

152 FERC ¶ 61,191
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

September 11, 2015

In Reply Refer To:
MidAmerican Energy Services,
LLC
Docket No. ER15-2211-000

Mr. Steven Ross
Attorney for MidAmerican Energy Services, LLC
Stephoe & Johnson LLP
1330 Connecticut Avenue, NW
Washington, DC 20006

Reference: Market-Based Rate Authorization

Dear Mr. Ross:

1. On July 15, 2015, as supplemented on September 1, 2015, MidAmerican Energy Services, LLC (MidAmerican Energy Services) filed an application for market-based rate authority with an accompanying market-based rate tariff. The proposed market-based rate tariff provides for the sale of electric energy, capacity, and ancillary services¹ at market-based rates.² MidAmerican Energy Services requests that the Commission grant

¹ MidAmerican Energy Services 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., California Independent System Operator Corp. (CAISO), Midcontinent Independent System Operator, Inc. (MISO), and Southwest Power Pool, Inc. (SPP). The approved ancillary services for the CAISO market are regulation service, spinning reserve service, and non-spinning reserve service. MidAmerican Energy Services also requests authorization to engage in the sale of certain ancillary services as a third-party provider in other markets.

² MidAmerican Energy Services does not request, and its proposed market-based rate tariff does not provide for, the authority to make market-based rate sales within the Nevada Power Company (Nevada Power), Sierra Pacific Power Company (Sierra Pacific), PacifiCorp-East, PacifiCorp-West, Idaho Power Company, and NorthWestern

(continued...)

waivers commonly granted to similar market-based rate applicants. MidAmerican Energy Services requests an effective date of September 14, 2015.

2. In this order, the Commission grants MidAmerican Energy Services authority to make wholesale sales of energy, capacity, and ancillary services at market-based rates, effective September 14, 2015, as requested.³ The Commission also grants MidAmerican Energy Services' request for waivers commonly granted to similar market-based rate applicants, except as noted herein.

3. Additionally, the Commission finds that MidAmerican Energy Services meets the criteria for a Category 2 seller in the Northeast, Central, SPP, Southwest, and Northwest regions and a Category 1 seller in the Southeast region, and is so designated.⁴

Corporation balancing authority areas, or in the Energy Imbalance Market administered by CAISO. The Commission recognized the consolidation of the Sierra Pacific and Nevada Power balancing authority areas as combined into the Nevada Power balancing authority area. *See Sierra Pac. Power Co.*, 147 FERC ¶ 61,137, at P 1 (2014).

³ MidAmerican Energy Services 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 (OATT) requirements to offer ancillary services to its own customers. If MidAmerican Energy Services 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 *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) (Clarification Order), *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). MidAmerican Energy Services must file an updated market power analysis for each region in which it is designated as a Category 2 seller in compliance with the regional reporting schedule adopted in Order No. 697.

4. Further, MidAmerican Energy Services is directed to submit a revised asset appendix within 30 days of the issuance of this order to properly reflect that assets in the Nevada Power balancing authority area are in the Northwest region.⁵

5. MidAmerican Energy Services states that it is a newly formed entity that is intending to become a retail electric and gas supplier that will serve customers in Illinois, Iowa, Nebraska, South Dakota, Ohio, Michigan, Maryland, Delaware, the District of Columbia, Texas, and Pennsylvania upon the receipt of various regulatory approvals and authorizations, all of which are expected by December 31, 2015.

6. MidAmerican Energy Services states that it is a direct wholly owned subsidiary of IES Holding, LLC, which in turn is a direct wholly owned subsidiary of Berkshire Hathaway Energy Company, a subsidiary of Berkshire Hathaway Inc.

7. MidAmerican Energy Services represents that it is affiliated with four traditional franchised utilities that have obtained market-based rate authority: MidAmerican Energy Company, PacifiCorp, Nevada Power, and Sierra Pacific. MidAmerican Energy Services states that MidAmerican Energy Company is a transmission-owning member of MISO and provides retail electric service in Iowa, Illinois, and South Dakota. MidAmerican Energy Services states that PacifiCorp owns transmission facilities in the PacifiCorp-East and PacifiCorp-West balancing authority areas and provides retail electric service in Utah, Oregon, Wyoming, Washington, Idaho, and California. Finally, MidAmerican Energy Services represents that Nevada Power and Sierra Pacific own transmission facilities in the consolidated Nevada Power balancing authority area and serve electric retail customers in the State of Nevada.

8. MidAmerican Energy Services represents that its affiliates own or control approximately 1,381 megawatt (MW) of generation capacity in the PJM market, 242 MW of generation capacity in the NYISO market, 9,660 MW of generation capacity in the MISO market, and 698 MW of generation capacity in the SPP market. Additionally, MidAmerican Energy Services represents that its affiliates own approximately 1,790 MW of generation capacity in the CAISO market, 347 MW of generation capacity in the Imperial Irrigation District (IID) balancing authority area, and 52 MW of generation capacity in the Arizona Public Service Company (APS) balancing authority area.

⁵ See *Sierra Pac. Power Co.*, 147 FERC ¶ 61,137 at P 1 (“The Commission also designates the new relevant geographic region for the consolidated [Nevada Power] balancing authority area as the Northwest region”). MidAmerican Energy Services is directed to submit a revised market-based rate 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, at P 8 (2007). See also Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 384.

MidAmerican Energy Services states that all of the generation owned or controlled by its affiliates in the CAISO market, and IID and APS balancing authority areas is fully committed to unaffiliated parties as a result of long-term purchase and sales arrangements.

9. Notice of MidAmerican Energy Services' July 15, 2015 filing was published in the *Federal Register*, 80 Fed. Reg. 43,082 (2015), with interventions and protests due on or before August 5, 2015. Midwest Municipal Transmission Group filed a motion to intervene raising no substantive comments.

10. Notice of MidAmerican Energy Services' request for blanket authorization under Part 34 of the Commission's regulations was separately published in the *Federal Register*, 80 Fed. Reg. 52,749 (2015), with interventions or protests due on or before September 8, 2015. None was filed.

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the timely, unopposed motion to intervene serves to make Midwest Municipal Transmission Group a party to this proceeding.

12. 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.⁶ The Commission has adopted two indicative screens for assessing horizontal market power: the pivotal supplier screen and the wholesale market share screen.⁷ The Commission has stated that passage of both screens establishes a rebuttable presumption that the applicant does not possess generation market power, while failure of either screen creates a rebuttable presumption that the applicant has generation market power.⁸

13. MidAmerican Energy Services has prepared the pivotal supplier and wholesale market share screens for the PJM, NYISO, MISO, and SPP markets consistent with the requirements of Order No. 697. MidAmerican Energy Services relies on Agua Caliente Solar, LLC's (Agua Caliente) accepted market power analysis⁹ to demonstrate that it passes both the pivotal supplier and the wholesale market share screens for the IID

⁶ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 62, 399, 408, 440.

⁷ *Id.* P 62.

⁸ *Id.* PP 33, 62-63.

⁹ *Agua Caliente Solar, LLC*, Docket No. ER12-21-008 (Aug. 5, 2014) (delegated letter order).

balancing authority area and on the market power analysis submitted by Nevada Power¹⁰ to demonstrate that it passes both the pivotal supplier and the wholesale market share screens for the APS and CAISO balancing authority areas.¹¹

14. MidAmerican Energy Services' horizontal market power screens demonstrate that MidAmerican Energy Services passes both the pivotal supplier and wholesale market share screens for sales of capacity and energy in the PJM, NYISO, MISO, SPP, and CAISO markets, as well as the APS and IID balancing authority areas. Based on its representations, the Commission finds that MidAmerican Energy Services satisfies the Commission's requirements for market-based rate authority regarding horizontal market power.

15. With regard to vertical market power, in cases where a public utility, or any of its affiliates, owns, operates, or controls transmission facilities, the Commission requires that there be a Commission-approved OATT on file or that the seller has received waiver of the OATT requirement before granting a seller market-based rate authorization.¹²

16. MidAmerican Energy Services states that MidAmerican Energy Company has turned the operational control of its transmission facilities over to MISO and that MidAmerican Energy Company provides transmission service pursuant to MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff, which is on file with the Commission.¹³ MidAmerican Energy Services represents that Nevada Power,

¹⁰ Notice of Change in Status, *Nevada Power Co.*, Docket No. ER10-2475-006, *et al.* (filed Jan. 2, 2014) and Supplement to Notification of Change in Status of the BHE MBR Sellers, *Nevada Power Co.*, Docket No. ER10-2475-006, *et al.* (filed July 16, 2014).

¹¹ MidAmerican Energy Services relies on historical data for the CAISO market and the APS and IID balancing authority areas for the study period of December 2011 through November 2012 contained in the Agua Caliente and Nevada Power pivotal supplier and market share screens study. MidAmerican Energy Services states that the use of more recent data (i.e., December 2012 through November 2013) would not result in significantly higher market shares because conditions would not change materially over one year. *See* Clarification Order, 121 FERC ¶ 61,260 at P 12.d.

¹² Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408.

¹³ *See Midwest Indep. Transmission Sys. Operator, Inc.*, 84 FERC ¶ 61,231 (1998).

Sierra Pacific, and PacifiCorp each operates its transmission facilities pursuant to OATTs that are on file with the Commission.¹⁴

17. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.¹⁵ The Commission requires a seller to provide a description of its ownership or control of, or affiliation with an entity that owns or controls, intrastate natural gas transportation, storage, or distribution facilities; sites for generation capacity development; and physical coal supply sources and ownership of or control over who may access transportation of coal supplies (collectively, inputs to electric power production).¹⁶ The Commission adopted a rebuttable presumption that the ownership or control of, or affiliation with any entity that owns or controls, inputs to electric power production does not allow a seller to raise entry barriers but will allow intervenors to demonstrate otherwise.¹⁷

18. MidAmerican Energy Services states that it is affiliated with BNSF Railway Company, whose activities include the shipment of coal for power generation. MidAmerican Energy Services states that MidAmerican Energy Company owns or controls, through lease agreements, a fleet of coal rail cars for private use in connection with its coal-fired generation and also owns various limited "spur lines" that are dedicated for private local transportation of coal to its generating stations. MidAmerican Energy Services states that PacifiCorp owns spur lines, rail cars and trucks necessary to move coal to PacifiCorp's own mine mouth generating facilities. MidAmerican Energy Services states that PacifiCorp also controls some coal mining operations in Colorado, Utah, and Wyoming through ownership or lease.

19. MidAmerican Energy Services states that an affiliate, North Country Gas Pipeline Corporation, owns and operates an intrastate pipeline in upstate New York with a capacity of about 100 dekatherms per day. MidAmerican Energy Services states that MidAmerican Energy Company and Sierra Pacific own and operate local gas distribution

¹⁴ See *Sierra Pac. Power Co.*, 87 FERC ¶ 61,077, *reh'g denied*, 88 FERC ¶ 61,058 (1999); *Nevada Power Co.*, 145 FERC ¶ 61,238 (2013); *Allegheny Power Sys., Inc.*, 80 FERC ¶ 61,143 (1997).

¹⁵ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 440.

¹⁶ *Id.* P 448; Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176; Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 at P 38.

¹⁷ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 446.

facilities. MidAmerican Energy Services represents that its affiliates have informed the Commission with respect to ownership of sites for potential generation development.

20. MidAmerican Energy Services affirmatively states that neither it nor its affiliates have erected barriers to entry into the relevant markets and that they will not erect barriers into such markets.

21. Based on MidAmerican Energy Services' representations, the Commission finds that it satisfies the Commission's requirements for market-based rates regarding vertical market power.

22. MidAmerican Energy Services requests the following waivers and authorizations: (1) waiver of the accounting and other requirements of Parts 41, 101, and 141 of the Commission's regulations, except sections 141.14 and 141.15; (2) waiver of the filing requirements of subparts B and C of Part 35 of the Commission's regulations, except sections 35.12(a), 35.13(b), 35.15 and 35.16; and (3) blanket authorization under section 204 of the FPA¹⁸ and Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability.

23. The Commission will grant the requested waivers and authorizations consistent with those granted to other entities with market-based rate authorizations.¹⁹

¹⁸ 16 U.S.C. § 824c (2012).

¹⁹ The Commission notes that it has examined and approved the continued applicability of the waiver of its accounting and reporting requirements in Parts 41, 101, and 141 of the Commission's regulations, as well as the continued applicability of the blanket authorization for the issuance of securities and the assumption of liabilities in Part 34 of the Commission's regulations. *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 984-985 (regarding waiver of Parts 41, 101, and 141) and PP 999-1000 (regarding blanket approval under Part 34). However, waiver of the provisions of Part 101 that apply to hydropower licensees is not granted with respect to licensed hydropower projects. Hydropower licensees are required to comply with the requirements of the Uniform System of Accounts pursuant to 18 C.F.R. Part 101 to the extent necessary to carry out their responsibilities under Part I of the FPA. The Commission further notes 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, MidAmerican Energy Services is expected to keep its accounting records in accordance with generally accepted accounting principles.

24. Blanket authorization under Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability is also granted. MidAmerican Energy Services is hereby 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 with the corporate purposes of MidAmerican Energy Services, compatible with the public interest, and reasonably necessary or appropriate for such purposes. The Commission reserves the right to modify this order to require a further showing that neither the public nor private interests will be adversely affected by continued Commission approval of MidAmerican Energy Services' issuances of securities or assumption of liability.

25. An entity with market-based rate authorization must file an Electric Quarterly Report (EQR) with the Commission, consistent with Order Nos. 2001²⁰ and 768,²¹ to fulfill its responsibility under FPA section 205(c)²² to have rates on file in a convenient form and place.²³ MidAmerican Energy Services must file EQRs electronically with the Commission consistent with the procedures set forth in Order No. 770.²⁴ Failure to

²⁰ *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).

²¹ *Electricity Market. Transparency Provisions of Section 220 of the Federal Power Act*, Order No. 768, FERC Stats. & Regs. ¶ 31,336 (2012), *order on reh'g*, Order No. 768-A, 143 FERC ¶ 61,054 (2013).

²² 16 U.S.C. § 824d(c) (2012).

²³ *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).

²⁴ Order No. 770, FERC Stats. & Regs. ¶ 31,338.

timely and accurately file an EQR is a violation of the Commission's regulations for which MidAmerican Energy Services may be subject to refund, civil penalties, and/or revocation of market-based rate authority.²⁵

26. In Order No. 697, the Commission created two categories of sellers.²⁶ Category 1 sellers are not required to file regularly scheduled updated market power analyses. Category 1 sellers are 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 generation facilities to the transmission grid (or have been granted waiver of the requirements of Order No. 888²⁷); 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.²⁸ Sellers that do not fall into Category 1 are designated as Category 2 sellers and are required to file updated market power analyses.²⁹

27. MidAmerican Energy Services represents that it meets the criteria for a Category 1 seller in the Southeast region because it does not own generation or own or control transmission facilities in this region, and no affiliate in this region owns or controls more

²⁵ The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2015). Forfeiture of market-based rate authority may require a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

²⁶ Order No. 697, FERC Stats & Regs. ¶ 31,252 at P 848.

²⁷ *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).

²⁸ 18 C.F.R. § 35.36(a) (2015).

²⁹ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 850.

than 500 MW of generation capacity, owns or controls transmission facilities, or is a franchised public utility.

28. Based on MidAmerican Energy Services' representations, the Commission designates it as a Category 1 seller in the Southeast region; however, the Commission reserves the right to require an updated market power analysis at any time for any region.³⁰

29. Additionally, MidAmerican Energy Services 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.³¹

By direction of the Commission.

Kimberly D. Bose,
Secretary.

³⁰ *See id.* P 853.

³¹ *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); 18 C.F.R. § 35.42 (2015).