

FEDERAL ENERGY REGULATORY COMMISSION  
Washington, D.C. 20426

OFFICE OF ENERGY MARKET REGULATION

In Reply Refer To:  
Phoenix Energy Group, LLC  
Docket No. ER15-1668-002

July 22, 2015

Mr. Sean Z. Sheikh  
Director of Operations  
Phoenix Energy Group, LLC  
79 Madison Avenue  
2<sup>nd</sup> Floor  
New York, New York 10016

Reference: Market-Based Rate Authorization

Dear Mr. Sheikh:

On May 5, 2015, as amended on June 18, 2015 and June 25, 2015, you filed on behalf of Phoenix Energy Group, LLC (Phoenix Energy Group) 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.<sup>1</sup> Phoenix Energy Group requests waivers commonly granted to similar market-based rate applicants.

Your filings were noticed on May 5, 2015, June 19, 2015 and June 25, 2015, with comments, protests or interventions due on or before May 26, 2015, July 9, 2015 and July 16, 2015, respectively. 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 submittals filed in the referenced

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<sup>1</sup> Phoenix Energy Group requests authorization to sell ancillary services in the market administered by New York Independent System Operator, Inc. Phoenix Energy Group also requests authorization to engage in the sale of certain ancillary services as a third-party provider in other markets. *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).

docket are accepted for filing, effective June 5, 2015, as requested.<sup>2</sup> Based on your representations, Phoenix Energy Group meets the criteria for a Category 1 seller in all regions and is so designated.<sup>3</sup>

You state that Phoenix Energy Group is located in New York, New York, and intends to act as a power marketer. You further represent that Phoenix Energy Group is wholly owned by two individuals, and is not affiliated with any entity that owns or controls generation or transmission facilities. Further, you affirmatively state that Phoenix Energy Group has not erected barriers to entry and will not erect barriers to entry into the relevant market.

You state that Phoenix Energy Group meets the criteria for a Category 1 seller in all regions. You state that Phoenix Energy Group does not own or control 500 megawatts of generation capacity in any region. You state that Phoenix Energy Group does not own transmission facilities and it is not affiliated with any entity that owns transmission facilities in the same region as its generation assets. You state that Phoenix Energy Group is not affiliated with any franchised public utilities 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 power.<sup>4</sup>

Based on your representations, Phoenix Energy Group's submittals satisfy the

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<sup>2</sup> We note that Phoenix Energy Group 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 Phoenix Energy Group seeks such authority, it must make the required showing and receive Commission authorization prior to making such sales.

<sup>3</sup> *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).

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

Commission's requirements for market-based rate authority regarding horizontal and vertical market power.

Phoenix Energy Group'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. Phoenix Energy Group'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.<sup>5</sup> Phoenix Energy Group'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.<sup>6</sup> Notwithstanding the waiver of the accounting and reporting requirements here, Phoenix Energy Group is expected to keep its accounting records in accordance with generally accepted accounting principles.

Phoenix Energy Group 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. Phoenix Energy Group 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 Phoenix Energy Group, compatible with the public interest, and reasonably necessary or appropriate for such purposes.<sup>7</sup>

Phoenix Energy Group must file an Electric Quarterly Report (EQR) with the

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<sup>5</sup> *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*).

<sup>6</sup> 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")).

<sup>7</sup> *Citizens Power*, 48 FERC ¶ 61,210; *Enron*, 65 FERC ¶ 61,305.

Commission, consistent with Orders Nos. 2001<sup>8</sup> and 768.<sup>9</sup> Phoenix Energy Group must file EQRs electronically with the Commission consistent with the procedures set forth in Order No. 770.<sup>10</sup> Phoenix Energy Group 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.<sup>11</sup>

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 the applicant.

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<sup>8</sup> *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).

<sup>9</sup> *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).

<sup>10</sup> *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).

<sup>11</sup> 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).

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:

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Washington, D.C. 20426

Sincerely,

Steve P. Rodgers, Director  
Division of Electric Power  
Regulation - West