

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

OFFICE OF ENERGY MARKET REGULATION

In Reply Refer To:
Kingman Wind Energy I, LLC
Kingman Wind Energy II, LLC
Docket Nos. ER16-2275-000
ER16-2276-000

September 8, 2016

Mr. Gunner Birgisson
Senior Attorney
NextEra Energy Resources, LLC
801 Pennsylvania Avenue, N.W. Suite 220
Washington, DC 20004

Reference: Market-Based Rate Authorization

Dear Mr. Birgisson:

On July 25, 2016, you filed on behalf of Kingman Wind Energy I, LLC and Kingman Wind Energy II, LLC (Kingman Sellers) applications for market-based rate authority with accompanying tariffs. The proposed market-based rate tariffs provide for the sale of energy, capacity, and ancillary services at market-based rates.¹ Kingman Sellers request waivers commonly granted to similar market-based rate applicants.

Your filings were noticed on July 26, 2016, with comments, protests or interventions due on or before August 15, 2016. 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 October 1, 2016, as requested.² Based on your representations, Kingman Sellers meet the criteria for

¹ Kingman Sellers request authorization to sell ancillary services in the markets administered by PJM Interconnection, L.L.C., New York Independent System Operator, Inc., ISO New England Inc., California Independent System Operator Corp., Midcontinent Independent System Operator, Inc., and Southwest Power Pool, Inc. (SPP). Kingman Sellers also request authorization to engage in the sale of certain ancillary services as third-party providers in other markets.

² We note that Kingman Sellers are 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 Kingman Sellers seek such authority, they must make the required showing and receive Commission

Category 1 sellers in the Northeast, Central, Northwest, Southwest and Southeast regions and Category 2 sellers in the SPP region and are so designated.³

You state that Kingman Sellers will own and operate two wind-powered electric generation facilities each totaling 103 megawatts (MW), and located in Kingman Country, Kansas within the SPP market. You add that the output of both facilities will be fully committed to a non-affiliate under long-term power purchase agreements. You further state that Kingman Sellers are indirectly wholly owned by NextEra Energy, Inc. and are affiliated with several entities that own generation facilities in the SPP market. You represent that certain affiliates of Kingman Sellers have open access transmission tariffs (OATT) on file with the Commission.⁴ You add that Kingman Sellers and some of their affiliates own interconnection facilities that qualify for the blanket OATT waiver under Order No. 807.⁵ Therefore, Kingman Sellers and their affiliates' have mitigated any

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). Kingman Sellers must file an updated market power analysis for each region in which they are designated as Category 2 sellers in compliance with the regional reporting schedule. See Order No. 816, FERC Stats. & Regs. ¶ 31,374 at P 353.

⁴ *Sagebrush, a California partnership*, 130 FERC ¶ 61,093, order on reh'g, 132 FERC ¶ 61,234 (2010). See also, *Sagebrush, a California Partnership*, Docket No. ER10-1988-001 (Feb. 28, 2011) (delegated letter order); and *Sagebrush, a California Partnership*, Docket No. ER11-2526-000 (Feb. 28, 2011) (delegated letter order). *Sky River LLC*, 136 FERC ¶ 61,162 (2011). *Florida Power & Light Company*, 77 FERC ¶ 61,025 (1996). *Peetz Logan Interconnect, LLC*, 136 FERC ¶ 61,075 (2011) and *Peetz Logan Interconnect, LLC*, 142 FERC ¶ 61,035 (2013).

⁵ In Order No. 807, the Commission amended its regulations to waive the OATT requirements of 18 C.F.R. § 35.28, the Open Access Same-Time

transmission market power. Further, you affirmatively state that Kingman Sellers and their affiliates have not erected barriers to entry and will not erect barriers to entry into the relevant market.

You represent that Kingman Sellers meet all of the Category 1 seller criteria in the Northeast, Southeast, Central, Southwest, and Northwest regions because Kingman Sellers do not own or control any generation or transmission facilities in those regions, and they do 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.⁶

You represent that Kingman Sellers rely on Brady Wind, LLC's market power analysis, which has been accepted by the Commission,⁷ to demonstrate that Kingman Sellers pass both the pivotal supplier and the wholesale market share screens for the SPP market. Accordingly, Kingman Sellers' submittals⁸ satisfy the Commission's requirements for market-based rate authority regarding horizontal market power.

Based on your representations, Kingman Sellers' submittals also satisfy the Commission's requirements for market-based rates regarding vertical market power.

Kingman Sellers request for waiver of Subparts B and C of Part 35 of the

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

⁷ *Brady Wind, LLC*, Docket No. ER16-2190-000 (August 30, 2016) (delegated letter order).

⁸ The next time Kingman Sellers make a market-based rate filing with the Commission, they must include revised tariffs 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.

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. Kingman Sellers 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 Kingman Sellers 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, Kingman Sellers are expected to keep its accounting records in accordance with generally accepted accounting principles.

Kingman Sellers request 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. Kingman Sellers are 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 Kingman Sellers, compatible with the public interest, and reasonably necessary or appropriate for such purposes.¹¹

Kingman Sellers must file an Electric Quarterly Report (EQR) with the Commission, consistent with Order Nos. 2001¹² and 768.¹³ Kingman Sellers

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")).

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.

must file EQRs electronically with the Commission consistent with the procedures set forth in Order No. 770.¹⁴ Kingman Sellers 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).

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) 502-6479
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888 First Street, N.E.
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¶ 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).

Sincerely,

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