

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

OFFICE OF ENERGY MARKET REGULATION

In Reply Refer To:
2016 ESA Project Company, LLC
Docket No. ER17-252-001

December 15, 2016

Mr. Lyle D. Larson
Attorney for 2016 ESA Project Company, LLC
Balch & Bingham LLP
1710 Sixth Avenue North
Birmingham, Alabama 35203

Reference: Market-Based Rate Authorization

Dear Mr. Larson:

On October 31, 2016, as amended on November 1, 2016, you filed on behalf of 2016 ESA Project Company, LLC (2016 ESA Project) an application for market-based rate authority with an accompanying tariff. The proposed market-based rate tariff provides for the sale of energy and capacity at market-based rates. 2016 ESA Project requests waivers commonly granted to similar market-based rate applicants.

Your filing was noticed on November 1, 2016 and November 2, 2016, with comments, protests or interventions due on or before November 21, 2016 and November 22, 2016, respectively. None was 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 docket are accepted for filing, effective November 1, 2016, as requested. Based on your representations, 2016 ESA Project meets the criteria for a Category 2 seller in the Southwest region and Category 1 seller in the Central, Northeast, Northwest, SPP, and Southeast regions and is so designated.¹

¹ 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, FERC Stats. & Regs. ¶ 31,382 (2016); *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No.

You state that 2016 ESA Project is constructing, and will own and operate a portfolio of distributed-energy generation facilities with an aggregate generation capacity of approximately 50 megawatts (MW) located in the California Independent System Operator Corp. (CAISO), PJM Interconnection, L.L.C. (PJM), New York Independent System Operator, Inc. (NYISO), and ISO New England Inc. (ISO-NE) markets, the Los Angeles Department of Water and Power (LADWP) balancing authority area, and the Balance Authority Area of Northern California (BANC). You add that 2016 ESA Project is wholly owned by 2016 ESA Holdco, LLC, which is an indirect subsidiary of Southern Company (Southern) and is affiliated with several entities that own generation facilities. You represent that 2016 ESA Project's affiliates through Southern have an open access transmission tariff (OATT) on file with the Commission.² You also represent that 2016 ESA Project and the remaining affiliates that own limited interconnection facilities necessary to connect their individual facilities to the transmission grid qualify for the blanket OATT waiver under 18 C.F.R. § 35.28(d)(2).³ Therefore, 2016 ESA Project and its affiliates have mitigated any transmission market power. Further, you affirmatively state that 2016 ESA Project and its affiliates have not erected barriers to entry and will not erect barriers to entry into the relevant markets.

You state that 2016 ESA Project will be a Category 2 seller in the Southwest region. You represent that 2016 ESA Project meets the criteria for a Category 1 seller in the Central, Northeast, Northwest, SPP, and Southeast regions because it owns less than 500 MW of generation in those regions; it does not own, operate or control any transmission facilities; it is not affiliated with anyone that owns, operates, or controls transmission facilities in the same region as its generation assets; it is not affiliated with a

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).

² *Southern Company Services, Inc.*, 82 FERC ¶ 61,130 (1998).

³ *See Open Access and Priority Rights on Interconnection Customer's Interconnection Facilities*, Order No. 807, FERC Stats. & Regs. ¶ 31,367, at P 57, *order on reh'g*, Order No. 807-A, 153 FERC ¶ 61,047 (2015) (waiving 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 also Oildale Energy, LLC*, 153 FERC ¶ 61,013 at P 14 (2015).

franchised public utility in the same region as its generation assets; and it does 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.⁴

2016 ESA Project has prepared the pivotal supplier and wholesale market share screens for the CAISO, PJM, NYISO, and ISO-NE markets and related submarkets, as well as the LADWP and BANC balancing authority areas consistent with the requirements of Order Nos. 816 and 697.

2016 ESA Project's horizontal market power screens have been reviewed, and 2016 ESA Project passes both the pivotal supplier and wholesale market share screens in those markets, submarkets, and balancing authority areas. Based on your representations, 2016 ESA Project's submittal satisfies the Commission's requirements for market-based rate authority regarding horizontal market power.

Based on your representations, 2016 ESA Project's submittal also satisfies the Commission's requirements for market-based rates regarding vertical market power.

2016 ESA Project's request 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 is granted. 2016 ESA Project's request for waiver of Part 41 and Part 141 of the Commission's regulations concerning accounting and reporting requirements is granted with the exception of 18 C.F.R. §§ 141.14 and 141.15.⁵ 2016 ESA Project's request for waiver of Part 101 of the Commission's regulations is hereby granted, with the exception that waiver of the provisions of Part 101 that apply to hydropower licensees is not granted with respect to licensed hydropower projects.⁶ Notwithstanding the waiver of the accounting and reporting requirements here,

⁴ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 62, 399, 408, 440.

⁵ See Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 984-985.

⁶ 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

2016 ESA Project is expected to keep its accounting records in accordance with generally accepted accounting principles.

2016 ESA Project requests 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 was filed. 2016 ESA Project is 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 2016 ESA Project, compatible with the public interest, and reasonably necessary or appropriate for such purposes.⁷

2016 ESA Project must file an Electric Quarterly Report (EQR) with the Commission, consistent with Order Nos. 2001⁸ and 768.⁹ 2016 ESA Project must file EQRs electronically with the Commission consistent with the procedures set forth in Order No. 770.¹⁰ 2016 ESA Project further must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission

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").

⁷ See Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 999-1000.

⁸ *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).

⁹ *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).

¹⁰ 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).

relied upon in granting market-based rate authority.¹¹

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).

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

¹¹ 18 C.F.R. § 35.42 (2016); *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).