

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

American Falls Solar, LLC

)

Docket No. ER17-___-000

**APPLICATION OF AMERICAN FALLS SOLAR, LLC
FOR MARKET-BASED RATE AUTHORITY
AND REQUEST FOR WAIVERS AND BLANKET AUTHORIZATIONS**

Pursuant to Section 205 of the Federal Power Act (“FPA”),¹ Rules 205 and 207 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission” or “FERC”),² and Part 35 of the Commission’s regulations,³ American Falls Solar, LLC (“American Falls” or “Applicant”) hereby requests that the Commission: (1) accept for filing the American Falls FERC Market-Based Rate Tariff, attached hereto as Attachment 1 (“Tariff”); (2) permit the Tariff to become effective as of January 5, 2017; (3) grant authorization for American Falls to sell electric energy and capacity at wholesale and make sales of ancillary services at market-based rates as specified in the Tariff; (4) grant regulatory waivers as are customarily granted by the Commission to persons with market-based rate authority, as described further herein; and (5) grant blanket authorizations as are customarily granted to persons with market-based rate authority, including blanket approval to issue securities and assume liabilities pursuant to Section 204 of the FPA and the Commission’s regulations at 18 C.F.R. Part 34⁴ (collectively, “MBR Authority”).

¹ 16 U.S.C. 824d.

² 18 C.F.R. §§ 385.205 and 385.207.

³ 18 C.F.R. Part 35.

⁴ 16 U.S.C. 824c and 18 C.F.R. Part 34.

As discussed below and as demonstrated in the market power analysis provided below, American Falls satisfies the Commission's standards for MBR Authority.

I. DOCUMENTS SUBMITTED WITH THIS FILING

In addition to the instant transmittal and a version of the Tariff in RTF format suitable for filing in FERC eTariff, American Falls submits herewith:

Attachment 1: The American Falls Solar, LLC FERC Market-Based Rate Tariff;

Attachment 2: Appendix of energy affiliates and assets, as required under 18 C.F.R. Part 35, Subpart H, Appendix B; and

Attachment 3: An organizational chart showing American Falls and its affiliates, as required by Commission Order No. 816;⁵

II. COMMUNICATIONS

American Falls requests that communications regarding this filing be provided to the following:

Capital Dynamics Clean Energy &
Infrastructure
c/o Kathryn Rasmussen
645 Madison Avenue
19th Floor
New York, NY 10022
Tel: +1 212 798 3400
Email: kasmussen@capdyn.com

William B. Bice
Milbank, Tweed, Hadley & McCloy LLP
28 Liberty Street
New York, NY 10005-1413
Tel: (212) 530-5622
Email: wbice@milbank.com

James C. Liles
Regulatory Advisor
Milbank, Tweed, Hadley & McCloy LLP
1850 K Street, N.W., Suite 1100
Washington, DC 20006
Tel: (202) 835-7545
Email: jliles@milbank.com

⁵ *Refinements to Policies and Procedures for Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, 153 FERC ¶ 61,065 (2015) ("Order No. 816").

III. DESCRIPTION OF APPLICANT, ITS AFFILIATES AND THE JURISDICTIONAL FACILITIES

A. American Falls and its Owners

American Falls is a Delaware limited liability company that has been formed to act as the project company with respect to the operation of a 20 MW (AC) (nameplate) photovoltaic electric generating facility (“American Falls Facility”) located in an unincorporated area of Power County, Idaho, several miles northeast of the town of American Falls. The American Falls Facility is scheduled to synchronize with the grid and produce test power on January 6, 2017 and is scheduled to begin commercial operation on or before January 20, 2017. The American Falls Facility is interconnected to the transmission facilities of, and will sell all of its electric power output at wholesale under a long-term power purchase agreement to, Idaho Power Company (“Idaho Power”). The American Falls Facility includes interconnection facilities that are necessary to deliver its electric output to the Idaho Power transmission system, but it will not provide transmission or distribution services for other parties or comprise an integrated transmission or distribution system. The American Falls Facility is a qualifying small power production facility (“QF”) ⁶ and American Falls has submitted a Notice of Self-Certification of Exempt Wholesale Generator Status.⁷

American Falls is wholly-owned subsidiary of CD Global Solar ID American Falls I Holdings, LLC (“AF Holdings”). AF Holdings is a wholly-owned subsidiary of CD Global Solar II ID Borrower, LLC (“Borrower”). Borrower is a wholly-owned subsidiary of CD Global Solar II ID Investor, LLC (“Investor”). Investor is owned 50.00% by CD Global Solar II Sponsor, L.P. (“Sponsor”), and 50.00% by Capital Dynamics HRJ GP LLC (“HRJ”). HRJ is a

⁶ *American Falls Solar, LLC*, Docket No. QF17-62-000, Form 556 Notice of Self-certification as a Qualifying Small Power Production Facility (filed October 12, 2016).

⁷ *See American Falls Solar, LLC*, Docket No. EG17-27-000, *Notice of Self-Certification of Exempt Wholesale Generator Status*, filed November 10, 2016.

wholly owned subsidiary of Capital Dynamics, Inc., which in turn is a wholly owned subsidiary of Capital Dynamics Holding AG (“Capital Dynamics”). Sponsor is owned 0.001% by Capital Dynamics CEI GP (Cayman Islands), Ltd. (“GP”) and 99.999% by CD Global Solar II HoldCo, L.P. (“HoldCo”). HoldCo is owned 0.001% by GP and 99.999% by Capital Dynamics Global Solar Energy Fund II, L.P. (“Fund”). Fund is owned 0.001% by GP, 0.001% by Capital Dynamics CEI Founder Partner (Cayman Islands), L.P. (“Founder”) and 99.998% by certain limited partners. GP is a wholly owned subsidiary of Capital Dynamics Hong Kong Ltd. (“CD Hong Kong”). Each of CD Hong Kong and Founder is a wholly owned subsidiary of Capital Dynamics. Capital Dynamics is a private company, organized under the laws of Germany, and is owned approximately 73% by its individual founder, Thomas Kubr, with the remaining approximately 27% ownership interests held by employees and third-party investors, none of whom or which holds a 10% or greater ownership interest.

In conjunction with this application, American Falls is submitting an application under Section 203 of the FPA for disposition of non-controlling, passive equity interests in American Falls to EFS Renewables Holdings, LLC (“EFS”), a Delaware limited liability company that is an affiliate of General Electric Company (“GE”) (the “Tax Equity Transaction”).⁸ Following receipt of Commission authorization under FPA Section 203 and completion of the Tax Equity Transaction, American Falls’ parent, AF Holdings, will be liquidated and the new parent company of American Falls will be CD Global Solar II ID Holdings, LLC (“Holdings”). Borrower will hold 100 percent of the Class B Membership Interests in Holdings, and EFS will hold 100 percent of the passive, non-controlling Class A Membership Interests in

⁸ Although American Falls does not believe the proposed transaction with EFS is necessarily subject to the Commission’s review under FPA Section 203, it has filed an application out of an abundance of caution for purposes of expediting the completion of the proposed transaction.

Holdings.⁹ American Falls will file a notification of change in status pursuant to 18 C.F.R. § 35.42 within 30 days of consummation of the Tax Equity Transaction.¹⁰

B. Affiliates of American Falls

American Falls is affiliated, through Borrower, with four other project companies that are developing solar electric generating facilities in Idaho. American Falls Solar II, LLC (“American Falls II”) is developing a 20 MW (AC) (nameplate) solar photovoltaic facility that is located adjacent to the American Falls Facility (“American Falls II Facility”). The American Falls II Facility is a QF.¹¹ Because the American Falls II Facility is located less than one mile from the American Falls Facility, the two facilities are considered to be located at the same site under the Commission’s regulations¹² and their aggregate capacity of 40 MW will exceed the power production capacity limit for the exemptions from regulation under the FPA and the Public Utility Holding Company Act of 2005 set forth at 18 C.F.R. §§ 292.601(c) and 292.602(b). American Falls II has submitted a Notice of Self-Certification of Exempt Wholesale Generator Status¹³ and is filing an application for market-based rate authority contemporaneously with this application. The American Falls II Facility will be interconnected to Idaho Power’s transmission system and will sell all of its electric power output at wholesale under a long-term power purchase agreement with Idaho Power.

In addition, three other affiliates of Applicant through Borrower, Murphy Flat Power, LLC (“Murphy Flat”), Orchard Ranch Solar, LLC (“Orchard Ranch”) and Simcoe Solar, LLC

⁹ The Class A Membership Interests will be passive, non-managing ownership interests with limited consent rights similar to the consent rights of the passive investors in *AES Creative Resources, L.P.*, 129 FERC ¶ 61,239 at PP 26-28 (2009) (describing rights that do not confer control) (“*AES Creative Resources*”).

¹⁰ The Notice of Change in Status will include a demonstration of passive interest for the Class A Membership Interests, consistent with *AES Creative Resources*.

¹¹ *American Falls Solar, LLC*, Docket No. QF17-63-000, Form 556 Notice of Self-certification as a Qualifying Small Power Production Facility (filed October 12, 2016).

¹² 18 C.F.R. § 292.204(a)(2).

¹³ See *American Falls Solar II, LLC*, Docket No. EG17-28-000, *Notice of Self-Certification of Exempt Wholesale Generator Status*, filed November 10, 2016.

(“Simcoe”) are each developing 20 MW (AC) (nameplate) solar photovoltaic projects in Idaho. These projects are not located within one mile of the American Falls Facility or the American Falls II Facility, or within one mile of each other. Each of these projects has filed a notice of self-certification as a QF.¹⁴ Each of Murphy Flat, Orchard Ranch and Simcoe will sell all of its electric power output at wholesale under a long-term power purchase agreement to Idaho Power. However, consistent with Order No. 816, the Murphy Flat, Orchard Ranch and Simcoe facilities will be QFs that are not subject to regulation under section 205 of the FPA and, therefore, are not included in the discussion of affiliates and the asset appendix submitted with this application.¹⁵

Through its relationship with Capital Dynamics, American Falls is affiliated with a number of additional companies that own electric generating facilities in the United States. Capital Dynamics also has ownership interests in three wind-powered generating facilities, each with a capacity of 150 MW, that are located in the Electric Reliability Council of Texas (“ERCOT”) region, and accordingly are not FERC-jurisdictional facilities. Capital Dynamics has indirect operating and/or ownership interests in three companies with landfill gas power generation facilities in North Carolina, each of which is a qualifying small power production facility that qualifies for exemption from Sections 205 and 206 of the FPA and has made no Section 205 filings.¹⁶ Capital Dynamics also has indirect ownership interests in ten other landfill

¹⁴ *Murphy Flat Power, LLC*, Docket No. QF17-64-000, Form 556 Notice of Self-certification as a Qualifying Small Power Production Facility (filed October 12, 2016); *Orchard Ranch Solar, LLC*, Docket No. QF17-65-000, Form 556 Notice of Self-certification as a Qualifying Small Power Production Facility (filed October 12, 2016); *Simcoe Solar, LLC*, Docket No. QF17-66-000, Form 556 Notice of Self-certification as a Qualifying Small Power Production Facility (filed October 12, 2016).

¹⁵ *Refinements to Policies and Procedures for Market-Based Rates and Wholesale Sales of Electric Energy, Capacity, and Ancillary Services by Public Utilities*, Order No. 816, 153 FERC ¶ 61,065 at P 255 (2015) (Order No. 816), *order on reh’g*, Order No. 816-A, 155 FERC ¶ 61,188 (2016) (“we clarify that qualifying facilities that are exempt from FPA section 205 and facilities that are behind-the-meter facilities do not need to be reported in the asset appendix or indicative screens.”) (citation omitted).

¹⁶ *MP Durham, LLC*, Docket No. QF09-78-001, Form 556 Notice of Self-certification as a Qualifying Small Power Production Facility (filed February 2, 2010); *MP Wayne, LLC*, Docket No. QF11-15-001, Form 556 Notice of Self-

gas qualifying small power production facilities in Massachusetts,¹⁷ Virginia,¹⁸ New York¹⁹ and Illinois.²⁰ Each are exempt from regulation under Sections 205 and 206 of the FPA and none has made any Section 205 filings. Additionally, Capital Dynamics has indirect interests in two large solar photovoltaic projects in California that have executed power sale agreements with the Los Angeles Department of Water and Power, however, neither project has commenced generation of electric energy and neither has made any filings under Section 205 of the FPA. Capital Dynamics also has interests in twelve smaller solar photovoltaic projects in North Carolina. Each of these North Carolina projects has filed a notice of self-certification for status as a QF, but none of these projects has commenced generation of electric energy, or has made any filings under Section 205 of the FPA.²¹

Neither American Falls nor any of its affiliates owns or controls any (1) electric transmission or distribution facilities in the United States, aside from the limited equipment necessary to connect their facilities to the transmission or distribution grid; or (2) inputs to generation in the United States.

certification as a Qualifying Small Power Production Facility (filed December 22, 2010); and *MP Wilson, LLC*, Docket No. QF11-54-000 (filed November 17, 2010).

¹⁷ *Barre Energy Partners I, LLC*, Docket No. QF92-105-006, Form 556 Notice of Self-certification as a Qualifying Small Power Production Facility (filed December 23, 2009).

¹⁸ *Suffolk Energy Partners, L.L.C.*, Docket No. QF92-159-007, Form 556 Notice of Self-certification as a Qualifying Small Power Production Facility (filed December 23, 2009).

¹⁹ *Oceanside Biogas, LLC*, Docket No. QF89-212-005, Form 556 Notice of Self-certification as a Qualifying Small Power Production Facility (filed October 9, 2009).

²⁰ *Brickyard Energy Partners, LLC*, Docket No. 97-120-006, Form 556 Notice of Self-certification as a Qualifying Small Power Production Facility (filed December 23, 2009); *Countryside Genco, L.L.C.*, Docket No. QF98-27-006, Form 556 Notice of Self-certification as a Qualifying Small Power Production Facility (filed October 9, 2009); *Dixon/Lee Energy Partners, LLC*, Docket No. QF97-108-005, Form 556 Notice of Self-certification as a Qualifying Small Power Production Facility (filed December 23, 2009); *Morris Genco, L.L.C.*, Docket No. QF98-55-006, Form 556 Notice of Self-certification as a Qualifying Small Power Production Facility (filed October 9, 2009); *Roxanna Resource Recovery, L.L.C.*, Docket No. QF97-110-005, Form 556 Notice of Self-certification as a Qualifying Small Power Production Facility (filed December 23, 2009); *Streator Energy Partners, L.L.C.*, Docket No. QF97-114-006, Form 556 Notice of Self-certification as a Qualifying Small Power Production Facility (filed December 23, 2009); and *Upper Rock Energy Partners, LLC*, Docket No. QF97-111-008, Form 556 Notice of Self-certification as a Qualifying Small Power Production Facility (filed December 23, 2009).

²¹ Each of the North Carolina qualifying facilities is expected to be eligible for the exemption from regulation under Sections 205 and 206 of the FPA set forth at 18 C.F.R. § 292.601(c)(1).

IV. REQUEST FOR MARKET-BASED RATE AUTHORIZATION

Applicant hereby requests authorization from the Commission to sell electric energy, capacity and specified ancillary services at market-based rates pursuant to the Tariff attached hereto as Attachment 1.

The Commission allows market-based sales if the seller and its affiliates (1) lack horizontal market power, or have adequately mitigated horizontal market power, in the relevant geographic market; and (2) lack vertical market power in the relevant geographic market.²² As is demonstrated below, American Falls meets the Commission's requirements concerning lack of market power.

A. American Falls and Its Affiliates Lack Horizontal Market Power

The Commission assesses the ability to exercise market power by first determining the relevant market and then, if necessary, applying two indicative market power screens: the pivotal supplier screen and the wholesale market share screen.

As noted above, the American Falls Facility is interconnected to, and sells all of its electric output to, Idaho Power. Because the American Falls Facility is located within the Idaho Power BAA, the relevant market is the Idaho Power BAA. The American Falls Facility has a net electric capacity of approximately, but no more than, 20 MW (AC) (nameplate), all of which is contractually committed under a long-term energy sales agreement ("ESA") to Idaho Power. The American Falls II Facility has a net electric capacity of approximately, but no more than, 20 MW (AC) (nameplate), all of which is contractually committed under a long-term energy sales

²² See *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, at P 399, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *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) (collectively, "Order No 697").

agreement (“American Falls II ESA”, and together with the ESA, the “ESAs”) to Idaho Power. Neither American Falls nor American Falls II will have any uncommitted capacity under its operational control, and therefore American Falls cannot have horizontal market power in the relevant market.²³

In Order No. 816 the Commission clarified that when all of a seller’s and its “relevant”²⁴ generation capacity is sold on a long-term firm basis, the seller has no uncommitted capacity, and in such cases the seller will not be required to file the indicative market-power screens. The Commission further explained that in order to qualify as fully committed, a 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. Additionally, the Commission requires the following information: (1) the amount of generation capacity that is fully committed; (2) the names of the counterparties; (3) the length of the long-term contract; (4) the expiration date of the contract; and (5) a representation that the contract is for firm sales for one year or longer. American Falls hereby affirms that (1) the amount of relevant generation capacity that is fully committed is the sum of 20 MW (AC) (nameplate), which is the maximum capacity of the American Falls Facility, plus 20 MW (AC) (nameplate), from the American Falls II Facility, which equals 40 MW (AC); (2) the purchaser under the ESA and the American Falls II ESA is Idaho Power, and there are no other counterparties; (3) the term of both of these ESAs is 20 years from the “Operation Date” as defined in the respective ESAs; the expiration date of the respective ESAs is specified as 20 years from the “Operation Date” as defined thereunder; and American Falls represents that both

²³ See, Order No. 816 at P 39. As noted above, Order No. 816 limits the analysis of market power to generation with is not exempt from Section 205 of the FPA; accordingly, the capacity of Murphy Flat, Orchard Ranch and Simcoe is not discussed. However, even if that capacity were included in the analysis, it all is similarly committed to Idaho Power under long-term energy sale agreements.

²⁴ “Relevant” generation is defined in Order No. 816 as “seller and affiliated capacity in the study area, including the first tier.” *Id.* at P 30 and n.38.

of these ESAs are for firm sales for one year or longer. American Falls affirms that the commitment of generation capacity under these ESAs is not limited in any respect.

B. American Falls and Its Affiliates Lack Vertical Market Power

In evaluating vertical market power, the Commission considers market power arising out of ownership or control of electric transmission facilities and the ability of the applicant and its affiliates to erect barriers to entry in the relevant BAA.²⁵ As explained below, American Falls and its affiliates do not possess vertical market power.

1. Transmission Market Power

Neither American Falls nor any of its affiliates currently owns or controls any electric transmission facilities in the Idaho Power BAA, or elsewhere within the United States, other than, as noted above, limited and discrete interconnection facilities that form part of the American Falls Facility and are used solely to connect the American Falls Facility to the Idaho Power transmission system. Affiliates of American Falls similarly own only limited and discrete interconnection facilities used to connect generation to the grid. Accordingly, these interconnection facilities qualify for the blanket waiver of the Commission's open access requirements pursuant to section 35.28(d)(2) of the Commission's regulations.²⁶ Accordingly, American Falls does not possess vertical market power as a result of ownership or control of electric transmission facilities.

2. Barriers to Entry

In evaluating the ability of an applicant to erect barriers to entry, the Commission considers the applicant's ability to exercise control over inputs to electric power production, such as intrastate natural gas transportation; intrastate natural gas storage or distribution facilities;

²⁵ See Order No. 697.

²⁶ 18 C.F.R. § 35.28(d)(2).

physical coal supply sources and ownership or control over who may access transportation of coal supplies.²⁷

Neither American Falls nor its affiliates owns or controls any intrastate natural gas transportation, storage or distribution facilities, or any physical supplies of coal or coal transportation providers or infrastructure in the United States.

The Commission has adopted a rebuttable presumption that market-based rate sellers that own or control, or have affiliation with, any entity that owns or controls intrastate natural gas transportation, intrastate natural gas storage or natural gas distribution facilities, or physical coal supply sources or others who may access transportation of coal supplies cannot erect barriers to entry.²⁸ Moreover, consistent with Order No. 697 and the Commission's regulations at 18 C.F.R. § 35.37(e)(4), American Falls affirms that it and its affiliates have not and will not erect barriers to entry into the Idaho Power BAA or in any wholesale electric markets within the United States.²⁹ Accordingly, American Falls meets the Commission's requirements with respect to barriers to entry, and American Falls has demonstrated a lack of vertical market power.

C. Affiliate Relations

American Falls has no affiliates that are franchised electric utilities or that have captive customers. Accordingly the Commission's restrictions on affiliate relationships do not apply to American Falls, and no such affiliate relationship restrictions are included in the Tariff. Nevertheless, American Falls agrees to abide by the Commission's affiliate restrictions, to the extent applicable, as a condition of its MBR Authority.

²⁷ See 18 C.F.R. § 35.37(e); Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

²⁸ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 446; Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 170, 176-180.

²⁹ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 448.

V. JURISDICTIONAL SERVICES TO BE PROVIDED PURSUANT TO APPLICANT'S MARKET-BASED RATE AUTHORITY

American Falls proposes to sell electric energy and capacity at market-based rates pursuant to its Tariff. American Falls also requests authorization to sell the ancillary services that the Commission has authorized public utilities with market-based rate authority to sell in markets administered by the California Independent System Operator Corporation, the Midcontinent Independent Transmission System Operator, Inc., ISO New England, Inc.; the New York System Operator, Inc.; PJM Interconnection, L.L.C.; and the Southwest Power Pool, Inc. In accordance with Appendix C of Order No. 697, American Falls has listed in its Tariff the specific ancillary services it may sell in each of these markets. The applicable sections of the Tariff include the restrictions required by Commission Order No. 784.³⁰

VI. REQUEST FOR WAIVERS AND BLANKET AUTHORIZATIONS

American Falls requests that the Commission grant such regulatory waivers and blanket authorizations as are customarily granted to persons with market-based rate authority, including:

- Waiver of Subparts B and C of Part 35 of the Commission's regulations, regarding the filing of rate schedules, except for Sections 35.12(a), 35.13(b), 35.15 and 35.16;
- Waiver of the accounting and related reporting requirements under Parts 41 and 141 of the Commission's regulations, except Sections 141.14 and 141.15;
- Waiver of Part 101 of the Commission's regulations regarding the Commission's Uniform System of Accounts, with the exception of provisions thereof that apply to hydropower licensees with respect to licensed hydropower projects;
- Blanket authorization to issue securities and assume liabilities under Section 204 of the FPA and the Commission's implementing rules at 18 C.F.R. Part 34; and
- Any other waivers and authorizations as may be necessary or appropriate for the Tariff to become effective.

³⁰ *Third-Party Provision of Ancillary Services; Accounting and Financial Reporting for New Electric Storage Technologies*, Order No. 784, 144 FERC ¶ 61,056, at P 200 (2013).

VII. REPORTING REQUIREMENTS

American Falls commits to file contract and transaction information for all sales under the Tariff in its Electric Quarterly Reports, in conformity with the Commission's regulations. Additionally, in accordance with Order No. 652³¹ and the Commission's regulations at 18 C.F.R. § 35.42, American Falls will notify the Commission within 30 days of any change in status that would reflect a departure from the characteristics relied upon by the Commission in its evaluation of American Falls' request for market-based rate authority.

American Falls agrees to comply with the Commission's market behavior regulations at 18 C.F.R. § 35.41. In accordance with Section 35.41(c) of the Commission's regulations, which requires that a seller with market-based rate authorization notify the Commission whether it engages in the reporting of transactions to publishers of electric or natural gas price indices, American Falls hereby notifies the Commission that it will not engage in such reporting.

Finally, American Falls and its affiliates have not, and will not, raise barriers to entry in relevant markets, including land acquisitions.

VIII. APPLICANT'S SELLER CATEGORY

Pursuant to Section 35.36(a)(2) of the Commission's regulations Category 1 Seller means a Seller that:³²

(i) is either a wholesale power marketer that controls or is affiliated with 500 MW or less of generation in aggregate per region or a wholesale power producer that owns, controls or is affiliated with 500 MW or less of generation in aggregate in the same region as its generation assets;

(ii) does not own, operate or control transmission facilities other than limited equipment necessary to connect individual generating

³¹ *Reporting Requirements for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005).

³² 18 C.F.R. § 35.36(a)(2).

facilities to the transmission grid (or has been granted waiver of the requirements of Order No. 888, FERC Stats. & Regs. ¶31,036);

(iii) is not affiliated with anyone that owns, operates or controls transmission facilities in the same region as the Seller's generation assets;

(iv) is not affiliated with a franchised public utility in the same region as the Seller's generation assets; and

(v) does not raise other vertical market power issues.

American Falls satisfies the Commission's requirements for status as a Category 1 Seller in its geographic region of operation, the Northwest region, and in each of the remaining regions of the nation as well. First, American Falls and its affiliates own or control less than 500 MW in every region.³³ Second, as described above, in every region, neither American Falls nor its affiliates owns, operates or controls transmission facilities other than limited and discrete interconnection facilities and equipment necessary to interconnect generation facilities to the transmission or distribution system. Third, American Falls is not affiliated with any entity that owns, operates or controls transmission facilities, other than limited interconnection facilities, in the Northwest region. Fourth, as noted above, American Falls has no affiliates that are franchised electric utilities or that have captive customers, in the same (or in any other) region. Finally, American Falls has no other ability to raise barriers to entry, and raises no other concerns with respect to vertical market power or barriers to entry.

Accordingly, American Falls meets the Commission's criteria for designation as a Category 1 Seller in the Northwest region, and in all other regions, and respectfully requests the Commission to affirm such Seller Category status.

³³ Even if all affiliated QF generation within the Idaho Power BAA, which has been excluded from the asset appendix in accordance with Order No. 816, is included for these purposes, the aggregate generation would be 80 MW (AC), which would still be below 500 MW.

IX. REQUESTED EFFECTIVE DATE

Pursuant to 18 C.F.R. § 35.3(a), American Falls requests that the Commission accept the Tariff for filing effective as of January 5, 2017, and respectfully requests a waiver of the Commission's 60-day advance notice requirement to allow for the sale of wholesale power as of that date. Good cause exists to grant such waiver, because this application does not present horizontal or vertical market power concerns.³⁴

X. CONCLUSION

For the reasons set forth above, American Falls respectfully requests that the Commission issue an order: (i) granting authorization for American Falls to make wholesale sales of electric energy and capacity at market-based rates, and sales of ancillary services as specified in its Tariff; (ii) accepting the Tariff for filing under Section 205 of the FPA to become effective as of January 5, 2017; (iii) granting the requested regulatory waivers with respect to market-based rate authority and any other waivers as are necessary or appropriate for the Tariff to become effective; (iv) granting blanket authorization under Part 34 of the Commission's regulations to issue securities and assume liabilities; and (v), as set forth in the Tariff, designating American Falls as a Category 1 Seller in all regions.

³⁴ See *Central Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106 at 61,339 (articulating a policy under which waiver of the prior notice filing requirement will be granted for good cause provided the proposed rate schedule is filed prior to commencement of service), *on reh'g*, 61 FERC ¶ 61,089 (1992).

Respectfully submitted,

/s/ William B. Bice

William B. Bice

Milbank, Tweed, Hadley & McCloy LLP

28 Liberty Street

New York, NY 10005-1413

Tel: (212) 530-5622

Fax: (212) 530-5219

wbice@milbank.com

Counsel to American Falls Solar, LLC

Dated: November 15, 2016

Attachment 1: American Falls Solar, LLC FERC Market-Based Rate Tariff

Attachment 2: American Falls Solar, LLC Asset Appendix

Attachment 3: American Falls Solar, LLC Organizational Chart

ATTACHMENT 1

**American Falls Solar, LLC
FERC Electric Tariff**

American Falls Solar, LLC
FERC Market-Based Rate Tariff

1. Availability. American Falls Solar, LLC (“Seller”) makes electric energy and capacity available under this Tariff to any purchaser, except as prohibited below. Seller also makes available to any purchaser ancillary services, except as prohibited below:
 - a. New England. Seller offers regulation and frequency response service (automatic generator control), operating reserve service (which includes 10-minute spinning reserve, 10-minute non-spinning reserve, and 30-minute operating reserve service) to purchasers within the markets administered by ISO New England, Inc.
 - b. PJM. Seller offers regulation and frequency response service, energy imbalance service, and operating reserve service (which includes spinning, 10-minute, and 30-minute reserves) for sale into the market administered by PJM Interconnection, L.L.C. (“PJM”) and, where the PJM Open Access Transmission Tariff permits, the self-supply of these services to purchasers for a bilateral sale that is used to satisfy the ancillary services requirements of the PJM Office of Interconnection.
 - c. New York. Seller offers regulation and frequency response service, and operating reserve service (which include 10-minute non-synchronous, 30-minute operating reserves, 10-minute spinning reserves, and 10-minute non-spinning reserves) for sale to purchasers in the market administered by the New York Independent System Operator, Inc.
 - d. California. Seller offers regulation service, spinning reserve service, and non-spinning reserve service to the California Independent System Operator Corporation (“CAISO”) and to others that are self-supplying ancillary services to the CAISO.
 - e. MISO. Seller offers regulation service and operating reserve service (which include 10-minute spinning reserve and 10-minute supplemental reserve) for sale to the Midcontinent Independent System Operator, Inc. (“MISO”) and to others that are self-supplying ancillary services to MISO.
 - f. SPP. Seller offers regulation service and operating reserve service (which include 10-minute spinning reserve and 10-minute supplemental reserve) for sale to the Southwest Power Pool, Inc. (“SPP”) and to others that are self-supplying ancillary services to SPP.
 - g. Third-Party Ancillary Services. Seller offers Regulation and Frequency Response Service, Reactive Supply and Voltage Control Service, Energy and Generator Imbalance Service, Operating Reserve-Spinning, and Operating Reserve-Supplemental. Sales will not include the following: (1) sales to an RTO or an ISO, *i.e.*, where that entity has no ability to self-supply ancillary services but instead depends on third parties; and (2) sales to a traditional, franchised public utility affiliated with the third-party supplier, or sales where the underlying transmission service is on the system of the public utility affiliated with the third-party supplier. Sales of Operating Reserve-Spinning and Operating

Reserve-Supplemental will not include sales 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, except where the Commission has granted authorization. Sales of Regulation and Frequency Response Service and Reactive Supply and Voltage Control Service will not include sales 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, except at rates not to exceed the buying public utility transmission provider's OATT rate for the same service or where the Commission has granted authorization.

2. Applicability. This Tariff is applicable to all FERC-jurisdictional sales of electric energy and capacity by Seller at market-based rates.
3. Rates. All sales shall be made at rates established by agreement between the purchaser and Seller.
4. Other Terms and Conditions. All other terms and conditions shall be established by agreement between the purchaser and Seller.
5. Compliance with Commission Regulations. Seller shall comply with the provisions of 18 C.F.R. Part 35, Subpart H, as applicable, and with any conditions the Commission imposes in its orders concerning Seller's market-based rate authority, including orders in which the Commission authorizes Seller to engage in affiliate sales under this Tariff or otherwise restricts or limits the Seller's market-based rate authority. Failure to comply with the applicable provisions of 18 C.F.R. Part 35, Subpart H, and with any orders of the Commission concerning Seller's market-based rate authority, will constitute a violation of this Tariff.
6. Limitations and Exemptions Regarding Market-Based Rate Authority. Seller does not have limitations on its market-based rate authority, except as otherwise provided in this Tariff. The Commission granted Seller the following waivers and exemptions in connection with Seller's market-based rate authority: (a) waiver of Subparts B and C of Part 35 of the Commission's regulations requiring the filing of rate schedules, except for Sections 35.12(a), 35.13(b), 35.15. and 35.16; (b) waiver of the accounting and related reporting requirements under Parts 41 and 141 of the Commission's regulations, with the exception of 18 C.F.R. §§ 141.14 and 141.15; (c) waiver of the accounting and related reporting requirements under Part 101, with the exception that waiver of the provisions that apply to hydropower licensees has not been granted with respect to licensed hydropower projects; and (d) blanket authorization under Section 204 of the Federal Power Act, 16 U.S.C. § 824c, and Part 34 of the Commission's regulations to issue securities and assume obligations and liabilities. *See American Falls Solar, LLC*, Docket No. ER17-[]-000.
7. Duration. This Tariff shall continue in effect until terminated or changed, and such termination or change becomes effective in accordance with any applicable regulatory requirements.

8. Modifications. Seller may unilaterally apply, under Section 205 of the Federal Power Act, to the Commission for a modification of this Tariff.
9. Seller Category. Seller is a Category 1 Seller, as defined in 18 C.F.R. 35.36(a), in the Southwest, Southeast, Northwest, Northeast, Central and Southwest Power Pool regions.
10. Effective Date. This Tariff is effective upon the date specified by the Commission.

ATTACHMENT 2

**American Falls Solar, LLC
Asset Appendix**

American Falls Solar, LLC

Asset Appendix: End Notes

End Notes for Entries in the Generation, Long-Term Firm PPA and Transmission/Natural Gas Assets Sheets

[A] End Note Number	[B] Sheet (Generation, PPA or Transmission / Natural Gas)	[C] Explanatory Note

ATTACHMENT 3

**American Falls Solar, LLC
Organizational Chart**

