

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

OFFICE OF ENERGY MARKET REGULATION

In Reply Refer To:
Exelon West Medway II, LLC
Docket No. ER16-2708-000

October 27, 2016

Mr. Vincenzo Franco
Exelon Corporation
111 Market Place
Suite 500
Baltimore, Maryland 21202

Reference: Market-Based Rate Authorization

Dear Mr. Franco:

On September 30, 2016, you filed on behalf of Exelon West Medway II, LLC (Exelon West) 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 Exelon West requests waivers commonly granted to similar market-based rate applicants.

Your filing was noticed on October 5, 2016, with comments, protests or interventions due on or before October 21, 2016. None were 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 October 1, 2016, as requested.² Based on your

¹ Exelon West 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), Midcontinent Independent System Operator, Inc. (MISO), and Southwest Power Pool, Inc. (SPP). Exelon West also requests authorization to engage in the sale of certain ancillary services as a third-party provider in other markets.

² We note that Exelon West is not being granted authority to make third-party sales of operating reserves to a public utility that is purchasing ancillary services to

representations, Exelon West will be a Category 2 seller in the Northeast region and meets the criteria for a Category 1 seller in the Southeast, Central, Northwest, Southwest, and Southwest Power Pool regions and is so designated.³

You state that Exelon West will own and operate a 195 megawatt generating facility located in Medway, Massachusetts, within the ISO-NE market. You add that Exelon West is indirectly wholly owned by Exelon Corporation and is affiliated with several entities that own generation facilities in the ISO-NE and NYISO markets. You state that, except for transmission facilities which are owned by Exelon West's affiliates Commonwealth Edison Company, PECO Energy Company, Baltimore Gas and Electric Company, Potomac Electric Power Company, Delmarva Power & Light Company, and Atlantic City Electric Company and operated by PJM under its open access transmission tariff,⁴ Exelon West and its affiliates do not own, operate, or control any transmission facilities other than limited and discrete interconnection facilities associated with individual generation facilities. You further state that these interconnection facilities qualify for the blanket waiver with respect to the Commission's open access requirements

satisfy its own open access transmission tariff requirements to offer ancillary services to its own customers. If Exelon West 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). Exelon West 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. *See* Order No. 816, FERC Stats. & Regs. ¶ 31,374 at P 353.

⁴ *Pennsylvania-New Jersey-Maryland Interconnection*, 81 FERC ¶ 61,257 (1997).

as described in Order No. 807.⁵ Therefore, Exelon West and its affiliates have mitigated any transmission market power. Further, you affirmatively state that Exelon West and its affiliates have not erected barriers to entry and will not erect barriers to entry into the relevant market.

You represent that Exelon West meets the criteria for Category 1 seller status in the Southeast, Central, Northwest, Southwest, and Southwest Power Pool regions because it owns less than 500 megawatts in these regions; does not own, operate or control transmission facilities other than limited and discrete equipment necessary to interconnect its individual generating facility to the transmission grid; is not affiliated with anyone that owns, operates or controls transmission facilities in the same region as its transmission assets; is not affiliated with a franchised public utility in the same region as its transmission assets; and does not raise other vertical market power issues.

You state that the Exelon West's affiliates were previously granted waivers of the affiliate restrictions contained in 18 C.F.R. § 35.39.⁶ You represent that waiver of the affiliate restrictions with respect to Exelon West remains appropriate because Commonwealth Edison Company, Baltimore Gas and Electric Company, and PECO Energy Company continue to have no captive wholesale or retail customers.

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.⁷

⁵ In Order No. 807, the Commission amended its regulations to waive the Open Access Transmission Tariff requirements 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 Open Access and Priority Rights on Interconnection Customer's Interconnection Facilities*, Order No. 807, FERC Stats. & Regs. ¶ 31,367 at PP 57, 176 (2015). *See also Kingfisher Wind, LLC*, 151 FERC ¶ 61,276 (2015); *Balko Wind Transmission, LLC*, 152 FERC ¶ 61,011 (2015).

⁶ *Exelon Generation Co.*, 93 FERC ¶ 61,140 at 61,425 (2000), *on reh'g*, 95 FERC ¶ 61,309 (2001), *AmerGen VT, LLC*, 90 FERC ¶ 61,307 at 61,995, *on reh'g*, *Baltimore Gas & Elec. Co.*, 91 FERC ¶ 61,270 (2000), *Baltimore Gas & Elec. Co.*, Docket Nos. ER99-2948-012, *et al.* (Sept. 16, 2008) (delegated letter order), *Exelon Generation Co.*, 126 FERC ¶ 61,031 at PP 43-48 (2009).

⁷ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 62, 399, 408, 440.

Exelon West has prepared the pivotal supplier and wholesale market share screens for the ISO-NE market consistent with the requirements of Order Nos. 816 and 697.

Exelon West's horizontal market power screens have been reviewed, and Exelon West passes both the pivotal supplier and wholesale market share screens in that market. Based on your representations, Exelon West's submittal⁸ satisfies the Commission's requirements for market-based rate authority regarding horizontal market power.

Exelon West'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. Exelon West'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 141.15.⁹ Exelon West'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.¹⁰ Notwithstanding the waiver of the accounting and reporting requirements here, Exelon West is expected to keep its accounting records in accordance with generally accepted accounting principles.

Exelon West 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 were filed. Exelon West is authorized to issue securities and

⁸ The next time Exelon West makes a market-based rate filing with the Commission, it 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.

⁹ *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 984-985.

¹⁰ 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"))).

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 Exelon West, compatible with the public interest, and reasonably necessary or appropriate for such purposes.¹¹

Exelon West must file an Electric Quarterly Report (EQR) with the Commission, consistent with Order Nos. 2001¹² and 768.¹³ Exelon West must file EQRs electronically with the Commission consistent with the procedures set forth in Order No. 770.¹⁴ Exelon West 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.¹⁵

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).

¹¹ See Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 999-1000.

¹² *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*, Order No. 2001-H, 121 FERC ¶ 61,289 (2007), *order revising filing requirements*, Order No. 2001-I, FERC Stats. & Regs. ¶ 31,282 (2008).

¹³ *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).

¹⁴ 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).

¹⁵ 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).

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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
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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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