

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

OFFICE OF ENERGY MARKET REGULATION

In Reply Refer To:
Bison Solar LLC,
Pavant Solar II LLC, and
San Isabel Solar LLC
Docket Nos. ER16-1924-001,
ER16-1925-001, and
ER16-1926-001

August 19, 2016

Mr. David K. Richter
Counsel for Bison Solar LLC, Pavant Solar II LLC, and San Isabel Solar LLC
PSEG Services Corporation
80 Park Plaza
T5G
Newark, New Jersey 07102

Reference: Market-Based Rate Authorizations

Dear Mr. Richter:

On June 14, 2016, as amended on July 1, 2016, you filed on behalf of Bison Solar LLC, Pavant Solar II LLC, and San Isabel Solar LLC (collectively, Applicants) applications for market-based rate authority with accompanying tariffs. The proposed market-based rate tariffs provide for the sale of energy, capacity, and ancillary services at market-based rates.¹ Applicants request waivers commonly granted to similar market-based rate applicants.

Your filings were noticed on June 15, 2016 and July 1, 2016, with comments, protests or interventions due on or before July 5, 2016 and July 22, 2016, respectively. None were filed.

Pursuant to the authority delegated to the Director, Division of Electric Power Regulation - West, under 18 C.F.R. § 375.307, your submittals filed in the referenced

¹ Applicants request authorization to engage in the sale of certain ancillary services as a third-party provider in other markets.

dockets are accepted for filing, effective August 1, 2016, as requested.² Based on your representations, Applicants meet the criteria for a Category 1 seller in all regions and are so designated.³

You state that Bison Solar LLC will own and operate a 30 megawatt (MW) photovoltaic solar facility that is located in Fort Collins, Colorado, in the Western Area Power Administration Colorado/Missouri (WACM) balancing authority area (BAA), the output of which is fully committed to Platte River Power Authority; Pavant Solar II LLC will own and operate a 50 MW photovoltaic solar facility that is located in McCormick, Utah, in the PacifiCorp East (PACE) BAA, the output of which is fully committed to PacifiCorp; and San Isabel Solar LLC will own and operate a 30 MW photovoltaic solar facility that is located in Las Animas County, Colorado, in the Public Service Company of Colorado (PSCo) BAA, the output of which is fully committed to Tri-State Generation and Transmission Association, Inc. You add that Applicants are wholly owned by PSEG Solar Source LLC, and are not affiliated with other entities that own generation facilities in the WACM, PACE, and PSCo BAAs. You state that Applicants and their affiliates, with the exception of Public Service Electric and Gas Company (PSE&G), do not own transmission assets in the U.S. other than incidental interconnection facilities. You further state that transmission service over the transmission facilities owned by PSE&G is

² We note that Applicants are 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 Applicants seek such authority, they must make the required showing and receive Commission authorization prior to making such sales. *See Third-Party Provision of Ancillary Services; Accounting and Financial Reporting for New Electric Storage Technologies*, Order No. 784, FERC Stats. & Regs. ¶ 31,349, at PP 200-202 (2013), *order on clarification*, Order No. 784-A, 146 FERC ¶ 61,114 (2014). *See also Third-Party Provision of Primary Frequency Response Service*, Order No. 819, FERC Stats. & Regs. ¶ 31,375 at P 70 (2015).

³ *See 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, at P 320 (2015), *order on reh'g*, Order No. 816-A, 155 FERC ¶ 61,188 (2016); *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 PP 848-850, *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).

provided under the PJM Interconnection, L.L.C. open access transmission tariff (OATT).⁴ You add that interconnection facilities owned by Applicants and their affiliates, other than PSE&G, qualify for the blanket OATT waiver under Order No. 807.⁵ Therefore, Applicants and their affiliates have mitigated any transmission market power. Further, you affirmatively state that Applicants and their affiliates have not erected barriers to entry and will not erect barriers to entry into the relevant markets.

You represent that Applicants meet the criteria for Category 1 seller status in all regions because, in the Northeast, Central, Northwest, Southwest, Southeast, and Southwest Power Pool regions, they and their affiliates do not own or control in aggregate more than 500 MWs of generation; do not own, operate or control transmission facilities other than limited equipment necessary to connect individual generating facilities to the transmission grid; are not affiliated with anyone that owns, operates, or controls transmission in the same region as Applicants' generation assets; are not affiliated with a franchised public utility in any region; and do not raise other vertical market power issues.

Market-Based Rate Authorization

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.⁶

You state that all of Applicants' generation capacity is fully committed under long-term power purchase agreements and thus they does not have any uncommitted capacity in the WACM, PACE, and PSCo BAAs. Based on your representations, Applicants' submittals satisfy the Commission's requirements for market-based rate authority regarding horizontal market power.

Based on your representations, Applicants' submittals also satisfy the

⁴ *Pennsylvania-New Jersey-Maryland Interconnection*, 81 FERC ¶ 61,257 (1997).

⁵ In Order No. 807, the Commission amended its regulations to waive the Open Access Transmission Tariff requirements of 18 C.F.R. § 35.28, the Open Access Same-Time Information System requirements of Part 37, and the Standards of Conduct requirements of Part 358, under certain conditions, for entities that own interconnection facilities. See *Open Access and Priority Rights on Interconnection Customer's Interconnection Facilities*, Order No. 807, FERC Stats. & Regs. ¶ 31,367 at PP 57, 176 (2015). See also *Kingfisher Wind, LLC*, 151 FERC ¶ 61,276 (2015); *Balko Wind Transmission, LLC*, 152 FERC ¶ 61,011 (2015).

⁶ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 62, 399, 408, 440.

Commission's requirements for market-based rates regarding vertical market power.

Applicants' requests for waiver of Subparts B and C of Part 35 of the Commission's regulations requiring the filing of cost-of-service information, except for sections 35.12(a), 35.13(b), 35.15 and 35.16 are granted. Applicants' requests for waiver of Part 41 and Part 141 of the Commission's regulations concerning accounting and reporting requirements are granted with the exception of 18 C.F.R. §§ 141.14 and 141.15.⁷ Applicants' requests for waiver of Part 101 of the Commission's regulations are hereby granted, with the exception that waivers of the provisions of Part 101 that apply to hydropower licensees are not granted with respect to licensed hydropower projects.⁸ Notwithstanding the waivers of the accounting and reporting requirements here, Applicants are expected to keep their accounting records in accordance with generally accepted accounting principles.

Applicants request blanket authorization under Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability. A separate notice was published in the Federal Register establishing a period during which protests could be filed. None were filed. Applicants are authorized to issue securities and assume obligations or liabilities as guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Applicants, compatible with the public interest, and reasonably necessary or appropriate for such purposes.⁹

Applicants must file an Electric Quarterly Report (EQR) with the Commission, consistent with Order Nos. 2001¹⁰ and 768.¹¹ Applicants must file EQRs electronically

⁷ See Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 984-985.

⁸ Hydropower licensees are required to comply with the requirements of the Uniform System of Accounts pursuant to 18 CFR Part 101 to the extent necessary to carry out their responsibilities under Part I of the Federal Power Act (FPA). We further note that a licensee's status as a market-based rate seller under Part II of the FPA does not exempt it from its accounting responsibilities as a licensee under Part I of the FPA. See Order No. 816, FERC Stats. & Regs. ¶ 31,374 at PP 345-350; *Seneca Gen., LLC*, 145 FERC ¶ 61,096, at P 23, n.20 (2013) (citing *Trafalgar Power, Inc.*, 87 FERC ¶ 61,207, at 61,798 (1999) (noting that "all licensees are required to comply with the requirements of the Uniform System of Accounts to the extent necessary to carry out their responsibilities under [s]ections 4(b), 10(d) and 14 of the FPA"))).

⁹ See Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 999-1000.

¹⁰ *Revised Public Utility Filing Requirements*, Order No. 2001, FERC Stats. & Regs. ¶ 31,127, *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reh'g denied*, Order No. 2001-B, 100 FERC ¶ 61,342, *order directing filing*, Order No. 2001-C, 101

with the Commission consistent with the procedures set forth in Order No. 770.¹² Applicants further 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.¹³

This action does not constitute approval of any service, rate, charge, classification, or any rule, regulation, or practice affecting such rate or service provided for in the filed documents; nor shall such action be deemed as recognition of any claimed contractual right or obligation affecting or relating to such service or rate; and such acceptance is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against any of the applicant(s).

FERC ¶ 61,314 (2002), *order directing filing*, Order No. 2001-D, 102 FERC ¶ 61,334, *order refining filing requirements*, Order No. 2001-E, 105 FERC ¶ 61,352 (2003), *order on clarification*, Order No. 2001-F, 106 FERC ¶ 61,060 (2004), *order revising filing requirements*, Order No. 2001-G, 120 FERC ¶ 61,270, *order on reh'g and clarification*, Order No. 2001-H, 121 FERC ¶ 61,289 (2007), *order revising filing requirements*, Order No. 2001-I, FERC Stats. & Regs. ¶ 31,282 (2008).

¹¹ *Elec. Mkt. Transparency Provisions of Section 220 of the Fed. Power Act*, Order No. 768, FERC Stats. & Regs. ¶ 31,336 (2012), *order on reh'g*, Order No. 768-A, 143 FERC ¶ 61,054 (2013).

¹² *See Revisions to Electric Quarterly Report Filing Process*, Order No. 770, FERC Stats. & Regs. ¶ 31,338, at P 3 (2012) (citing Order No. 2001, FERC Stats. & Regs. ¶ 31,127 at P 31).

¹³ 18 C.F.R. § 35.42 (2015); *see also Reporting Requirement 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).

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This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R § 385.713.

Questions regarding the above order should be directed to:

Federal Energy Regulatory Commission
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Phone: (202) 502-6267
Office of Energy Market Regulation
888 First Street, N.E.
Washington, D.C. 20426

Sincerely,

Steve P. Rodgers, Director
Division of Electric Power
Regulation - West

Document Content(s)

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