

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

OFFICE OF ENERGY MARKET REGULATION

In Reply Refer To:
Indeck Corinth Limited Partnership
Docket No. ER15-1972-000

July 22, 2015

Ms. Ruta Kalvaitis Skučas
Attorney for Indeck Corinth Limited Partnership
Pierce Atwood LLP
900 17th Street, N.W.
Suite 350
Washington, D.C. 20006

Reference: Market-Based Rate Authorization

Dear Ms. Skučas:

On June 23, 2015, you filed on behalf of Indeck Corinth Limited Partnership (Indeck Corinth) 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 Indeck Corinth requests waivers commonly granted to similar market-based rate applicants.

Your filing was noticed on June 24, 2015, with comments, protests or interventions due on or before July 14, 2015. 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 submittal filed in the referenced

¹ Indeck Corinth 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). Indeck Corinth also requests authorization to engage in the sale of certain ancillary services as a third-party provider in other markets.

docket is accepted for filing, effective July 1, 2015, as requested.² Based on your representations, Indeck Corinth meets the criteria for a Category 1 seller in all regions and is so designated.³

You state that Indeck Corinth owns and operates a 128 megawatt (MW) generation facility located in the NYISO market. You add that Indeck Corinth is wholly owned by Indeck Energy Services, Inc., and it is affiliated with several entities that own generation facilities in the NYISO market. You state that Indeck Corinth neither owns nor is affiliated with any transmission facilities. Further, you affirmatively state that Indeck Corinth has not erected barriers to entry and will not erect barriers to entry into the relevant market.

You represent that Indeck Corinth is seeking Category 1 status in all regions. You state that Indeck Corinth is affiliated with under 500 MW of generation in every region, it does not own any transmission facilities, and it is not affiliated with any transmission facilities in any regions. You further state that Indeck Corinth is not affiliated with any franchised public utilities and raises no 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.⁴

² We note that Indeck Corinth 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 Indeck Corinth 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).

³ *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 848-50, *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).

⁴ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 62, 399, 408, 440.

You state that Indeck Corinth relies on Danskammer Energy, LLC's recently accepted market power analysis⁵ to demonstrate that Indeck Corinth passes both the pivotal supplier and the wholesale market share screens for the NYISO market. Accordingly, Indeck Corinth's submittal⁶ satisfies the Commission's requirements for market-based rate authority regarding horizontal market power.

Based on your representations, Indeck Corinth's submittal also satisfies the Commission's requirements for market-based rates regarding vertical market power.

Indeck Corinth'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. Indeck Corinth'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 141.15.⁷ Indeck Corinth'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.⁸ Notwithstanding the waiver of the accounting and reporting requirements here, Indeck Corinth is expected to keep its accounting records in accordance with generally accepted accounting principles.

⁵ *Danskammer Energy, LLC*, 148 FERC ¶ 61,090 (2014).

⁶ The next time Indeck Corinth 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.

⁷ *Citizens Energy Corp.*, 35 FERC ¶ 61,198 (1986); *Citizens Power and Light Corp.*, 48 FERC ¶ 61,210 (1989) (*Citizens Power*); *Enron Power Marketing, Inc.*, 65 FERC ¶ 61,305 (1993), *order on reh'g*, 66 FERC ¶ 61,244 (1994) (*Enron*).

⁸ 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 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")).

Indeck Corinth 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 was filed. Indeck Corinth is 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 Indeck Corinth, compatible with the public interest, and reasonably necessary or appropriate for such purposes.⁹

Indeck Corinth must file an Electric Quarterly Report (EQR) with the Commission, consistent with Orders Nos. 2001¹⁰ and 768.¹¹ Indeck Corinth must file EQRs electronically with the Commission consistent with the procedures set forth in Order No. 770.¹² Indeck Corinth 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 in accordance with Order No. 697.¹³

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

⁹ *Citizens Power*, 48 FERC ¶ 61,210; *Enron*, 65 FERC ¶ 61,305.

¹⁰ *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).

¹¹ *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).

¹² *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).

¹³ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 1015-1046; 18 C.F.R. § 35.42 (2013). *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).

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
Attn: Michelle Barnaby
Phone: (202) 502-8407
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