

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

OFFICE OF ENERGY MARKET REGULATION

In Reply Refer To:
Convergent Energy and Power Inc.
Docket Nos. ER15-1494-000,
ER15-1494-001, and
ER15-1494-002

July 22, 2015

Mr. Christopher Streeter
Chief Information Officer
Convergent Energy and Power Inc.
1065 Avenue of the Americas
7th Floor
New York, New York 10018

Reference: Market-Based Rate Authorization

Dear Mr. Streeter:

On April 10, 2015, as amended on June 9, 2015, and June 30, 2015, you filed on behalf of Convergent Energy and Power Inc. (Convergent) an application for market-based rate authority with an accompanying tariff.¹ The proposed market-based rate tariff provides for the sale of energy, capacity, and ancillary services at market-based rates.² Convergent requests waivers commonly granted to similar market-based rate applicants.

Your filings were noticed on April 10, 2015, June 10, 2015, and June 30, 2015, with comments, protests or interventions due on or before May 1, 2015, June 30, 2015, and July 21, 2015, respectively. None was filed.

¹ Convergent is reminded that it must submit required filings on a timely basis, or face possible sanctions by the Commission.

² Convergent requests authorization to sell ancillary services in the markets administered by PJM Interconnection, L.L.C., New York Independent System Operator, Inc., ISO New England Inc. (ISO-NE), California Independent System Operator Corp., Midcontinent Independent System Operator, Inc., and Southwest Power Pool, Inc. Convergent also requests authorization to engage in the sale of certain ancillary services as a third-party provider in other markets.

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 dockets are accepted for filing, effective June 15, 2015, as requested.³ Based on your representations, Convergent meets the criteria for a Category 1 seller in all regions and is so designated.⁴

You state that Convergent owns and operates a 500 kilowatt lead acid battery energy storage facility located in the ISO-NE market. You add that Convergent is owned by Energy Asset Development LLC, Fisher Convergent LLC, and individuals. Further, you affirmatively state that Convergent and its affiliates have not erected barriers to entry and will not erect barriers to entry into the relevant market.

You represent that Convergent meets the criteria for a Category 1 seller in all regions because it and its affiliates do not own more than 500 megawatts of generation in aggregate in any region, and do not own, operate, or control transmission facilities, other than limited equipment necessary to connect individual generation facilities to the transmission grid. You add that Convergent is not affiliated with a franchised public utility, and that it does not raise any other vertical market power concerns.

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

³ We note that Convergent 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 Convergent 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).

⁴ *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).

power.⁵

You state that all of Convergent's generation capacity is fully committed under a long-term power purchase agreement and thus it does not have any uncommitted capacity in the ISO-NE market. Based on your representations, Convergent's submittals satisfy the Commission's requirements for market-based rate authority regarding horizontal market power.

Based on your representations, Convergent's submittals also satisfy the Commission's requirements for market-based rates regarding vertical market power.

As you have represented, Convergent made wholesale sales of electric power at market-based rates without Commission authorization.

Section 205 of the Federal Power Act explicitly requires that rates be timely filed with the Commission.⁶ In this regard, the Commission has explained that it cannot "ignore its statutory duty to determine whether rates are just and reasonable by permitting utilities to submit filings whenever convenient," and that it "must have the opportunity to examine proposed rates, terms, and conditions of jurisdictional service before that service commences."⁷ Thus, a regulated entity must timely file its rates to allow the Commission to fulfill its statutory mandate, namely, timely determining whether the rates being charged are just and reasonable. The Commission has further made clear that, for market-based rates in particular, it "does not allow market-based rates to go into effect before a filing has been tendered with the Commission."⁸

As such, we will require Convergent to refund to its customers the difference between the market-based rate and a cost-justified rate, as well as the time value of the revenues collected, calculated pursuant to section 35.19a of the Commission's regulations,⁹ for the entire period that the rate was collected without Commission authorization.¹⁰ The Commission has stated that:

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

⁶ See *El Paso Elec. Co.*, 105 FERC ¶ 61,131 at P 9-11 (2003).

⁷ *Id.* P 14.

⁸ *El Segundo Power, LLC*, 84 FERC ¶ 61,011, at 61,060, *order on reh'g*, 85 FERC ¶ 61,123 (1998), *order on reh'g*, 87 FERC ¶ 61,208 (1999), *order on reh'g*, 90 FERC ¶ 61,036 (2000).

⁹ 18 C.F.R. § 35.19a (2014).

¹⁰ *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*

The utility will be required to refund all revenues resulting from the difference, if any, between the market-based rate and the cost-justified rate . . . The late-filing utility will receive the equivalent of a cost-based rate, less the time value remedy applicable to the unauthorized filing of cost-based rates, until the date of Commission authorization.¹¹

Please make refunds within 30 days of the date of this order and file a refund report with the Commission within 30 days thereafter. Such refunds shall include the period that market-based rates were collected without Commission authorization. If no refunds are necessary, you are directed to file a report to that effect within 30 days of the date of this order.

Convergent'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. Convergent'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 141.15.¹² Convergent'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.¹³

(*Prior Notice Order*), 64 FERC ¶ 61,139, at 61,980, *clarified*, 65 FERC ¶ 61,081 (1993); 18 CFR § 35.19a (2011).

¹¹ *Id.*; see 16 U.S.C. § 825h (2000). See *Southern California Water Co.*, 106 FERC ¶ 61,305 at P 15-16, *reh'g denied*, 108 FERC ¶ 61,168 (2004). See also *Public Service Co. of Colorado*, 85 FERC ¶ 61,146 at 61,588 (1998); *Carolina Power & Light Co.*, 87 FERC ¶ 61,083 at 61,356 (1999) (*Carolina Power*).

¹² *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*).

¹³ 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")).

Notwithstanding the waiver of the accounting and reporting requirements here, Convergent is expected to keep its accounting records in accordance with generally accepted accounting principles.

Convergent 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. Convergent 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 Convergent, compatible with the public interest, and reasonably necessary or appropriate for such purposes.¹⁴

Convergent must file an Electric Quarterly Report (EQR) with the Commission, consistent with Orders Nos. 2001¹⁵ and 768.¹⁶ Convergent must file EQRs electronically with the Commission consistent with the procedures set forth in Order No. 770.¹⁷ Convergent 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. 697.¹⁸

¹⁴ *Citizens Power*, 48 FERC ¶ 61,210; *Enron*, 65 FERC ¶ 61,305.

¹⁵ *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).

¹⁶ *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).

¹⁷ *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).

¹⁸ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 1015-1046; 18 C.F.R. § 35.42 (2014). *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*

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 Convergent.

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
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Phone: (202) 502-8876
Office of Energy Market Regulation
888 First Street, N.E.
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Sincerely,

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