

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

OFFICE OF ENERGY MARKET REGULATION

In Reply Refer To:
Pavant Solar LLC
Docket No. ER15-1952-000

July 22, 2015

Mr. William M. Keyser
Counsel to Pavant Solar LLC
K&L Gates LLP
1601 K Street, N.W.
Washington, DC 20006

Reference: Market-Based Rate Authorization

Dear Mr. Keyser:

On June 19, 2015, you filed on behalf of Pavant Solar LLC (Pavant Solar) 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 Pavant Solar requests waivers commonly granted to similar market-based rate applicants.

Your filing was noticed on June 19, 2015, with comments, protests or interventions due on or before July 10, 2015. None were 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 docket is accepted for filing, effective August 1, 2015, as requested.² Based on your

¹ Pavant Solar requests authorization to sell ancillary services in the markets administered by PJM Interconnection, L.L.C. (PJM), 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. Pavant Solar also requests authorization to engage in the sale of certain ancillary services as a third-party provider in other markets.

² We note that Pavant Solar 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

representations, Pavant Solar meets the criteria for a Category 1 seller in all regions and is so designated.³

You state that Pavant Solar will own and operate a 50 megawatt (MW) solar photovoltaic generation facility located in Holden, Utah, within the PacifiCorp-East (PACE) balancing authority area. You add that Pavant Solar is wholly owned by Dominion Solar Holdings III, Inc., and is not affiliated with any entities that own generation facilities in the PACE balancing authority area. You further state that output of Pavant Solar's facility will be fully-committed to PacifiCorp. You state that Pavant Solar does not own or operate any transmission facilities and that its affiliate Dominion Virginia Power has turned over control of its transmission to PJM and therefore has mitigated any transmission market power.⁴ Further, you affirmatively state that Pavant Solar and its affiliates have not erected barriers to entry and will not erect barriers to entry into the relevant market.

You represent that Pavant Solar meets the criteria for Category 1 seller status in all regions because it does not own, operate, or control more than 500 MW of generation facilities in each region; it does not own, operate, or control transmission facilities other than limited interconnection necessary to connect its generation facilities to the transmission grid; it is not affiliated with any entity that owns, operates, or controls transmission facilities or with a franchised public utility in the same region as Pavant Solar's generation assets; and it does 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

customers. If Pavant Solar 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 *Pennsylvania-New Jersey-Maryland Interconnection*, 81 FERC ¶ 61,257 (1997).

power.⁵

You state that all of Pavant Solar's generation capacity is fully committed under a long-term power purchase agreement and thus it does not have any uncommitted capacity in the PACE balancing authority area. Based on your representations, Pavant Solar's submittal⁶ satisfies the Commission's requirements for market-based rate authority regarding horizontal market power.

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

Pavant Solar'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. Pavant Solar'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 Pavant Solar'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, Pavant Solar is expected to keep its accounting records in accordance with generally accepted

⁵ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 62, 399, 408, 440.

⁶ The next time Pavant Solar 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")).

accounting principles.

Pavant Solar 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 were filed. Pavant Solar 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 Pavant Solar, compatible with the public interest, and reasonably necessary or appropriate for such purposes.⁹

Pavant Solar requests waiver of the Commission's affiliate restrictions under 18 C.F.R. § 35.39 (2014) that apply to other Virginia Electric and Power Company (Dominion Virginia Power) market-regulated power sales affiliates, namely a waiver granted in *Virginia Elec. & Power Co.*¹⁰ regarding the sharing between Dominion Virginia Power and its existing affiliates of certain employees who conduct front-end generation resource planning activities. Based on Pavant Solar's representations, Pavant Solar's request for waiver of the Commission's affiliate restrictions under 18 C.F.R. § 35.39 (2014) with regard to generation resource planning personnel is granted, consistent with the Commission's decisions in *Virginia Elec. & Power Co.* and *Mulberry Farm, LLC*.¹¹ The waiver granted herein is limited to the specific facts, representations, policies and procedures presented by Pavant Solar and applies only to the generation resource planning employees discussed in Pavant Solar's filing. To the extent there is any material change in circumstances that would reflect a departure from the facts, representations, policies and procedures that we have relied upon in granting the requested waiver, Pavant Solar will be required to inform the Commission within 30 days of any such change. With the exception of the limited waiver specifically granted herein, all of the other affiliate restrictions continue to apply to Pavant Solar.

Pavant Solar must file an Electric Quarterly Report (EQR) with the Commission, consistent with Orders Nos. 2001¹² and 768.¹³ Pavant Solar must file EQRs

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

¹⁰ 147 FERC ¶ 61,011 (2014) (granting waiver regarding generation resource planning personnel).

¹¹ *See id.*; *Mulberry Farm, LLC*, 149 FERC ¶ 61,154 (2014).

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*

electronically with the Commission consistent with the procedures set forth in Order No. 770.¹⁴ Pavant Solar 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. 697.¹⁵

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.

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).

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 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).

Questions regarding the above order should be directed to:

Federal Energy Regulatory Commission

Attn: Melissa Lozano

Phone: (202) 502-6267

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