

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

OFFICE OF ENERGY MARKET REGULATION

In Reply Refer To:
Shiloh IV Lessee, LLC
Docket No. ER13-338-000

December 17, 2012

Mr. Stephen C. Palmer
Attorney for Shiloh IV Lessee, LLC
Alston & Bird, LLP
950 F Street, N.W.
Washington, D.C. 20004

Reference: Market-Based Rate Authorization

Dear Mr. Palmer:

On November 7, 2012, you filed on behalf of Shiloh IV Lessee, LLC (Shiloh IV) 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 Shiloh IV requests waivers commonly granted to similar market-based rate applicants.

Your filing was noticed on November 8, 2012, with comments, protests or interventions due on or before November 28, 2012. 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 December 15, 2012, as requested. Based on your

¹ Shiloh IV 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), and Midwest Independent Transmission System Operator, Inc. (MISO). Shiloh IV also requests authorization to engage in the sale of certain ancillary services as a third-party provider in other markets.

representations, Shiloh IV meets the criteria for a Category 2 seller in the Southwest region and a Category 1 seller in all other regions and is so designated.²

You state that Shiloh IV will operate a 100 megawatt (MW) wind powered generation facility located in Solano County, California, within the CAISO market. You add that all of the output of the facility will be sold under a long-term power purchase agreement with an unaffiliated entity. You represent that Shiloh IV is indirectly wholly owned by EDF Renewable Energy, Inc. which is ultimately owned by Électricité de France, S.A. You state that Shiloh IV is affiliated with entities that own generation facilities throughout the United States. You also state that Shiloh IV is affiliated with Oasis Power Partners, LLC which holds an equity interest in the Sagebrush Partnership (Sagebrush). You explain that Sagebrush owns and operates a 46-mile transmission line in California, but that Sagebrush has an open access transmission tariff on file with the Commission and therefore has mitigated any transmission market power.³ Further, you affirmatively state that Shiloh IV has not erected barriers to entry and will not erect barriers to entry into the relevant market.

You state that Shiloh IV meets all of the Category 1 seller criteria in the Northeast, Southeast, Central, Southwest Power Pool and Northwest regions because it and its affiliates own or control less than 500 MW of generation in aggregate in those regions, it is not affiliated with any entity that owns transmission facilities in those regions, it is not affiliated with any franchised public utilities, and it 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

² *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 P 848-50, *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 sub nom. Pub. Citizen, Inc. v. FERC*, 133 S. Ct. 26 (2012). Shiloh IV must file an updated market power analysis for all regions in which it is designated as a Category 2 seller in compliance with the regional reporting schedule adopted in Order No. 697.

³ *Sagebrush, a California Partnership*, 130 FERC ¶ 61,093 (2010).

power.⁴

You state that Shiloh IV relies on Topaz Solar Farms LLC's recently accepted market power analysis⁵ to demonstrate that Shiloh IV passes both the pivotal supplier and the wholesale market share screens for the CAISO market. Accordingly, Shiloh IV's submittal⁶ satisfies the Commission's requirements for market-based rate authority regarding horizontal market power.

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

Shiloh IV'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. Shiloh IV's request for waiver of Part 41, Part 101, 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 141.15.⁷ Notwithstanding the waiver of the accounting and reporting requirements here, Shiloh IV is expected to keep its accounting records in accordance with generally accepted accounting principles.

Shiloh IV 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. Shiloh IV 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 Shiloh IV, compatible with the public interest,

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

⁵ *Topaz Solar Farms LLC*, Docket No. ER12-1626-000 (June 14, 2012) (delegated letter order).

⁶ The next time you make a market-based rate filing with the Commission, you 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.

⁷ *Citizens Energy Corp.*, 35 FERC ¶ 61,198 (1986); *Citizens Power and Light Corp.*, 48 FERC ¶ 61,210 (1989) (*Citizens Power*); *Enron Power Marketing, Inc.*, 65 FERC ¶ 61,305 (1993), *order on reh'g*, 66 FERC ¶ 61,244 (1994) (*Enron*).

and reasonably necessary or appropriate for such purposes.⁸

Shiloh IV must file electronically with the Commission Electric Quarterly Reports.⁹ Shiloh IV 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 in accordance with Order No. 697.¹⁰

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).

⁸ *Citizens Power*, 48 FERC ¶ 61,210; *Enron*, 65 FERC ¶ 61,305.

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 (2003). Attachments B and C of Order No. 2001 describe the required data sets for contractual and transaction information. Public utilities must submit Electric Quarterly Reports to the Commission using the EQR Submission System Software, which may be downloaded from the Commission's website at <http://www.ferc.gov/docs-filing/eqr.asp>.

¹⁰ *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); 18 C.F.R. § 35.42 (2012).

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: Ryan Anderson
Phone: (202) 502-8122
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