

151 FERC ¶ 61,256  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;  
Philip D. Moeller, Cheryl A. LaFleur,  
Tony Clark, and Colette D. Honorable.

Dynergy Commercial Asset Management, LLC	Docket Nos.	ER15-1596-000
Dynergy Conesville, LLC		ER15-1597-000
Dynergy Dicks Creek, LLC		ER15-1598-000
Dynergy Energy Services (East), LLC		ER15-1599-000
Dynergy Fayette II, LLC		ER15-1600-000
Dynergy Hanging Rock II, LLC		ER15-1602-000
Dynergy Killen, LLC		ER15-1603-000
Dynergy Lee II, LLC		ER15-1604-000
Dynergy Miami Fort, LLC		ER15-1605-000
Dynergy Stuart, LLC		ER15-1606-000
Dynergy Washington II, LLC		ER15-1607-000
Dynergy Zimmer, LLC		ER15-1608-000

ORDER ACCEPTING MARKET-BASED RATE TARIFF REVISIONS AND  
NOTICES OF SUCCESSION

(Issued June 26, 2015)

1. In this order, we accept tariff revisions and notices of succession filed by the above-captioned subsidiaries of Dynergy Inc. (Dynergy) with market-based rate authorization (together, the Indicated Dynergy MBR Sellers),<sup>1</sup> to become effective April 30, 2015, as requested. Specifically, we conclude that the Indicated Dynergy MBR Sellers may remove certain restrictions on their market-based rate authorities from their market-based rate tariffs.

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<sup>1</sup> For purposes of this proceeding, the Indicated Dynergy MBR Sellers consist of: Dynergy Commercial Asset Management, LLC (Dynergy Commercial Asset Management); Dynergy Conesville, LLC; Dynergy Dicks Creek, LLC; Dynergy Energy Services (East), LLC (Dynergy East); Dynergy Fayette II, LLC; Dynergy Hanging Rock II, LLC; Dynergy Killen, LLC; Dynergy Lee II, LLC; Dynergy Miami Fort, LLC; Dynergy Stuart, LLC; Dynergy Washington II, LLC; and Dynergy Zimmer, LLC.

2. Additionally, we find that Dynegy Commercial Asset Management and Dynegy East each meets the criteria for a Category 2 seller in the Southwest region and a Category 1 seller in the Southeast region, and are so designated.<sup>2</sup>

### **I. Background**

3. On April 29, 2015, pursuant to section 35.16 of the Commission's regulations,<sup>3</sup> the Indicated Dynegy MBR Sellers submitted tariff revisions and notices of succession.<sup>4</sup> The Indicated Dynegy MBR Sellers state that, after the consummation of a transaction on April 2, 2015, Dynegy indirectly acquired all of the equity interests in the Indicated Dynegy MBR Sellers and certain other entities from subsidiaries of Duke Energy Corporation (Duke Energy).<sup>5</sup> The Indicated Dynegy MBR Sellers explain that they changed their names after the transaction took place.

4. Further, the Indicated Dynegy MBR Sellers state that they each propose certain modifications to their respective tariffs. Specifically, each of the Indicated Dynegy MBR Sellers proposes revisions: (1) to remove from its market-based rate tariff the prohibition on market-based rate sales in the Duke Energy Carolinas and Progress Energy Carolinas balancing authority areas and in Peninsular Florida,<sup>6</sup> where its former affiliates through

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<sup>2</sup> 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).

<sup>3</sup> 18 C.F.R. § 35.16 (2014).

<sup>4</sup> The Indicated Dynegy MBR Sellers and other Dynegy affiliates submitted a related change in status filing on May 1, 2015. See, e.g., *Brayton Point Energy, LLC*, Notification of Change in Status, Docket No. ER13-2477-007, at 1 (filed May 1, 2015). The Commission will address the notice of change in status in that proceeding.

<sup>5</sup> *Dynegy Resource I, LLC*, 150 FERC ¶ 61,232 (2015) (approving the transaction).

<sup>6</sup> Peninsular Florida is defined as the state of Florida except the area in the western panhandle served by the Southern Company. See *Carolina Power & Light Co.*, 128 FERC ¶ 61,053 (2009); *Florida Power Corp.*, 113 FERC ¶ 61,131 (2005).

Duke Energy were restricted;<sup>7</sup> and (2) to remove waiver of the affiliate restrictions that was granted based on its former affiliation with Duke Energy Ohio, Inc. (Duke Ohio). The Indicated Dynege MBR Sellers state that, because they are no longer affiliated with the Duke Energy subsidiaries that own generation in the Duke Energy Carolinas and Progress Energy Carolinas balancing authority areas and in Peninsular Florida, and are no longer affiliated with Duke Ohio, these provisions are no longer relevant or appropriate.<sup>8</sup> Each of the Indicated Dynege MBR Sellers also proposes revisions to its tariff to reflect its new name.

5. Dynege Commercial Asset Management and Dynege East also each requests that the Commission find that it meets the criteria as a Category 2 seller in the Southwest region and a Category 1 seller in the Southeast region.

## **II. Notice of Filing**

6. Notice of the Indicated Dynege MBR Sellers' April 29, 2015 filings was published in the *Federal Register*, 80 Fed. Reg. 26,027 (2015) with interventions and protests due on or before May 20, 2015. None was filed.

## **III. Discussion**

7. We will grant the Indicated Dynege MBR Sellers' request to remove the prohibition on market-based rates sales in the Duke Energy Carolinas and Progress Energy Carolinas balancing authority areas and in Peninsular Florida from their market-based rate tariffs. Given Dynege's acquisition of all of the equity interests in the Indicated Dynege MBR Sellers and certain other entities from subsidiaries of Duke Energy, the Indicated Dynege MBR Sellers are no longer affiliated with Duke Energy. Therefore, there is no need to limit the Indicated Dynege MBR Sellers' sales at market-based rates to exclude the Duke Energy Carolinas and Progress Energy Carolinas balancing authority areas and Peninsular Florida. Additionally, waiver of the affiliate restrictions based on each of the Indicated Dynege MBR Sellers' former affiliation with Duke Ohio is no longer required.

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<sup>7</sup> See *Duke Power, a Div. of Duke Energy Corp.*, 111 FERC ¶ 61,506, at P 61 (2005) (limitation on market-based rate sales within the Duke Energy Carolinas balancing authority area); *Florida Power Corp.*, 113 FERC ¶ 61,131, at P 17 (2005) (limitations on market-based rate sales within the Progress Energy Carolinas balancing authority areas and Peninsular Florida); see also *Duke Energy Corp.*, 136 FERC ¶ 61,245 (2011); *Duke Energy Corp.*, 139 FERC ¶ 61,194 (2012).

<sup>8</sup> See, e.g., Dynege Commercial Asset Management Transmittal at 3.

8. Likewise, we find that Dynegy Commercial Asset Management and Dynegy East meet the criteria for Category 2 seller status in the Southwest region and Category 1 seller status in the Southeast region. In Order No. 697, the Commission created two categories of sellers.<sup>9</sup> 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. 888);<sup>10</sup> 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 same region as the seller's generation assets; and that do not raise other vertical market power issues.<sup>11</sup> Sellers that do not fall into Category 1 seller status are designated as Category 2 sellers and are required to file updated market power analyses.<sup>12</sup>

9. Dynegy Commercial Asset Management and Dynegy East maintain that in the Southeast region, they each qualify for Category 1 seller status because they: (1) do not own or control, and are not affiliated with any entity that owns or controls, generation facilities in the Southeast region; (2) do not own, operate, or control transmission facilities, other than limited equipment necessary to interconnect individual generating facilities to the transmission grid, in the Southeast region; (3) are not affiliated with anyone that owns, operates, or controls transmission facilities (other than limited equipment necessary to interconnect individual generating facilities with the transmission grid) in the Southeast region (or any other region); (4) are not affiliated with any franchised public utility in the Southeast region (or any other region); and (5) do not present any other vertical market power concerns in the Southeast region.

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

<sup>10</sup> *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).

<sup>11</sup> 18 C.F.R. § 35.36(a)(2) (2014).

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

10. Based on Dynegy Commercial Asset Management's and Dynegy East's representations, we find that Dynegy Commercial Asset Management and Dynegy East meet the criteria for Category 1 sellers in the Southeast region; however, the Commission reserves the right to require an updated market power analysis at any time for any region.<sup>13</sup> In addition to meeting the criteria for Category 2 sellers in the Southwest region, Dynegy Commercial Asset Management and Dynegy East continue to meet the criteria for Category 2 sellers in the Central and Northeast regions and Category 1 sellers in the Southwest Power Pool and Northwest regions.<sup>14</sup>

The Commission orders:

The Indicated Dynegy MBR Sellers' revised market-based rate tariffs and notices of succession are hereby accepted for filing, effective April 30, 2015, as requested, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>13</sup> *See id.* P 853.

<sup>14</sup> *See Koch Supply & Trading, LP*, Docket No. ER10-1206-000 (July 1, 2010) (delegated letter order) (finding Dynegy Commercial Asset Management and Dynegy East met the criteria for a Category 2 seller in the Central, Northeast, and Southeast regions, and for a Category 1 seller in the Southwest, Southwest Power Pool, and Northwest regions). Dynegy Commercial Asset Management and Dynegy East must file an updated market power analysis for all regions in which they are designated as Category 2 sellers in compliance with the regional reporting schedule adopted in Order No. 697. Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 848-850.