

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Macho Springs Solar, LLC

Docket No. ER14-____-000

**APPLICATION OF MACHO SPRINGS SOLAR, LLC
FOR ORDER ACCEPTING INITIAL MARKET-BASED RATE TARIFF AND
GRANTING CERTAIN WAIVERS AND BLANKET APPROVALS**

Pursuant to Section 205 of the Federal Power Act (“FPA”)¹ and Part 35 of the regulations of the Federal Energy Regulatory Commission (“FERC” or “Commission”),² Macho Springs Solar, LLC (“Macho Springs”) hereby submits for filing this Application containing its initial rate schedule, FERC Electric Tariff Original Volume No. 1 (“Tariff”), which is appended hereto as Attachment A, and respectfully requests that the Commission grant it authority to make wholesale sales of electric energy, capacity and ancillary services at negotiated, market-based rates. This Application also seeks waiver of certain Commission regulations and a grant of certain blanket approvals, as discussed herein. Macho Springs also respectfully requests that the Commission waive the 60-day prior notice filing requirement set forth in § 35.3(a)(1) of the Commission’s regulations, 18 C.F.R. § 35.3(a)(1), and accept its Tariff with an effective date of January 1, 2014. Macho Springs anticipates energizing its facilities on or about January 15, 2014, and, therefore, respectfully requests the Commission to act on this filing expeditiously and issue its order accepting Macho Springs’ tariff as soon as possible.

I. Introduction and Summary

Macho Springs will own an approximately 50 MW alternating current solar photovoltaic power plant located in Luna County, New Mexico (the “Facility”), which is currently under

¹ 16 U.S.C. § 824d.

² 18 C.F.R. pt. 35.

construction and is expected to be synchronized with the El Paso Electric Company (“El Paso”) Transmission System on or about January 15, 2014. The Facility is expected to begin full commercial operations on or about May 1, 2014. This Application demonstrates that Macho Springs satisfies the Commission’s standards for authorization to make wholesale sales at market-based rates.

Macho Springs seeks: (1) authorization to engage in the sale of electric energy, capacity and ancillary services at market-based rates; (2) acceptance of its proposed Tariff, to become effective January 1, 2014; (3) a waiver of certain regulations and a grant of certain blanket approvals as set forth in this Application, which the Commission typically grants in connection with market-based rate authorizations; and (4) Commission confirmation that Macho Springs is a Category 1 Seller in all regions.

As discussed below, Macho Springs and its affiliates will own or control only the Facility in the relevant market, and the electrical output of the Facility is fully committed under a long-term power sales contract. Thus, Macho Springs and its affiliates lack generation market power in the relevant market. In addition, Macho Springs and its affiliates do not own or otherwise control transmission facilities, or other facilities for the production, sale or delivery of fuel supplies or other inputs into power generation. Thus, Macho Springs and its affiliates also lack vertical market power. Accordingly, Macho Springs respectfully requests that the Commission accept its market-based rate Tariff for filing and grant the waivers discussed in more detail herein.

II. Communications

All notices, correspondence, and communications regarding this Application should be addressed and directed to the following individuals:

Raymond B. Wuslich
Winston & Strawn LLP
1700 K Street, N.W.
Washington, D.C. 20006
Tel: (202) 282-5000
Fax: (202) 282-5100
E-mail: rwuslich@winston.com

Beth Deane
Assistant General Counsel
Project Development
First Solar, Inc.
525 Market, 15th Floor
San Francisco, CA 94105
Tel: (415) 935-2566
Fax: (415) 894-6278
E-mail: beth.deane@firstsolar.com

III. Description of the Applicant and its Affiliates

A. Macho Springs

Macho Springs is a Delaware limited liability company engaged in the business of owning the Facility and selling electric products exclusively at wholesale from the Facility. Macho Springs is an indirect wholly-owned subsidiary of First Solar, Inc. (“First Solar”). The Facility is currently under construction and will consist of solar photovoltaic panels with a capacity of approximately 50 MW. The Facility will interconnect at 345 kV within El Paso’s balancing authority area (“BAA”). Under a 20-year power purchase agreement, El Paso is contractually entitled to all of the Facility’s output. There will be no uncommitted capacity available for sale to any third party. Further, Macho Springs does not own or control any transmission facilities beyond the limited facilities required to interconnect the Facility to the El Paso transmission system.

B. First Solar

First Solar is a Delaware corporation headquartered in Tempe, Arizona. First Solar was formed in 1999 and is engaged in the business of manufacturing thin film solar photovoltaic modules for sale, and developing solar power generating facilities through special purpose project companies. First Solar typically sells the generating projects it develops to purchasers and provides ongoing operation and maintenance services for the facilities under the direction of

the new owners. First Solar and its affiliates also do not own or control a franchised electric utility in North America, any physical natural gas transportation or storage facilities, or any other physical inputs to electric generation or transmission.

IV. Macho Springs Satisfies the Commission’s Standards for Market-Based Authority

Section 205 of the FPA requires that all rates and charges made or received by any public utility for the sale of electric energy subject to the Commission’s jurisdiction must be “just and reasonable” and “not unduly discriminatory or preferential.”³ Under this standard, the Commission allows entities to sell wholesale power at market-based rates “if the Seller and its affiliates do not have, or have adequately mitigated, market power in generation and transmission and cannot erect other barriers to entry.”⁴ The Commission has authorized the submission of streamlined applications that make simplifying assumptions, where appropriate, such as when the generating capacity of the applicant and its affiliates is fully committed under long-term contracts.⁵ The Commission also permits applicants to rely upon the results of recent relevant market power analyses that have been accepted by the Commission.⁶

Macho Springs will interconnect to the El Paso transmission system, which is the relevant geographic market for purposes of this application, and Macho Springs complies with Order 784 to the extent it is engaged in sales of ancillary services to El Paso.⁷ Macho Springs lacks

³ 16 U.S.C. § 824d.

⁴ *NRG Marketing Services, LLC*, 105 FERC ¶ 61,187, at P 14 (2003); *see also Heartland Energy Services, Inc.*, 68 FERC ¶ 61,223, at pp. 62,060-61 (1994).

⁵ *Order No. 697* at PP 337, 380; *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018, at PP 85, 117, *order on reh’g*, 108 FERC ¶ 61,026 (2004) (“*AEP*”).

⁶ *E.g.*, FERC Example of Updated Market Power Analysis Filing, available at: www.ferc.gov/industries/electric/gen-info/mbr/sample-tren.doc.

⁷ *Third-Party Provision of Ancillary Services; Accounting and Financial Reporting for New Electric Storage Technologies*, Order No. 784, 78 Fed. Reg. 46178, at P 200 (July 30, 2013) (effective on November 27, 2013).

horizontal market power, because all of its capacity is committed to El Paso under a long-term power sales contract. Additionally, Macho Springs and its affiliates lack vertical market power, and cannot erect barriers to entry. Accordingly, the Commission should grant Macho Springs authorization to make wholesale sales of electric energy, capacity and ancillary services at negotiated, market-based rates under the attached proposed Tariff.

A. Macho Springs Does Not Have Horizontal Market Power

In Order No. 697, the Commission adopted two indicative generation market power screens – a Pivotal Supplier analysis using uncommitted capacity (“Pivotal Supplier Screen”) and a Wholesale Market Share analysis using uncommitted capacity (“Market Share Screen”).⁸ The Pivotal Supplier Screen analyzes whether “market demand can be met absent the applicant during peak times.”⁹ An applicant satisfies the Pivotal Supplier Screen if its uncommitted capacity in the relevant markets is less than the net uncommitted supply in the relevant markets.¹⁰ The Market Share Screen “seasonally evaluate[s] the market share of uncommitted capacity of an applicant and its affiliates.”¹¹ An applicant satisfies the Market Share Screen if it has less than a twenty percent market share in the relevant market for all seasons.¹² The Commission established a rebuttable presumption that an applicant lacks horizontal market power if it passes both of these indicative tests.¹³

⁸ *Order No. 697* at P 62 (adopting, with minor revisions, the Pivotal Supplier Screen and Market Share Screen established in AEP); *see also* 18 C.F.R. § 35.37(c)(1).

⁹ *AEP*, 107 FERC ¶ 61,018, at P 72; *see Order No. 697* at P 65.

¹⁰ *AEP*, 107 FERC ¶ 61,018, at P 99; *Order No. 697* at P 66.

¹¹ *AEP*, 107 FERC ¶ 61,018, at P 71; *see Order No. 697* at P 65.

¹² *AEP*, 107 FERC ¶ 61,018, at P 102; *Order No. 697* at P 89.

¹³ 18 C.F.R. § 35.37(c)(1); *Order No. 697* at P 62.

For the purposes of both screens, the Commission has stated that the relevant market area is the seller's balancing authority area, or the regional transmission operator/independent system operator market, as applicable, where the seller's generation is physically located.¹⁴ Because the Facility will be interconnected with El Paso and located in the El Paso BAA, the El Paso BAA is the relevant geographic market for purposes of this analysis.

Macho Springs and its affiliates (which do not directly or indirectly own or control any operational generating facilities in the relevant market or first tier markets) lack horizontal market power. Because all of the Facility's generation capacity is committed under a long-term sales agreement, and the entities do not control uncommitted generation through power purchase agreements, Macho Springs and its affiliates have no uncommitted capacity that can be sold into the El Paso market. For the same reason, the market share of Macho Springs and its affiliates in every season is 0%. As such, Macho Springs lacks horizontal market power.¹⁵

B. Macho Springs Does Not Have Vertical Market Power

In determining whether an applicant has vertical market power, the Commission considers the applicant's and its affiliates' ownership, operation or control of transmission facilities and, through affiliation, the applicant's ownership or control of inputs to electric power production, such as the transportation or distribution of the inputs to electric power production.¹⁶

¹⁴ *Order No. 697* at PP 215, 231.

¹⁵ Since Macho Springs and its affiliates have no uncommitted capacity with respect to the El Paso BAA, it is not necessary for Macho Springs to submit screens for the El Paso BAA. *Arlington Valley Solar Energy II, LLC*, 144 FERC ¶ 61,010, at n.15 (2013) (“Given that Arlington Valley and its affiliates have no uncommitted capacity to study with respect to the El Paso balancing authority area, it was not necessary for Arlington Valley to submit screens for the El Paso balancing authority area; thus, those screens did not factor into the determination that Arlington Valley satisfied the Commission's requirements regarding horizontal market power.”)

¹⁶ 18 C.F.R. § 35.37(d)-(e).

Macho Springs and its affiliates lack vertical market power, because they do not own, operate, or control any jurisdictional transmission facilities other than limited transmission-related equipment necessary to interconnect Macho Springs' generating facilities to the transmission grid.¹⁷ Thus, Macho Springs' ownership or control over interconnection facilities does not give it vertical market power.¹⁸

In Order No. 697, the Commission noted that it “draws a distinction between two categories of inputs to electric power production: one consisting of natural gas supply, interstate natural gas transportation (which includes interstate natural gas storage), oil supply, and oil transportation, and another consisting of intrastate natural gas transportation, intrastate natural gas storage or distribution facilities; sites for generation capacity development; and sources of coal supplies and the transportation of coal supplies such as barges and rail cars.”¹⁹ With respect to the first category, an applicant is not required to provide a description or affirmative statement with regard to ownership or control of, or affiliation with an entity that owns or controls the relevant inputs.²⁰ For items in the second category, the Commission has adopted a rebuttable presumption that sellers cannot erect barriers to entry with regard to ownership or control.²¹ Nonetheless, an applicant is required to provide a description of its ownership or control of, or affiliation with, an entity that owns or controls these inputs to electric power production.²² An

¹⁷ The Commission has previously found that generation interconnection facilities used solely to interconnect generation facilities to the grid do not convey market power for the purposes of market-based rate authorization determinations. *See, e.g., AIG Energy Inc.*, 114 FERC ¶ 61,103, at P 28 (2006); *Iowa Power Partners I, LLC*, 81 FERC ¶ 61,058 (1997); *Vastar Resources, Inc.*, 81 FERC ¶ 61,135 (1997).

¹⁸ *See, e.g., Entegra Power Serv., LLC*, 128 FERC ¶ 61,019 (2009).

¹⁹ *Order No. 697* at P 441; *see also Order No. 697-A* at P 167.

²⁰ *Order No. 697* at P 442; *Order No. 697-A* at P 179.

²¹ *Order No. 697-A* at P 176; *see also Order No. 697* at P 446; 18 C.F.R. § 35.37(e).

²² *Order No. 697* at PP 447-48; 18 C.F.R. § 35.37(e)(3).

applicant must also “make an affirmative statement that it has not erected barriers to entry into the relevant market and will not erect barriers to entry into the relevant market.”²³

Neither Macho Springs nor its affiliates own or control inputs to electric power production that raise vertical market power concerns. Neither Macho Springs nor its affiliates own or control sites in the El Paso BAA used for the development of generation capacity. Also, Macho Springs and its affiliated entities do not own or control intrastate natural gas transportation, intrastate natural gas storage or distribution facilities, or physical coal supply sources, and they do not have ownership or control over who may access transportation of coal supplies. They further have not erected barriers to entry in the relevant geographic market, and will not erect barriers to entry into the relevant market. Hence, no vertical market power concerns are present here. Accordingly, Macho Springs and its affiliates lack vertical market power.

C. Asset Appendix

As required by Section 35.37(a)(2) of the Commission’s regulations and Appendix B of Order No. 697, attached hereto is Attachment B, Market-Based Rate Authority and Generation Assets.²⁴ The Facility is the first asset of Macho Springs or its affiliates that is required to be listed in the asset appendix.

V. Category 1 Seller

In Order No. 697, the Commission adopted a category of sellers, Category 1 Sellers, which are exempt from the requirement to submit updated market power analyses every three years after obtaining authorization to sell at market-based rates.²⁵ Category 1 Sellers are those

²³ *Order No. 697* at PP 447-48; 18 C.F.R. § 35.37(e)(4).

²⁴ *Order No. 697* at P 849 and Appendix B.

²⁵ *Id.* at P 848, codified at 18 C.F.R. § 35.36(a)(2).

that own or control 500 MW or less of generation in a given region, and that, together with their affiliates, do not own, operate or control, transmission assets in the region.²⁶ The Commission determined that with regard to new applications for market-based rate authority, it would make a finding regarding the category in which the applicant falls.²⁷

Macho Springs submits that it is a Category 1 Seller in the Central, Northeast, Northwest, Southwest and Southeast regions because Macho Springs and its affiliates: (1) own or control 500 MW or less of generation in aggregate per region; (2) do not own, operate or control transmission facilities other than limited equipment necessary to connect individual generating facilities to the transmission grid; (3) are not affiliated with any entity that owns, operates or controls transmission facilities that the Commission considers relevant in the market power analysis; (4) are not affiliated with a franchised public utility; and (5) Macho Springs' application for market-based rate authorization does not raise any vertical (transmission) market power issues. Therefore, Macho Springs requests that the Commission designate it as a Category 1 Seller within the meaning of Section 35.36(a)(2) of the Commission's regulations in all regions.

VI. Macho Springs' Proposed Market-Based Rate Tariff

Macho Springs respectfully requests that the Commission accept its proposed Tariff at Attachment A for filing, effective January 1, 2014. Macho Springs' proposed Tariff conforms to the tariff requirements adopted in Order Nos. 697 and 697-A, including the required and standard applicable tariff provisions.²⁸ With respect to ancillary services sales into regions where the Commission has authorized market-based sales of such services, Macho Springs' Tariff adopts

²⁶ 18 C.F.R. § 35.36(a)(2).

²⁷ *Order No. 697* at P 851.

²⁸ *Id.* at Appendix C; *Order No. 697-A* at Appendix C.

the Commission's *pro forma* tariff and lists the specific ancillary services that it may sell in the California Independent System Operator Corporation ("CAISO") market.²⁹ Macho Springs may sell ancillary services to El Paso, and its Tariff, therefore, also includes the revised tariff language adopted by the Commission in Order No. 784 regarding third-party ancillary services sales.³⁰

VII. Reporting Requirements

Macho Springs will comply with the reporting requirements normally imposed on public utilities that are authorized to sell electric energy, capacity and ancillary services at market-based rates. Macho Springs understands that these filings include Electric Quarterly Reports.³¹ Macho Springs will also notify the Commission within 30 days after any change in status that would reflect a departure from the characteristics relied upon by the Commission in its evaluation of this application for market-based rate authority.³²

²⁹ See *Atlantic City Electric Co.*, 86 FERC ¶ 61,248, *clarified*, 86 FERC ¶ 61,310 (1999); *Central Hudson Gas & Electric Corp.*, 86 FERC ¶ 61,062, *order on reh'g*, 88 FERC ¶ 61,138 (1999); *Indeck-Olean Ltd. Partnership*, 87 FERC ¶ 61,305 (1999); *AES Redondo Beach, L.L.C.*, 85 FERC ¶ 61,123 (1998), *order on reh'g*, 87 FERC ¶ 61,208 (1999), *order on reh'g and clarification*, 90 FERC ¶ 61,036 (2000); *New England Power Pool*, 85 FERC ¶ 61,379 (1998), *reh'g denied*, 95 FERC ¶ 61,074 (2001). Macho Springs does not anticipate the sale of ancillary services into any organized markets other than the CAISO. In the event that circumstances change, Macho Springs will amend its tariff to add additional markets, as appropriate.

³⁰ *Third-Party Provision of Ancillary Services; Accounting and Financial Reporting for New Electric Storage Technologies*, Order No. 784, 78 Fed. Reg. 46178 (July 30, 2013), at P 200.

³¹ See generally, *Revised Public Utility Filing Requirements*, Order No. 2001, FERC Stats. & Regs. ¶ 31,127 (2002); *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074 (2002); *reh'g denied*, Order No. 2001-B, 100 FERC ¶ 61,342 (2002); Order No. 2001-C, 101 FERC ¶ 61,314 (2002); Order No. 2001-D, 102 FERC ¶ 61,334 (2003); Order No. 2001-E, 105 FERC ¶ 61,352 (2003); Order No. 2001-F, 106 FERC ¶ 61,060 (2004); Order No. 2001-G, 120 FERC ¶ 61,270 (2007).

³² 18 C.F.R. § 35.42; *Reporting Requirements 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).

VIII. Request for Certain Waivers and Blanket Approvals

Consistent with the Commission's prior orders granting authority to make sales at market-based rates, Macho Springs requests the following waivers, blanket approvals, and authorizations typically granted by the Commission to market-based rate sellers:

- (1) waiver of the filing requirements of subparts B and C of Part 35 of the Commission's regulations, except as to Sections 35.12(a), 35.13(b), 35.15, and 35.16;³³
- (2) waiver of the accounting, reporting and other requirements of Parts 41 (accounts, records, and memoranda), 101 (uniform system of accounts), and 141 (statement and reports) of the Commission's regulations, except Sections 141.14 and 141.15;³⁴ and
- (3) blanket authorization for the issuance of securities or the assumption of liabilities pursuant to Section 204 of the FPA and Part 34 of the Commission's regulations.³⁵

IX. Requested Effective Date and Waiver of Notice Requirement

Macho Springs anticipates that it will synchronize the Facility to the transmission grid on or about January 15, 2014, which is less than 60 days from the date of this filing. To permit the Facility to synchronize to the transmission grid and begin operational testing on schedule, Macho Springs respectfully requests the Commission to waive its prior notice filing requirement set forth in Section 35.3(a)(1) of the Commission's regulations, 18 C.F.R. 35.3(a)(1), and permit the

³³ First Solar notes that the Commission has explained that a waiver of these requirements is not necessary. *See, e.g., Jamaica Bay Peaking Facility*, Docket No. ER03-623, at Appendix A, n.2, (Letter Order, May 19, 2003).

³⁴ *See Order No. 697* at P 984 (“[L]ittle purpose would be served to require compliance with accounting regulations for entities that do not sell at cost-based rates and do not have captive customers. Such entities typically include power marketers and independent and affiliated power producers that are not franchised public utilities.”).

³⁵ *See id.* at P 999 (“We will continue to grant blanket approval under Part 34 for future issuances of securities and assumptions of liability where the entity seeking market-based rate authority, such as a power marketer or power producer, is not a franchised public utility or does not otherwise provide requirements service at cost-based rates.”).

attached tariff sheets to become effective on less than 60-days prior notice, (*i.e.*, January 1, 2014).

X. Conclusion

For the foregoing reasons, Macho Springs respectfully requests that the Commission: (1) find that Macho Springs satisfies the Commission's horizontal and vertical market power standards for market-based rate authority; (2) grant Macho Springs' application for market-based rate authorization; (3) grant waiver of the Commission's 60-day prior notice requirement and accept for filing Macho Springs' Tariff to become effective January 1, 2014; (4) waive Commission regulations and grant blanket approvals as set forth in this Application; (5) find that Macho Springs is a Category 1 Seller in all regions, and (6) issue an order on this filing on an expedited basis prior to January 1, 2014.

Respectfully submitted,

/s/ **Raymond B. Wuslich**

Raymond B. Wuslich
Winston & Strawn LLP
1700 K Street, N.W.
Washington, D.C. 20006
Tel: (202) 282-5000
Fax: (202) 282-5100
E-mail: rwuslich@winston.com

ATTORNEY FOR
MACHO SPRINGS SOLAR, LLC

Dated: December 20, 2013