

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

OFFICE OF ENERGY MARKET REGULATION

Brady Wind, LLC
Brady Wind II, LLC
Rush Springs Wind Energy, LLC
Ninnescah Wind Energy, LLC
Osborn Wind Energy, LLC
(collectively, Applicants)

In Reply Refer To:
Docket Nos. ER16-2190-000
ER16-2191-000
ER16-2240-000
ER16-2241-000
ER16-2297-000

August 30, 2016

Mr. Gunnar Birgisson
Senior Attorney
NextEra Energy Resources, LLC
801 Pennsylvania Avenue, N.W.
Suite 220
Washington, D.C. 20004

Reference: Market-Based Rate Authorization

Dear Mr. Birgisson:

On July 13, 2016, July 19, 2016, and July 27, 2016, you filed on behalf of 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 July 14, 2016, July 20, 2016, and July 27, 2016, with comments, protests or interventions due on or before August 17, 2016. No protests or comments were filed.

¹ Applicants request authorization to sell ancillary services in the markets administered by PJM Interconnection, L.L.C., New York Independent System Operator, Inc., ISO New England Inc., California Independent System Operator Corp., Midcontinent Independent System Operator, Inc., and Southwest Power Pool, Inc. (SPP). Applicants also request authorization to engage in the sale of certain ancillary services as a third-party provider in other markets.

Pursuant to the authority delegated to the Director, Division of Electric Power Regulation - West, under 18 C.F.R. § 375.307, Brady Wind, LLC, Rush Springs Wind Energy, LLC, Ninnescah Wind Energy, LLC, and Osborn Wind Energy, LLC submittals filed in the referenced dockets are accepted for filing, effective October 1, 2016, as requested. Brady Wind II, LLC's submittal filed in the referenced docket is accepted for filing, effective November 1, 2016, as requested.² Based on your representations, Applicants meet the criteria for Category 2 sellers in the SPP region and Category 1 sellers in the Northeast, Southeast, Central, Southwest, and Northwest regions and are so designated.³

You state that Applicants will each control and operate a wind generating facility located within the SPP market. You represent that, in aggregate, Applicants will control and operate approximately 957 megawatts (MW) of generation capacity. You further state that Applicants are indirectly wholly owned by NextEra Energy, Inc. and are affiliated with several entities that own generation facilities in the SPP market. You represent that certain affiliates of Applicants have open access transmission tariffs

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). Applicants must file an updated market power analysis for each region in which it is designated as a Category 2 seller in compliance with the regional reporting schedule. *See* Order No. 816, FERC Stats. & Regs. ¶ 31,374 at P 353.

(OATT) on file with the Commission.⁴ You add that Applicants and some of their affiliates own interconnection facilities that 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 market.

You represent that Applicants meet all of the Category 1 seller criteria in the Northeast, Southeast, Central, Southwest, and Northwest regions because Applicants do not own or control any generation or transmission facilities in those regions, and they do not raise any 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

Applicants have prepared the pivotal supplier and wholesale market share screens for the SPP market consistent with the requirements of Order Nos. 816 and 697.

Applicants' horizontal market power screens have been reviewed and Applicants pass both the pivotal supplier and wholesale market share screens in that market. Based on your representations, Applicants' submittals⁷ satisfy the Commission's requirements

⁴ *Sagebrush, a California partnership*, 130 FERC ¶ 61,093, *order on reh'g*, 132 FERC ¶ 61,234 (2010). *See also, Sagebrush, a California Partnership*, Docket No. ER10-1988-001 (Feb. 28, 2011) (delegated letter order); and *Sagebrush, a California Partnership*, Docket No. ER11-2526-000 (Feb. 28, 2011) (delegated letter order). *Sky River LLC*, 136 FERC ¶ 61,162 (2011). *Florida Power & Light Company*, 77 FERC ¶ 61,025 (1996). *Peetz Logan Interconnect, LLC*, 136 FERC ¶ 61,075 (2011) and *Peetz Logan Interconnect, LLC*, 142 FERC ¶ 61,035 (2013).

⁵ In Order No. 807, the Commission amended its regulations to waive the OATT 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.

⁷ The next time Applicants make market-based rate filings with the Commission,

for market-based rate authority regarding horizontal market power.

Based on your representations, Applicants' submittals also satisfy the 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 141.15.⁸ Applicants' requests for waiver of Part 101 of the Commission's regulations are hereby granted, with the exception that waiver of the provisions of Part 101 that apply to hydropower licensees are not granted with respect to licensed hydropower projects.⁹ Notwithstanding the waiver 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. Separate notices were published in the Federal Register establishing a period during which protests could be filed. None was 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,

they must include a revised tariff in compliance with Appendix C – Limitations and Exemptions Regarding Market-Based Rate Authority to include appropriate citations. *Niagara Mohawk Power Corporation*, 121 FERC ¶ 61,275 (2007) at P 8. *See also*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 384.

⁸ *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 984-985.

⁹ 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"))).

and reasonably necessary or appropriate for such purposes.¹⁰

Applicants must file Electric Quarterly Reports (EQR) with the Commission, consistent with Order Nos. 2001¹¹ and 768.¹² Applicants must file EQRs electronically with the Commission consistent with the procedures set forth in Order No. 770.¹³ 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.¹⁴

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).

¹⁰ See Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 999-1000.

¹¹ *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 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).

¹² *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).

¹³ 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).

¹⁴ 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).

Docket No. ER16-2190-000, *et al.* - 6 -

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
Attn: Debra Irwin
Phone: (202) 502-6253
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)

ER16-2190-000.DOC.....1-6