

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

OFFICE OF ENERGY MARKET REGULATION

In Reply Refer To:
TPE Alta Luna, LLC
Docket No. ER17-239-000

December 15, 2016

Mr. Michael J. Gergen
Counsel for TPE Alta Luna, LLC
Latham & Watkins LLP
555 Eleventh Street, N.W.
Suite 1000
Washington, D.C. 20004

Reference: Market-Based Rate Authorization

Dear Mr. Gergen:

On October 31, 2016, you filed on behalf of TPE Alta Luna, LLC (TPE Alta Luna) 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.¹ TPE Alta Luna requests waivers commonly granted to similar market-based rate applicants.

Your filing was noticed on November 1, 2016, with comments, protests or interventions due on or before November 21, 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

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

docket is accepted for filing, effective January 3, 2017, as requested.² Based on your representations, TPE Alta Luna meets the criteria for a Category 1 seller in all regions and is so designated.³

You state that TPE Alta Luna plans to own and operate a 25 megawatt (MW) solar powered electric generating facility located in Luna County, New Mexico. You add that TPE Alta Luna's affiliates own an additional 415 MW in the Public Service Company of New Mexico (PNM) balancing authority area. You further state that the generation owned by TPE Alta Luna and its affiliates in the PNM balancing authority area is fully committed to non-affiliated buyers under long-term firm contracts. You state that TPE Alta Luna is a direct wholly owned subsidiary of DESRI Alta Luna Holdings, L.L.C. You state that TPE Alta Luna and its affiliates own interconnection facilities that qualify for the blanket OATT waiver under 18 C.F.R. § 35.28(d)(2).⁴ Therefore, TPE Alta Luna and

² We note that TPE Alta Luna is 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 TPE Alta Luna 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).

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, 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).

⁴ *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

its affiliates have mitigated any transmission market power. Further, you affirmatively state that TPE Alta Luna and its affiliates have not erected barriers to entry and will not erect barriers to entry into the relevant market.

TPE Alta Luna requests Category 1 seller status in all regions. You state that TPE Alta Luna does not own or control 500 MW or more of generation capacity in any region. You further state that TPE Alta Luna is not affiliated with anyone that owns, operates or controls transmission facilities in the same regions as its generation assets. You state that TPE Alta Luna is not affiliated with a franchised public utility in the same region as its generation assets, and TPE Alta Luna 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.⁵

Based on your representations, TPE Alta Luna's submittal satisfies the Commission's requirements for market-based rate authority regarding horizontal and vertical market power.

TPE Alta Luna'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. TPE Alta Luna'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 141.15.⁶ TPE Alta Luna'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.⁷ Notwithstanding the waiver of the accounting and reporting requirements here,

¶ 61,013 at P 14 (2015).

⁵ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 62, 399, 408, 440.

⁶ See Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 984-985.

⁷ 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

TPE Alta Luna is expected to keep its accounting records in accordance with generally accepted accounting principles.

TPE Alta Luna 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. TPE Alta Luna 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 TPE Alta Luna, compatible with the public interest, and reasonably necessary or appropriate for such purposes.⁸

TPE Alta Luna must file an Electric Quarterly Report (EQR) with the Commission, consistent with Order Nos. 2001⁹ and 768.¹⁰ TPE Alta Luna must file EQRs electronically with the Commission consistent with the procedures set forth in Order No. 770.¹¹ TPE Alta Luna 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.¹²

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").

⁸ See Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 999-1000.

⁹ *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).

¹⁰ *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).

¹¹ 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).

¹² 18 C.F.R. § 35.42 (2016); see also *Reporting Requirement for Changes in Status*

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 the applicant.

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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Washington, D.C. 20426

Sincerely,

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