

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

OFFICE OF ENERGY MARKET REGULATION

NextEra Blythe Solar Energy
Center, LLC
Docket No. ER16-2495-000

October 14, 2016

Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004

Attention: John Lilyestrom
Attorney for NextEra Blythe Solar Energy Center, LLC

Reference: Shared Facilities Agreement

Dear Mr. Lilyestrom:

On August 26, 2016, you submitted for filing, on behalf of NextEra Blythe Solar Energy Center, LLC (Blythe Energy Center) a proposed Shared Facilities Agreement (Agreement) between Blythe Energy Center, Blythe Solar 110, LLC (Blythe Solar 110), Blythe Solar II, LLC (Blythe Solar II), Blythe Solar III, LLC (Blythe Solar III), and Blythe Solar IV, LLC (Blythe Solar IV). The Agreement provides Blythe Solar 110, Blythe Solar II, Blythe Solar III, and Blythe Solar IV the non-exclusive right to access and utilize the shared facilities owned by Blythe Energy Center as necessary to connect their projects to the electric grid. Blythe Energy Center requests waiver of the Commission's notice requirements pursuant to section 35.11 of the Commission's regulations (18 C.F.R. § 35.11) to permit the Agreement to become effective on December 18, 2015, the date that Blythe Energy Center first began providing service. Alternatively, Blythe Energy Center states that if the Commission denies its request for the December 18, 2015 effective date, it requests waiver of the Commission's prior notice regulations to permit an effective date of August 27, 2016, the day after filing.

The Commission grants waiver of the prior notice requirements¹ for untimely filings only upon a showing of extraordinary circumstances.² However,

¹ 18 C.F.R. § 35.11 (2016).

² See *Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106 (1992), *reh'g denied*, 61 FERC ¶ 61,089 (1992). See also *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, at 61,980, *clarified*, 65 FERC ¶ 61,081 (1993).

Blythe Energy Center has not made such a showing. Accordingly, we deny waiver of the Commission's prior notice requirement,³ and the Agreement will be accepted for filing, effective October 26, 2016, after a full 60-days' notice from the date of filing.

In cases where service commences before filing, and where waiver of the 60-day prior notice requirement is denied, the utility must refund the time value of the monies collected, calculated pursuant to section 35.19(a) of the Commission's regulations⁴ for the entire period monies were collected without Commission authorization to the date that the utility ultimately issues refunds. The time value refund is determined by calculating the interest on the full amount of revenues actually collected for the time period the rate was charged without Commission authorization.⁵ However, the Commission imposes a floor for time value refunds in cases such as this, involving agreements governing the construction, operation, and maintenance of transmission facilities, so as not to cause the utility to suffer a loss.⁶ For purposes of determining the "floor" for time value refunds, costs are not limited to usage-based variable O&M costs, but also include other costs, whether fixed or variable.⁷ The Commission has acknowledged that in a scenario where the amount collected represents actual costs, without profit, a utility would fail to recover its costs and would operate at a loss if ordered to refund the time value of amounts collected.⁸ Here, the Agreement provides only for the pass through of actual operating and maintenance costs, and it therefore appears that requiring Blythe Energy Center to refund the time value of monies it has collected would indeed cause Blythe Energy Center to suffer a loss. Accordingly, under these circumstances, no time value refunds are due and no refund report is required.

³ Blythe Energy Center is reminded that it must submit required filings on a timely basis or face possible sanctions by the Commission.

⁴ *El Paso Electric Co.*, 101 FERC ¶ 61,276 (2002), *reh'g denied*, 105 FERC ¶ 61,131 (2003) (*El Paso*).

⁵ *El Paso*, 105 FERC ¶ 61,131 at P 35.

⁶ *See International Transmission Co.*, 152 FERC ¶ 61,043, at PP 34-38 (2015) (*ITC*); *Tucson Electric Power Co.*, 151 FERC ¶ 61,088 (2015); *Carolina Power & Light Co.*, 87 FERC ¶ 61,083 (1999). *See also Southern California Edison Co.*, 98 FERC ¶ 61,304 (2002); *Florida Power & Light Co.*, 98 FERC ¶ 61,276, *reh'g denied*, 99 FERC ¶ 61,320 (2002); *Florida Power & Light Co.*, 133 FERC ¶ 61,120 (2010) (*FP&L II*).

⁷ *ITC*, 152 FERC ¶ 61,043 at P 29.

⁸ *FP&L II*, 133 FERC ¶ 61,120 at P 5.

The filing was noticed on August 26, 2016, with comments, protests, or interventions due on or before September 16, 2016. No protests or adverse comments were filed. Notices of intervention and unopposed timely filed motions to intervene are granted pursuant to the operation of Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214). Any opposed or untimely filed motion to intervene is governed by the provisions of Rule 214.

This acceptance for filing shall not be construed as constituting approval of the referenced filing or of any rate, charge, classification or any rule, regulation or practice affecting such rate or service contained in your filed documents; nor shall such acceptance be deemed as recognition of any claimed contractual right or obligation associated therewith; and such acceptance is without prejudice to any findings or orders which have been or any which may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Blythe Energy Center.

This action is taken pursuant to the authority delegated to the Director, Division of Electric Power Regulation - West under 18 C.F.R. § 375.307. 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.

Sincerely,

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