

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

OFFICE OF ENERGY MARKET REGULATION

In Reply Refer To:
Spectrum Nevada Solar, LLC
Docket Nos. ER13-1101-000 and
ER13-1101-001

May 14, 2013

Mr. Lyle D. Larson
Attorney for Spectrum Nevada Solar, LLC
Balch & Bingham LLP
1710 Sixth Avenue North
Birmingham, Alabama 35203

Reference: Market-Based Rate Authorization

Dear Mr. Larson:

On March 15, 2013, as amended March 28, 2013, you filed on behalf of Spectrum Nevada Solar, LLC (Spectrum) an application for market-based rate authority with an accompanying tariff. The proposed market-based rate tariff provides for the sale of energy and capacity at market-based rates. Spectrum requests waivers commonly granted to similar market-based rate applicants.

Your filings were noticed on March 15, 2013, and March 29, 2013, with comments, protests or interventions due on or before April 5, 2013, and April 18, 2013, 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 dockets are accepted for filing, effective April 24, 2013, as requested. Based on your representations, Spectrum meets the criteria for a Category 2 seller in the Southeast region and a Category 1 seller in the Northeast, Central, Northwest, Southwest, and Southwest Power Pool regions and is so designated.¹

¹ *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,

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You represent that Spectrum will own and operate a 30 megawatt (MW) solar generating facility located in North Las Vegas, Nevada, within the Nevada Power Company's (Nevada Power) balancing authority area. You add that Spectrum is wholly owned by Southern Turner Renewable Energy LLC (Southern Turner), and is affiliated with Apex Nevada Solar, LLC, which owns a 20 MW solar generating facility in the Nevada Power balancing authority area. You further explain that Spectrum's operations are conducted and managed by Southern Renewable Energy, Inc., a wholly-owned subsidiary of The Southern Company. You state that Southern Renewable Energy, Inc. holds a 90 percent membership interest in Southern Turner. You also represent that Turner Renewable Energy, LLC (Turner Renewable) holds the remaining 10 percent membership interest in Southern Turner. You further represent that the membership interest held by Turner Renewable does not confer management voting rights or equivalent control.

You add that Spectrum does not own transmission, but that it is affiliated with entities that own and control transmission in the Southeast region. You add that each of Spectrum's transmission owning affiliates has an open access transmission tariff on file,² and therefore has mitigated transmission market power. Further, you affirmatively state that Spectrum has not erected barriers to entry and will not erect barriers to entry into the relevant market.

You state that Spectrum meets the criteria for Category 1 status in all regions except for the Southeast region. You represent that Spectrum will own and control generation capacity in the Southwest region totaling 283 MW, and does not own any generation capacity in other region. You add that with the exception of the Southeast region neither Spectrum nor any of its affiliates own or control transmission facilities in any other region. You also represent that Spectrum 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 concerns.

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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). Spectrum 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.

² See *Southern Company Services, Inc.*, 77 FERC ¶ 61,266 (1996); *Southern Company Services, Inc.*, 80 FERC ¶ 61,143 (1997); *Southern Company Services, Inc.*, 82 FERC ¶ 61,130 (1998), *order on reh'g*, 85 FERC ¶ 61,235 (1998).

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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 represent that all of Spectrum's generation capacity will be fully committed under a long-term power purchase agreement and thus it and its affiliates do not have any uncommitted capacity in the Nevada Power balancing authority area. Based on your representations, Spectrum's submittal satisfies the Commission's requirements for market-based rate authority regarding horizontal market power.

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

Spectrum'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. Spectrum'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 141.15.⁴ Notwithstanding the waiver of the accounting and reporting requirements here, Spectrum is expected to keep its accounting records in accordance with generally accepted accounting principles.

Spectrum 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. Spectrum 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 Spectrum, compatible with the public interest, and reasonably necessary or appropriate for such purposes.⁵

Spectrum must file electronically with the Commission Electric Quarterly Reports.⁶ Spectrum further must timely report to the Commission any change in status

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

⁴ *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*).

⁵ *Citizens Power*, 48 FERC ¶ 61,210; *Enron*, 65 FERC ¶ 61,305.

⁶ *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

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that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority in accordance with Order No. 697.⁷

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).

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

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>.

⁷ *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).

Document Content(s)

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