

147 FERC ¶ 61,068
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

Victory Garden Phase IV, LLC

Docket No. ER14-1077-000

ORDER ACCEPTING MARKET-BASED RATE TARIFF REVISIONS

(Issued April 25, 2014)

1. In this order, the Commission accepts tariff revisions filed by Victory Garden Phase IV, LLC (Victory Garden), to become effective March 18, 2014, as discussed below. Also, the Commission concludes that Victory Garden may remove certain restrictions on its market-based rate authority from its market-based rate tariff.
2. Additionally, we find that Victory Garden meets the criteria for a Category 1 seller in the Southeast, Central, Southwest Power Pool, Northeast, and Northwest regions, and is so designated.¹

Background

3. On January 17, 2014, as amended on March 11, 2014, pursuant to section 205 of the Federal Power Act,² Victory Garden submitted revisions to its market-based rate tariff. Victory Garden's existing market-based rate tariff provides that "Seller shall not make wholesale sales of energy or capacity to, or purchases of energy or capacity from, peninsular Florida without first receiving advance approval by [the Commission]"

¹ See *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).

² 16 U.S.C. § 824d (2012).

pursuant to a separate filing under section 205 of the Federal Power Act.”

Victory Garden states that its proposed market-based rate tariff revisions remove this existing restriction because Victory Garden is no longer affiliated with Florida Power & Light Company.³ Victory Garden states that it is now a wholly-owned indirect subsidiary of Terra-Gen Power, LLC and that Victory Garden’s current affiliates through Terra-Gen Power, LLC that are located in the Southeast region have passed recent market power screens.⁴ Victory Garden further states that none of Victory Garden’s current affiliates in the Southeast region have ever been subject to mitigation.

4. Victory Garden also proposes the following other tariff revisions: (1) including the language adopted in Order No. 784⁵ regarding third-party ancillary services sales; (2) clarifying that Victory Garden’s waiver from Part 141 of the Commission’s regulations excludes sections 141.14 and 141.15; (3) reflecting the new name of Midcontinent Independent System Operator, Inc.; and (4) other ministerial edits and corrections. Finally, Victory Garden requests that the Commission grant it Category 1 seller status in all regions except the Southwest region and has proposed an amendment to its tariff to reflect the changes in its category status.

Notice

5. Notice of Victory Garden’s filings was published in the *Federal Register*,⁶ with interventions and comments due on or before April 1, 2014. None was filed.

Discussion

6. The Commission will grant Victory Garden’s request to remove from its market-based rate tariff the prohibition on market-based rates sales to and purchases from peninsular Florida. Given that Victory Garden is no longer affiliated with Florida Power & Light Company there is no need to limit Victory Garden’s sales at market-based rates

³ See *Victory Garden Phase IV, LLC*, 145 FERC ¶ 62,194 (2013) (authorizing disposition of jurisdictional facilities); *Alta Wind I, LLC*, Notice of Change in Status, Docket No. ER11-2211-003 (filed Jan. 17, 2014).

⁴ See *Effingham County Power, LLC*, Docket No. ER10-3102-004 (June 7, 2012) (delegated letter order).

⁵ 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 P 200 (2013), *order on clarification*, Order No. 784-A, 146 FERC ¶ 61,114 (2014).

⁶ 79 Fed. Reg. 4685; 79 Fed. Reg. 15,328 (2014).

to exclude peninsular Florida.⁷ As noted above, Victory Garden represents that its current affiliates through Terra-Gen Power, LLC that are located in the Southeast region have passed recent pivotal supplier and wholesale market share screens and none of its current affiliates in the Southeast region have ever been subject to mitigation.

7. We also will accept Victory Garden's additional tariff revisions, which include revising its tariff to reflect the language adopted in Order No. 784 regarding third-party ancillary services sales,⁸ clarifying that Victory Garden's waiver from Part 141 of the Commission's regulations excludes sections 141.14 and 141.15, revising the tariff to reflect the new name of Midcontinent Independent System Operator, Inc., and making other ministerial edits and corrections.

8. Likewise, we will also grant Victory Garden's request for Category 1 seller designation in the Southeast, Central, Southwest Power Pool, Northeast, and Northwest regions. In Order No. 697, the Commission created two categories of sellers.⁹ Category 1 sellers are defined as wholesale power marketers and wholesale power producers that own or control 500 MW or less of generation in aggregate per region; that do not own, operate or control transmission facilities other than limited equipment necessary to connect individual generating facilities to the transmission grid (or have been granted waiver of the requirements of Order No. 888¹⁰); that are not affiliated with anyone that owns, operates or controls transmission facilities in the same region as the seller's generation assets; that are not affiliated with a franchised public utility in the

⁷ See Victory Garden Phase IV, LLC, Notice of Transaction Completion, Docket No. EC14-22-000 (filed Dec. 20, 2013).

⁸ We note that Victory Garden is 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 Victory Garden seeks such authority, it must make the required showing and receive Commission authorization prior to making such sales. See Order No. 784, FERC Stats. & Regs. ¶ 31,349 at PP 200-202.

⁹ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 848.

¹⁰ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

same region as the seller's generation assets; and that do not raise other vertical market power issues.¹¹ Sellers that do not fall into Category 1 are designated as Category 2 sellers and are required to file updated market power analyses.¹²

9. Victory Garden maintains that it qualifies for Category 1 seller status in each region other than the Southwest region because: (1) it does not own or control generation in any region outside of the Southwest region; (2) the only transmission facilities it owns are the limited equipment necessary to connect its facility to the transmission system; (3) other than the Southwest region, Victory Garden is not affiliated with any entity that owns, operates, or controls transmission facilities in the same region as its generation assets; (4) it is not an affiliate of a franchised public utility in the same region as Victory Garden's generation assets; and (5) there are no other vertical market power concerns.

10. Based on Victory Garden's representations, we designate Victory Garden as a Category 1 seller in the Southeast, Central, Southwest Power Pool, Northeast, and Northwest regions; however, the Commission reserves the right to require an updated market power analysis at any time for any region.¹³ Victory Garden continues to meet the criteria as a Category 2 seller in the Southwest region.¹⁴

The Commission orders:

Victory Garden's revised market-based rate tariff is hereby accepted for filing, effective March 18, 2014, as requested, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹¹ 18 C.F.R. § 35.36(a)(2) (2013).

¹² Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 849-850.

¹³ *See id.* P 853.

¹⁴ *See Victory Garden Phase IV, LLC*, 127 FERC ¶ 61,244 (2009).

Victory Garden 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. Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 848-850.