

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

OFFICE OF ENERGY MARKET REGULATION

In Reply Refer To:
Deerfield Wind Energy, LLC
Docket No. ER16-2703-000

December 21, 2016

Ms. Linda L. Walsh
Attorney for Deerfield Energy, LLC
Husch Blackwell LLP
750 17th Street, N.W.
Suite 900
Washington, D.C. 20006

Reference: Market-Based Rate Authorization

Dear Ms. Walsh:

On September 29, 2016, as amended on November 1, 2016, November 14, 2016, and December 9, 2016, you filed on behalf of Deerfield Wind Energy, LLC (Deerfield) 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 Deerfield requests waivers commonly granted to similar market-based rate applicants.

Your filings were noticed on September 30, 2016, November 3, 2016, November 15, 2016, and December 12, 2016 with comments, protests or interventions due on or before October 20, 2016, November 22, 2016, November 25, 2016, and December 19, 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

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

docket are accepted for filing, effective October 7, 2016, as requested.² Based on your representations, Deerfield meets the criteria for a Category 1 seller in all regions and is so designated.³

You state that Deerfield intends to construct, own, and operate a 149 megawatt (MW) wind-powered electric generating facility located in Huron County, Michigan within the MISO market. You add that Deerfield HoldCo, LLC is the sole and managing member of Deerfield and that Deerfield is affiliated with several entities that own generation facilities in the MISO, PJM, and SPP markets. You state that Deerfield is affiliated with The Empire District Electric Company, a transmission-owning member of SPP that has turned over control of its transmission facilities to SPP.⁴ You also represent that Deerfield and its remaining affiliates qualify for the blanket Open Access Transmission Tariff (OATT) waiver under 18 C.F.R. § 35.28(d)(2) and therefore have mitigated any transmission market power.⁵ Further, you affirmatively state that Deerfield

² We note that Deerfield 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 Deerfield 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, 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).

⁴ *See Southwest Power Pool, Inc.*, 82 FERC ¶ 61,267 (1998), 82 FERC ¶ 61,285 (1998), *order on reh'g*, 85 FERC ¶ 61,031 (1998).

⁵ *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

and its affiliates have not erected barriers to entry and will not erect barriers to entry into the relevant market.

You represent that Deerfield meets the criteria for Category 1 status in all regions because Deerfield does not own or control generation capacity outside of the Central region wherein it and its affiliates own or control fewer than 500 MW; it does not own any transmission facilities; it is not affiliated with any transmission facilities in the same region as its generation assets; it is not affiliated with a franchised public utility in the same region as its generation assets; and 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.⁶

Deerfield has prepared the pivotal supplier and wholesale market share screens for the MISO market consistent with the requirements of Order Nos. 816 and 697.

Deerfield's horizontal market power screens have been reviewed, and Deerfield passes both the pivotal supplier and wholesale market share screens in that market. Based on your representations, Deerfield's submittals⁷ satisfy the Commission's requirements for market-based rate authority regarding horizontal market power.

Based on your representations, Deerfield's submittals also satisfy the Commission's requirements for market-based rates regarding vertical market power.

Deerfield'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

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).

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

⁷ The next time Deerfield makes a market-based rate filing with the Commission, it must include a revised tariff in compliance with Order Nos. 697 and 697-A to include appropriate citations. *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 916; Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 384. *See also* 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.

35.12(a), 35.13(b), 35.15 and 35.16 is granted. Deerfield'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 141.15.⁸ Deerfield'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.⁹ Notwithstanding the waiver of the accounting and reporting requirements here, Deerfield is expected to keep its accounting records in accordance with generally accepted accounting principles.

Deerfield 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. Deerfield 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 Deerfield, compatible with the public interest, and reasonably necessary or appropriate for such purposes.¹⁰

Deerfield must file an Electric Quarterly Report (EQR) with the Commission, consistent with Order Nos. 2001¹¹ and 768.¹² Deerfield must file EQRs electronically

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"))).

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*,

with the Commission consistent with the procedures set forth in Order No. 770.¹³ Deerfield 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).

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 (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).

Docket No. ER16-2703-000

- 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)

ER16-2703-000.DOC.....1-6