17.

¹³ *Id.*

ownership, operation or control of transmission facilities.¹⁴ If a seller or its affiliates own such facilities, they may demonstrate a lack of market power by having an Open Access Transmission Tariff on file with the Commission.¹⁵ Finally, an applicant must state that it will not erect barriers to entry in the relevant market.¹⁶

Midway II and its relevant affiliates only own, operate, or control limited transmission-related equipment necessary to connect their facilities to the transmission grid. Midway II affirms that these interconnection facilities are limited and discrete facilities that qualify for the blanket waivers provided in Section 35.28(d)(2) promulgated by Order No. 816. Accordingly, Midway II and its affiliates do not possess transmission market power and satisfy the Commission's standards with respect to any vertical market power concerns.¹⁷

Neither Midway II nor any of its affiliates own or control inputs to electric power production that raise vertical market power concerns. Neither Midway II nor its affiliates own or control intrastate natural gas storage or distribution facilities, physical coal supply sources, or access to the transportation of coal supplies. Neither Midway II nor its affiliates own or control any physical natural gas transportation, storage or distribution facilities or own or control other physical inputs to electric generation or transmission.

In accordance with the Commission's regulations, Midway II hereby states that neither it nor any of its affiliates have erected barriers to entry in the relevant geographic market, and will not erect such barriers to entry. This assurance, along with the facts

¹⁴ 18 C.F.R. § 35.37(d).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *See* Order No. 697 at P 21; *see also* Order No. 816 at P 210.

discussed above, demonstrates that Midway II and its affiliates do not have vertical market power.

C. Affiliate Restrictions

The regulations restrict transactions between companies who have received market-based rate authority and affiliated public utilities.¹⁸ In Order No. 697, however, the Commission clarified that these regulations do not apply when captive customers are not present.¹⁹ The term “captive customer” only refers to customers served under cost-based rate regulation,²⁰ and does not refer to customers who have the ability to select a retail supplier based on rates, terms and conditions.²¹ The customer of Midway II does not and will not fit the Commission’s definition of “captive customer.” Further, Midway II is not affiliated with a franchised public utility. Thus, the affiliate restrictions do not apply to Applicant or its affiliates.

IV. ANCILLARY SERVICES

Applicant requests authorization to sell certain ancillary services in various markets as authorized for other companies permitted to sell at market-based rates, under the terms of Applicant’s tariff. Applicant’s tariff contains terms and conditions for the sale of certain ancillary services at market-based rates consistent with Commission precedent.²²

¹⁸ 18 C.F.R. § 35.39.

¹⁹ Order No. 697 at PP 552, 589.

²⁰ 18 C.F.R. § 35.36(a)(6).

²¹ Order No. 697 at P 479; *see also* Order No. 697-A at PP 192, 198.

²² Order No. 697-A, Appendix C; *Midwest Independent Transmission System Operator, Inc.*, 123 FERC ¶ 61,297, at P 46 (2008); *Southwest Power Pool, Inc.*, 144 FERC ¶ 61,224, at P 412 (2013); and *Third-Party Provision of Ancillary Services; Accounting and Financial Reporting for New Electric Storage Technologies*, 78 Fed. Reg. 46178 (July 30, 2013), at P 200 (“*Order No. 784*”). As required by Order No.

V. SELLER CATEGORY

The regulations define “Category 1 Sellers” as wholesale power producers that: (1) own or control 500 MW or less of generation in aggregate per region; (2) do not own, operate or control transmission facilities other than limited equipment to connect generating facilities to the transmission grid; (3) are not affiliated with anyone that owns, operates or controls transmission facilities in the same region as the seller’s generation assets; (4) are not affiliated with a franchised public utility in the same region as the seller’s generation assets; and (5) do not raise other vertical market power issues.²³ Any seller not in Category 1 is a Category 2 Seller.²⁴

Midway II submits that it is a Category 1 Seller in the Northeast, Southeast, Central, Southwest, Northwest, and Southwest Power Pool regions because (i) it and its affiliates will own or control less than 500 MW of electric generating capacity in aggregate per region, (ii) it does not own or operate or control transmission facilities other than as necessary for the interconnection of generation to the interconnected transmission grid, (iii) it is not affiliated with any one who owns, operates, or controls transmission facilities in the region in which its generation is located; (iv) it is not affiliated with a franchised public utility, and (v) there are no vertical market power issues raised in any of those regions.

784, Applicant’s tariff states that it will not 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 unless it has made a future filing with the Commission seeking such authorization by making the required showing and receiving Commission authorization prior to making such sales. *Id.* at PP 200-202.

²³ 18 C.F.R. § 35.36(a) (2).

²⁴ 18 C.F.R. § 35.36(a) (3).

VI. REPORTING REQUIREMENTS

Midway II agrees to comply with all the reporting requirements normally imposed on sellers permitted to sell power at market-based rates, including filing Electric Quarterly Reports, updated market power analyses, and notices of material changes in status.²⁵ Midway II also agrees to comply with the market behavior rules.²⁶ Midway II does not intend to report transactions to publishers of electricity or natural price indices.

VII. REQUEST FOR WAIVERS AND AUTHORIZATIONS

Midway II requests the following waivers, blanket approvals, and authorizations traditionally granted to market-based rate sellers:

- (1) Waiver of reporting requirements in subparts B and C of Part 35 of the Commission's regulations, except as to Sections 35.12(a), 35.13(b), 35.15 and 35.16;
- (2) Waiver of accounting, reporting and other requirements of Parts 41, 101 (except that waiver of the provisions of Part 101 that apply to hydropower licensees is not requested with respect to licensed hydropower projects), and 141 of the Commission's regulations, except Sections 141.14 and 141.15;
- (3) Blanket authorization to issue securities or assume liabilities, under Section 204 of the FPA and Part 34 of the Commission's regulations; and
- (4) Any other waiver or authorization that the Commission finds appropriate.

²⁵ 18 C.F.R. §§ 35.10(b), 35.42.

²⁶ 18 C.F.R. § 35.41.

VIII. REQUESTED EFFECTIVE DATE AND WAIVER OF NOTICE PERIOD

Midway II respectfully requests an effective date for its market-based rate tariff of January 1, 2017 and waiver of the notice period to permit the tariff to become effective on that date so that Midway II can honor its contractual commitments.

IX. LIST OF DOCUMENTS SUBMITTED WITH THIS FILING

The documents included in this filing consist of the following:

1. This Petition
2. Asset Appendix (Attachment A)
3. Market-Based Rate Tariff (Attachment C)

X. CONCLUSION

For the foregoing reasons, Midway II respectfully requests the Commission to issue an order (1) granting its petition for market-based rate authorization; (2) granting the requested waivers and authorizations, and (3) accepting the tariff records to be effective on January 1, 2017.

Respectfully submitted,

/s/ **Andrea Wolfman**

Andrea Wolfman
Ambrea Watts
Alston & Bird LLP
950 F Street, N.W.
Washington, DC 20004
(202) 239-3300

Counsel for 96WI 8ME, LLC

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ATTACHMENT A

ASSET APPENDIX

[Provided in separate Excel file]