

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

*Beethoven Wind, LLC* )  
 ) Docket No. ER15-\_\_-000  
 )

**APPLICATION FOR MARKET-BASED RATE AUTHORITY AND  
REQUEST FOR WAIVERS AND BLANKET AUTHORIZATIONS  
OF BEETHOVEN WIND, LLC**

Pursuant to Section 205 of the Federal Power Act,<sup>1</sup> Section 35.12 of the regulations of the Federal Energy Regulatory Commission (the “Commission”),<sup>2</sup> and Rule 205 of the Commission’s Rules of Practice and Procedure,<sup>3</sup> Beethoven Wind, LLC (“Beethoven”) requests that the Commission (i) authorize Beethoven to engage in the sale of electric energy, capacity and ancillary services at market-based rates; (ii) grant such waivers and blanket authorizations as the Commission has granted to other entities with market-based rate authorization, as described herein; and (iii) accept for filing Beethoven’s Market-Based Rate Tariff (“Tariff”) attached hereto with an effective date of February 27, 2015, in order to permit Beethoven to begin selling test energy by that date.

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<sup>1</sup> 16 U.S.C. § 824d.

<sup>2</sup> 18 C.F.R. § 35.12 (2014).

<sup>3</sup> *Id.* at § 385.205.

## **I. INTRODUCTION AND SUMMARY**

Beethoven will own a wind-powered electric generation facility with a nameplate capacity of 79.55 MW located in in Bon Homme, Hutchison and Charles Mix Counties, South Dakota (the “Facility”), in the Central region in the Western Area Power Administration – Upper Great Plains East (“WAUE”) balancing authority area. The Facility is currently under construction, and Beethoven expects to begin generating and selling test energy from it as early as February 27, 2015.

This Application demonstrates that Beethoven satisfies the Commission’s standards for authorization to make wholesale sales at market-based rates. As discussed below, Beethoven and its affiliates own or control only limited generation capacity in the relevant market, and that capacity is fully committed under long-term contracts. Beethoven and its affiliates therefore lack horizontal market power. In addition, Beethoven and its affiliates lack vertical market power because they own only limited and discrete transmission facilities necessary for generator interconnection, and they do not own or control any inputs into power generation that would permit them to create barriers to the entry of competitive generation. Accordingly, Beethoven respectfully requests that the Commission accept its Tariff for filing and grant the waivers discussed in more detail herein.

## II. COMMUNICATIONS

All communications and service related to this filing should be directed to the following:

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## III. DESCRIPTION OF APPLICANT AND RELEVANT AFFILIATES

### A. Beethoven

Beethoven is a limited liability company organized under the laws of the State of Delaware with its business offices at 4365 Executive Drive, Suite 1470, San Diego, California 92121. Beethoven is a wholly owned subsidiary of BayWa r.e. Wind, LLC (“BayWa Wind”). BayWa Wind is owned 95% by BayWa r.e. USA, LLC, a Delaware limited liability company (“BayWa USA”), and 5% by Florian Zerhusen, the President and CEO of BayWa Wind. BayWa USA is a wholly owned subsidiary of BayWa r.e. renewable energy Gmbh, a company organized under the laws of Germany (“BayWa Gmbh”). BayWa Gmbh, in turn, is a wholly owned subsidiary of BayWa AG, also a company organized under the laws of Germany.

Beethoven was formed for the purpose of constructing, owning and operating the Facility.<sup>4</sup> The Facility will consist of 43 General Electric 1.85 MW wind turbine generators and associated equipment. The Facility is currently under construction, and Beethoven expects to begin generating and selling test energy from it as early as February 27, 2015. Beethoven will also own an approximately seven-mile 115 kV generator interconnection line and associated equipment that will be used to interconnect the Facility to transmission facilities owned by NorthWestern Corporation (“NorthWestern”) and operated by the Western Area Power Administration in the WAUE balancing authority area.

NorthWestern is contractually entitled to all of the Facility’s electrical output pursuant to long-term power purchase agreements. Beethoven does not own any generation or transmission assets other than those described above relating to the Facility.

#### **B. Relevant Affiliates**

Beethoven is affiliated with Wagner Wind, LLC (“Wagner”), which owns a wind-powered electric generation facility with a nameplate capacity of approximately 6 MW located in the California Independent System Administrator balancing authority area in the Southwest region. Wagner is a direct, wholly owned subsidiary of BayWa USA. The entire output of the Wagner facility is sold to the City of Riverside, California. As a

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<sup>4</sup> Beethoven filed an updated certification of qualifying facility status with respect to the Facility on October 24, 2014 in Docket No. QF14-1-001. Beethoven also plans to file for exempt wholesale generator status with respect to the Facility.

qualifying facility with a capacity of less than 20 MW,<sup>5</sup> Wagner is exempt from regulation under Sections 205 and 206 of the Federal Power Act.<sup>6</sup>

Beethoven is also affiliated with BayWa r.e. Mozart, LLC (“Mozart”), which owns a wind-powered electric generation facility with a nameplate capacity of approximately 30 MW located in the Electric Reliability Council of Texas balancing authority area and region. Mozart also owns an approximately 0.75-mile 34.5 kV generator interconnection line and associated equipment.

Certain Beethoven affiliates operate – but do not own – four wind-powered electric generation facilities located in the Southwest Power Pool balancing authority area with an aggregate nameplate capacity of approximately 34.7 MW. The output of these facilities is committed to an unaffiliated third party, Western Farmers Electric Cooperative (“Western Farmers”) pursuant to long-term power purchase agreements. Because the facilities are not owned by Beethoven affiliates and their output is committed to Western Farmers, the facilities are not included on the attached asset appendix.

In addition, BayWa Wind, through subsidiaries, is developing various additional wind energy projects in the U.S. The projects currently under development consist of (i) up to 18 MW in Umatilla County, Oregon; (ii) 60 to 140 MW in Moore County, Texas; and (iii) 50 to 200 MW in Kent and Stonewall Counties, Texas. Beethoven affiliates lease the sites on which the projects are being developed. These projects are not yet operational and are therefore not included on the attached asset appendix. However, to the extent they become operational, Beethoven will make all necessary filings under the

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<sup>5</sup> Wagner filed a certification of qualifying facility status on April 11, 2013 in Docket No. QF13-387-000.

<sup>6</sup> 18 C.F.R. § 292.601(c)(1) (2014).

Commission's regulations at the appropriate time to notify the Commission of any change in status.

Neither Beethoven nor any of its affiliates holds an exclusive franchise or exclusive service territory in the United States for the transmission, distribution, or sale of electric power. Nor do Beethoven or any of its affiliates own any natural gas transportation, distribution or storage assets.

#### **IV. APPLICATION FOR MARKET-BASED RATE AUTHORITY**

Beethoven respectfully requests authorization to sell electric energy, capacity and ancillary services at market-based rates. Section 205 of the Federal Power Act requires that all rates and charges made or received by any public utility for the sale of electric energy subject to the Commission's jurisdiction be just and reasonable and not unduly discriminatory or preferential. Pursuant to Order No. 697, the Commission will authorize entities to sell power at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, horizontal and vertical market power in generation and transmission, and cannot erect other barriers to entry.<sup>7</sup> As demonstrated below, Beethoven satisfies these standards and is a Category 1 seller in all regions.

##### **A. Horizontal Market Power**

In Order No. 697, the Commission adopted two indicative horizontal market power screens to enable it to more readily identify potential market power: the pivotal

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<sup>7</sup> *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, 72 Fed. Reg. 39,904 (July 20, 2007), *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, 73 Fed. Reg. 25,832 (May 7, 2008), *clarified*, 124 FERC ¶ 61,055 (2008), *order on reh'g*, Order No. 697-B, 73 Fed. Reg. 79,610 (Dec. 30, 2008), *order on reh'g*, Order No. 697-C, 74 Fed. Reg. 30,924 (June 29, 2009), *order on reh'g*, Order No. 697-D, 75 Fed. Reg. 14,342 (March 25, 2010).

supplier screen and the market share screen.<sup>8</sup> If the applicant and its affiliates pass both of these indicative screens in the relevant geographic market, then there is a rebuttable presumption that the applicant lacks horizontal market power.<sup>9</sup> Each indicative screen assesses generation market power based on the uncommitted capacity of the applicant and its affiliates in the relevant geographic market. The Commission has indicated that the default relevant geographic market is the balancing authority area in which the applicant's generation is located and the "first-tier" balancing authority areas directly interconnected to the seller's balancing authority area.<sup>10</sup>

The relevant geographic market for Beethoven is the WAUE balancing authority and the first-tier neighboring balancing authority areas. As detailed in Sections III.A and III.B, neither Beethoven nor any of its affiliates has uncommitted generating capacity in the WAUE balancing authority area or in the markets that are first-tier to the WAUE balancing authority area.

Because Beethoven and its affiliates do not have any uncommitted generating capacity in the relevant market, Beethoven cannot be a pivotal supplier and, by definition, it possesses generation market shares of zero in all seasons. Accordingly, Beethoven passes both indicative screens. Beethoven's passage of both tests creates a rebuttable presumption that it lacks horizontal market power.<sup>11</sup>

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<sup>8</sup> Order No. 697 at PP 33-37.

<sup>9</sup> 18 C.F.R. § 35.37(c)(1) (2014).

<sup>10</sup> See Order No. 697 at P 37; Order No. 697-A at PP 69, 83-84.

<sup>11</sup> 18 C.F.R. § 35.37(c)(1) (2014). The Commission has granted market-based rate authority to applicants that have not submitted formal horizontal market power analyses with their market-based rate applications where the applicants do not have any uncommitted generating capacity in the relevant market. See, e.g., *Flat Ridge 2 Wind Energy LLC*, 139 FERC ¶ 61,160 (2012) at PP 15-16.

## **B. Vertical Market Power**

In determining whether an applicant has vertical market power directly or through affiliates, the Commission considers the applicant's and its affiliates' ownership, operation or control of transmission facilities and, through affiliation, the applicant's ownership or control of inputs to electric power production, such as the transportation or distribution of the inputs to electric power production.<sup>12</sup>

Neither Beethoven nor any of its affiliates owns or controls transmission facilities other than limited and discrete interconnection lines and associated equipment necessary to connect generating facilities to the transmission grid, as described in Sections III.A and III.B. Thus, Beethoven's ownership or control over interconnection facilities does not give it vertical market power.<sup>13</sup>

With respect to inputs into electricity generation, neither Beethoven nor any of its affiliates owns or controls intrastate natural gas transportation, intrastate natural gas storage or distribution facilities; or sources of coal supplies and the transportation of coal supplies such as barges and rail cars.

As discussed in Section III.B, affiliates of Beethoven lease sites for new generation development and are currently developing generation on these sites. In addition, Beethoven leases the site on which the Facility is under construction. However, the Commission has adopted a rebuttable presumption that ownership or control of, or affiliation with an entity that owns or controls, sites for generation capacity development

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<sup>12</sup> 18 C.F.R. § 35.37(d)-(e).

<sup>13</sup> See, e.g., *Entegra Power Services, LLC*, 128 FERC ¶ 61,019 (2009).



does not allow a seller to raise entry barriers.<sup>14</sup> Neither Beethoven nor any of its affiliates has erected barriers to entry into the relevant market or will erect barriers to entry into the relevant market.

**C. Ancillary Services**

Beethoven respectfully requests authorization to sell the ancillary services the Commission has authorized utilities with market-based rate authority to sell in jurisdictional ISO/RTO markets, as well as to third-parties. Beethoven has included in its Tariff the standard authorizing language approved by the Commission in this regard.

**D. Seller Category**

Beethoven meets the Commission's requirements to qualify as a Category 1 seller in all regions because: (1) it and its affiliates own or control 500 MW or less of generation in aggregate per region; (2) it and its affiliates do not own, operate or control transmission facilities other than limited equipment necessary to connect individual generating facilities to the transmission grid; (3) it is not affiliated with any entity that owns, operates or controls transmission facilities that the Commission considers relevant in the market power analysis; (4) it is not affiliated with a franchised public utility; and (5) its application for market-based rate authorization does not raise any other vertical market-power issues. Accordingly, Beethoven requests that the Commission designate it as a Category 1 seller in all regions.

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<sup>14</sup> Order No. 697 at P 446.

**E. Affiliate Restrictions**

Beethoven has included in its proposed Tariff a provision requiring compliance with the affiliate restrictions set forth in the Commission’s regulations. However, neither Beethoven nor any of its affiliates has captive customers. Accordingly, the restrictions do not apply to Beethoven.<sup>15</sup>

**F. Reporting Requirements**

Beethoven will comply with the reporting requirements the Commission normally imposes on public utilities that are authorized to sell electric energy, capacity and ancillary services at market-based rates, including the requirements to submit electric quarterly reports and to timely inform the Commission of any change in status that would reflect a departure from the facts upon which the Commission relied in granting Beethoven market-based rate authority. In accordance with Section 35.41(c) of the Commission’s regulations,<sup>16</sup> Beethoven notifies the Commission that, as of the effective date of the Tariff, it will not report transactions to publishers of electric or natural gas price indices. If at any point Beethoven begins reporting price data to index publishers, it will notify the Commission within 15 days of commencing such reporting.

**V. REQUEST FOR CERTAIN WAIVERS AND BLANKET AUTHORIZATIONS**

**A. Request for Waivers and Blanket Authorizations in Connection with Request for Market-Based Rate Authority**

Beethoven respectfully requests that the Commission grant certain waivers and blanket authorizations, consistent with the waivers and blanket authorizations approved

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<sup>15</sup> Order No. 697 at P 552.

<sup>16</sup> 18 C.F.R. § 35.41(c) (2014).

by the Commission when requested by other sellers seeking approval to sell at market-based rates. Specifically, Beethoven requests the following waivers and blanket authorizations:

- (i) Waiver of the requirements of Part 35, Subparts B and C (except Sections 35.12(a), 35.13(b), 35.15 and 35.16) and Parts 41 (accounts, records and memoranda), 101 (uniform system of accounts), and 141 (statement and reports, except Sections 141.14 and 141.15) of the Commission's regulations;
- (ii) Blanket authorization under Section 204 of the Federal Power Act and Part 34 of the Commission's regulations to issue securities and assume obligations and liabilities; and
- (iii) Other waivers and authorizations customarily granted to entities with market-based rate authority.

**B. Request for Waiver of Transmission Provider Requirements**

Beethoven requests waiver of the Commission's requirements applicable to transmission providers with respect to Beethoven's seven-mile 115 kV generator interconnection line and associated equipment. Specifically, Beethoven requests that the Commission grant it waiver of the requirements of Order Nos. 717, 888, 889, 890 and 2004 and Sections 35.28, Part 37 and Part 358 of the Commission's regulations.

Beethoven's interconnection line and associated equipment are limited and discrete transmission facilities that do not form an integrated transmission grid. The facilities are not interconnected with any generation other than the Facility, and they are interconnected at only a single point with the NorthWestern transmission system.

Accordingly, consistent with Commission precedent with respect to entities that own only

limited and discrete generator interconnection facilities,<sup>17</sup> Beethoven respectfully requests waiver of the requirements of Order Nos. 717, 888, 889, 890 and 2004 and Sections 35.28, Part 37 and Part 358 of the Commission's regulations.

Beethoven acknowledges that if receives a request for transmission service, it will file with the Commission a *pro forma* OATT within 60 days of the date of the request and will satisfy any other applicable requirements.<sup>18</sup>

## **VI. REQUESTED EFFECTIVE DATE**

Beethoven expects to begin producing test power from the Facility as early as February 27, 2015. Accordingly, Beethoven respectfully requests a waiver of the Commission's 60-day notice period established by section 35.3(a) of its regulations<sup>19</sup> and requests that the Commission accept its proposed Tariff for filing, effective February 27, 2015.

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<sup>17</sup> See, e.g., *Flat Ridge 2*, 139 FERC ¶ 61,160 at PP 23-28.

<sup>18</sup> *Id.* at P 27.

<sup>19</sup> 18 C.F.R. § 35.3(a) (2014).

## VII. CONCLUSION

Beethoven respectfully requests that the Commission (i) authorize Beethoven to engage in the sale of electric energy, capacity and ancillary services at market-based rates as a Category 1 seller in all regions; (ii) grant such waivers and blanket authorizations as the Commission has granted to other entities with market-based rate authorization, as described herein; and (iii) accept for filing Beethoven's Tariff with an effective date of February 27, 2015.

Respectfully submitted,

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