

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

OFFICE OF ENERGY MARKET REGULATION

In Reply Refer To:
Covanta Fairfax, Inc.
Docket No. ER15-595-000

January 15, 2015

Ms. Catherine P. McCarthy
Counsel for Covanta Fairfax, Inc.
Bracewell & Giuliani LLP
2000 K Street, N.W.
Suite 500
Washington, D.C. 20006

Reference: Market-Based Rate Authorization

Dear Ms. McCarthy:

On December 5, 2014, you filed on behalf of Covanta Fairfax, Inc. (Covanta Fairfax) 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 Covanta Fairfax requests waivers commonly granted to similar market-based rate applicants.

Your filing was noticed on December 8, 2014, with comments, protests or interventions due on or before December 26, 2014. None was filed.

¹ Covanta Fairfax requests authorization to sell ancillary services in the market administered by PJM Interconnection, L.L.C. (PJM). Covanta Fairfax also requests authorization to engage in the sale of certain ancillary services as a third-party provider in other markets. We note that Covanta Fairfax 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 Covanta Fairfax 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).

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 February 4, 2015. Based on your representations, Covanta Fairfax meets the criteria for a Category 2 seller in the Northeast region and a Category 1 seller in the Southeast, Central, Southwest Power Pool, Southwest, and Northwest regions and is so designated.²

You state that Covanta Fairfax owns and operates 108 megawatts of generation capacity located in Lorton, Virginia, within the AP South submarket of PJM. You add that Covanta Fairfax is a wholly-owned subsidiary of Covanta Energy LLC, and is affiliated with several entities that own generation facilities in the PJM market. Further, you affirmatively state that Covanta Fairfax has not erected barriers to entry and will not erect barriers to entry into the relevant market.

You state that Covanta Fairfax meets all of the Category 1 seller criteria in the Southeast, Central, Southwest Power Pool, Southwest, and Northwest regions because it and its affiliates own or control less than 500 megawatts of generation in aggregate in those regions, it does not own transmission facilities, it is not affiliated with any entity that owns transmission facilities, 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 power.³

You state that Covanta Fairfax relies on Camden County Energy Recovery Associates, L.P.'s recently filed market power analysis⁴ to demonstrate that Covanta

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 PP 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*, 133 S. Ct. 26 (2012). Covanta Fairfax 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 adopted in Order No. 697.

³ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 62, 399, 408, 440.

⁴ *Camden County Energy Recovery Associates, L.P.*, Docket No. ER12-1195-002

Fairfax passes both the pivotal supplier and the wholesale market share screens for the AP South submarket, when the Commission-accepted Simultaneous Transmission Import Limit (SIL) study results are taken into consideration for the AP South submarket.⁵

Accordingly, Covanta Fairfax's submittal satisfies the Commission's requirements for market-based rate authority regarding horizontal market power in the AP South submarket of PJM when the Commission-accepted SIL values for this market are applied.

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

Covanta Fairfax'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. Covanta Fairfax'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 Covanta Fairfax'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, Covanta Fairfax is expected to keep its accounting records in accordance with generally accepted accounting principles.

(filed June 30, 2014).

⁵ See *New Brunswick Energy Marketing Corporation*, 147 FERC ¶ 61,190 at P 8 and Appendix A (2014) (SIL Study Order). In the SIL Study Order, the Commission stated that it will use these SIL values when examining updated market power analyses for the Northeast region.

⁶ *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*).

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 *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")).

Covanta Fairfax 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. Covanta Fairfax 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 Covanta Fairfax, compatible with the public interest, and reasonably necessary or appropriate for such purposes.⁸

Covanta Fairfax must file electronically with the Commission Electric Quarterly Reports.⁹ Covanta Fairfax 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 applicants.

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 Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 1015-1046; 18 C.F.R. § 35.42 (2014). *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).

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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: Melissa Lozano
Phone: (202) 502-6267
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)

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