

FEDERAL ENERGY REGULATORY COMMISSION  
Washington, D.C. 20426

OFFICE OF ENERGY MARKET REGULATION

In Reply Refer To:  
Pima Energy Storage System, LLC  
Docket No. ER17-196-000

December 15, 2016

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

Reference: Market-Based Rate Authorization

Dear Mr. Newton:

On October 27, 2016, you filed on behalf of Pima Energy Storage System, LLC (Pima Energy) an application for market-based rate authority with an accompanying tariff. The proposed market-based rate tariff provides for the sale of energy, capacity, and ancillary services at market-based rates.<sup>1</sup> Pima Energy requests waivers commonly granted to similar market-based rate applicants.

Your filing was noticed on October 27, 2016, with comments, protests or interventions due on or before November 17, 2016. 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 submittal filed in the referenced docket is accepted for filing, effective October 28, 2016, as requested.<sup>2</sup> Based on your

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<sup>1</sup> Pima Energy requests 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). Pima Energy also requests authorization to engage in the sale of certain ancillary services as a third-party provider in other markets.

<sup>2</sup> We note that Pima Energy is not being granted authority to make third-party sales of operating reserves to a public utility that is purchasing ancillary services to

representations, Pima Energy meets the criteria for a Category 2 seller in the Southwest region and Category 1 seller in the Northeast, Southeast, Central, SPP, and Northwest regions and is so designated.<sup>3</sup>

You state that Pima Energy will own and operate a 10 megawatt energy storage system located in Tucson, Arizona within the Tucson Electric Power Company (Tucson) balancing authority area. You represent that Pima Energy has entered into a long-term energy storage agreement with Tucson, which provides Tucson with the sole right to dispatch the energy storage system in exchange for a capacity payment. You add that Pima Energy is an indirect subsidiary of NextEra Energy, Inc., and is affiliated with entities that own generation facilities in balancing authority areas first-tier to the Tucson balancing authority area. You state that certain affiliates of Pima Energy have open access transmission tariffs (OATT) on file with the Commission.<sup>4</sup> You add that Pima

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satisfy its own open access transmission tariff requirements to offer ancillary services to its own customers. If Pima Energy seeks such authority, it 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).

<sup>3</sup> *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. 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). Pima Energy 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.

<sup>4</sup> *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 ¶

Energy and some of its affiliates own interconnection facilities that qualify for the blanket OATT waiver under Order No. 807.<sup>5</sup> Therefore, Pima Energy and its affiliates have mitigated any transmission market power. Further, you affirmatively state that Pima Energy and its affiliates have not erected barriers to entry and will not erect barriers to entry into the relevant market.

You state that Pima Energy meets all of the Category 1 seller criteria in the Northeast, Southeast, Central, SPP, and Northwest regions because Pima Energy does not own or control any generation or transmission facilities in these regions, and Pima Energy does 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.<sup>6</sup>

You state that all of Pima Energy's generation capacity is fully committed under a long-term power purchase agreement and thus it does not have any uncommitted capacity in the Tucson balancing authority area. Based on your representations, Pima Energy's submittal<sup>7</sup> satisfies the Commission's requirements for market-based rate authority regarding horizontal market power.

Based on your representations, Pima Energy's submittal also satisfies the

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61,025 (1996). *Peetz Logan Interconnect, LLC*, 136 FERC ¶ 61,075 (2011) and *Peetz Logan Interconnect, LLC*, 142 FERC ¶ 61,035 (2013).

<sup>5</sup> 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).

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

<sup>7</sup> The next time Pima Energy makes a market-based rate filing with the Commission, it 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.

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

Pima Energy'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. Pima Energy'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.<sup>8</sup> Pima Energy'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.<sup>9</sup> Notwithstanding the waiver of the accounting and reporting requirements here, Pima Energy is expected to keep its accounting records in accordance with generally accepted accounting principles.

Pima Energy 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. Pima Energy 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 Pima Energy, compatible with the public interest, and reasonably necessary or appropriate for such purposes.<sup>10</sup>

Pima Energy must file an Electric Quarterly Report (EQR) with the Commission, consistent with Order Nos. 2001<sup>11</sup> and 768.<sup>12</sup> Pima Energy must file EQRs electronically

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<sup>8</sup> See Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 984-985.

<sup>9</sup> 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"))).

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

<sup>11</sup> *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.<sup>13</sup> Pima Energy 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.<sup>14</sup>

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).

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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).

<sup>12</sup> *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).

<sup>13</sup> *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).

<sup>14</sup> 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).

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:

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Sincerely,

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