

153 FERC ¶ 61,276
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

Calvert Cliffs Nuclear Power Plant, LLC	Docket Nos. ER10-2179-014
Nine Mile Point Nuclear Station, LLC	ER10-2181-014
R.E. Ginna Nuclear Power Plant, LLC	ER10-2182-014
AV Solar Ranch 1, LLC	ER12-2178-001
Baltimore Gas and Electric Company	ER10-2172-012
Beebe Renewable Energy, LLC	ER12-2311-003
Cassia Gulch Wind Park, LLC	ER11-2016-007
CER Generation, LLC	ER10-2184-012
CER Generation II, LLC	ER10-2183-009
Commonwealth Edison Company	ER10-1048-009
Constellation Energy Commodities Group, Inc.	ER10-2176-013
Constellation Energy Commodities Group Maine, LLC	ER10-2192-012
Constellation Mystic Power, LLC	ER11-2056-006
Constellation NewEnergy, Inc.	ER10-2178-012
Constellation Power Source Generation, Inc.	ER10-2174-012
Cow Branch Wind Power, LLC	ER11-2014-009
CR Clearing, LLC	ER11-2013-009
Criterion Power Partners, LLC	ER10-3308-011
Exelon Energy Company	ER10-1017-008
Exelon Framingham, LLC	ER10-1020-008
Exelon Generation Company, LLC	ER10-1144-007
	ER10-1145-008
Exelon New Boston, LLC	ER10-1078-008
Exelon New England Power Marketing, Limited Partnership	ER10-1079-008
Exelon West Medway, LLC	ER10-1080-008
Exelon Wind 4, LLC	ER11-2010-009
Exelon Wyman, LLC	ER10-1081-008
Handsome Lake Energy, LLC	ER10-2180-012
Harvest Windfarm, LLC	ER11-2011-008
Harvest II Windfarm, LLC	ER12-2201-002
Michigan Wind 1, LLC	ER11-2009-008
Michigan Wind 2, LLC	ER11-3989-007
PECO Energy Company	ER10-1143-008
Safe Harbor Water Power Corporation	ER11-2780-006

Shooting Star Wind Project, LLC	ER11-2780-007
Tuana Springs Energy, LLC	ER12-1829-001
Wildcat Wind, LLC	ER11-2007-007
Wind Capital Holdings, LLC	ER12-1223-006
	ER11-2005-009

ORDER ACCEPTING NOTICES OF CHANGE IN STATUS AND DISMISSING
REQUEST FOR LIMITED WAIVER

(Issued December 4, 2015)

1. In this order, the Commission accepts notices of change in status filed by the CENG Nuclear Entities,¹ the Exelon MBR Entities,² and Safe Harbor Water Power Corporation (Safe Harbor).³ As discussed below, the Commission concludes that the

¹ The CENG Nuclear Entities are: Calvert Cliffs Nuclear Power Plant, LLC; Nine Mile Point Nuclear Station, LLC; and R.E. Ginna Nuclear Power Plant, LLC.

² The Exelon MBR Entities are: AV Solar Ranch 1, LLC; Baltimore Gas and Electric Company; Beebe Renewable Energy, LLC; Cassia Gulch Wind Park, LLC; CER Generation, LLC; CER Generation II, LLC; Commonwealth Edison Company; Constellation Energy Commodities Group, Inc.; Constellation Energy Commodities Group Maine, LLC; Constellation Mystic Power, LLC; Constellation NewEnergy, Inc.; Constellation Power Source Generation, Inc.; Cow Branch Wind Power, LLC; CR Clearing, LLC; Criterion Power Partners, LLC; Exelon Energy Company; Exelon Framingham, LLC; Exelon Generation Company, LLC; Exelon New Boston, LLC; Exelon New England Power Marketing, Limited Partnership; Exelon West Medway, LLC; Exelon Wind 4, LLC; Exelon Wyman, LLC; Handsome Lake Energy, LLC; Harvest Windfarm, LLC; Harvest II Windfarm, LLC; Michigan Wind 1, LLC; Michigan Wind 2, LLC; PECO Energy Company; Safe Harbor Water Power Corporation; Shooting Star Wind Project, LLC; Tuana Springs Energy, LLC; Wildcat Wind, LLC; and Wind Capital Holdings, LLC.

³ We note that while Constellation Energy Commodities Group, Inc., Exelon Energy Company, and Exelon New England Power Marketing, Limited Partnership were included in the notice of change in status with CENG Nuclear Entities, Exelon MBR Entities, and Safe Harbor, Constellation Energy Commodities Group, Inc., Exelon Energy Company, and Exelon New England Power Marketing, Limited Partnership subsequently cancelled their market-based rate authority. *See Constellation Energy Commodities Group, Inc.*, Docket No. ER13-993-000 (Apr. 5, 2013) (delegated letter order); *Exelon Energy Co.*, Docket No. ER13-256-000 (Dec. 4, 2012) (delegated letter

(continued...)

CENG Nuclear Entities, the Exelon MBR Entities, and Safe Harbor (collectively, Applicants) continue to satisfy the Commission's standards for market-based rate authority.⁴ Additionally, we dismiss as unnecessary Applicants' request for a limited waiver of the requirements of section 35.42(a)(2) of the Commission's regulations with respect to future new affiliations with entities that own or control behind-the-meter generation facilities of 20 MW or less.

I. Background

2. On October 12, 2012, as amended on July 3, 2013, the CENG Nuclear Entities and the Exelon MBR Entities submitted notices of change in status pursuant to the reporting requirements of Order No. 652⁵ and section 35.42 of the Commission's regulations. On October 31, 2012, Safe Harbor submitted a notice of change in status. In their filings, Applicants notify the Commission of their affiliation with certain individual project company subsidiaries (Retail QF Subsidiaries) of Exelon Corporation (Exelon) that install, own and operate very small solar generation facilities, and request a limited waiver of the requirements of section 35.42(a)(2) of the Commission's regulations going

order); *Exelon New England Power Marketing, Limited Partnership*, Docket No. ER13-47-000 (Nov. 20, 2012) (delegated letter order). We also note that CER Generation II, LLC and Constellation Power Source Generation, Inc. have filed notices of succession and are now operating as West Valley Power, LLC and Constellation Power Source Generation, LLC, respectively. See *Castleton Energy Services, LLC*, Docket No. ER10-2983-005 (May 14, 2015) (delegated letter order); *Constellation Power Source Generation, LLC*, Docket No. ER14-1523-000 (Apr. 23, 2014) (delegated letter order).

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, *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).

⁵ See *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).

forward. Additionally, the CENG Nuclear Entities notify the Commission of their affiliation with certain subsidiaries of EDF Renewable Energy, Inc., a subsidiary of EDF Inc. (EDF).

3. The CENG Nuclear Entities state that they are wholly owned subsidiaries of Constellation Energy Nuclear Group, LLC, a joint venture between Exelon and EDF. The Exelon MBR Entities state that they are wholly owned subsidiaries of Exelon.

II. Notice of Filings and Responsive Pleadings

4. Notice of the CENG Nuclear Entities' and the Exelon MBR Entities' October 12, 2012 and July 3, 2013 filings was published in the *Federal Register*,⁶ with interventions and comments due on or before July 24, 2013. None was filed.

5. Notice of Safe Harbor's October 31, 2012 filing was published in the *Federal Register*,⁷ with interventions and comments due on or before November 21, 2012. None was filed.

III. Discussion

6. 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.⁸ As discussed below, we have reviewed Applicants' notices of change in status and conclude that they continue to satisfy the Commission's standards for market-based rate authority. Additionally, we dismiss as unnecessary Applicants' request for a limited waiver of the requirements of section 35.42(a)(2) of the Commission's regulations.

A. Notices of Change in Status

1. The CENG Nuclear Entities' Affiliation with Subsidiaries of EDF Renewable Energy, Inc.

7. The CENG Nuclear Entities notify the Commission of five new affiliations with indirect, wholly owned subsidiaries of EDF Renewable Energy, Inc. that own and operate generation facilities: (1) Shiloh IV Wind Project, LLC (Shiloh IV), which owns and

⁶ 77 Fed. Reg. 64,501 (2012); 78 Fed. Reg. 42,060 (2013).

⁷ 77 Fed. Reg. 67,356 (2012).

⁸ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 62,399, 408, 440.

operates a 100 megawatt (MW) wind-powered electric generation facility located in the California Independent System Operator Corp. (CAISO) market in the Southwest region;⁹ (2) Pacific Wind Lessee, LLC (Pacific Wind), which manages and operates a 140 MW wind generation facility located in the CAISO market;¹⁰ (3) Catalina Solar, LLC (Catalina), which owns and operates a 110 MW solar-powered electric generation facility located in the CAISO market;¹¹ (4) Spearville 3, LLC (Spearville), which owns and operates a 100.8 MW wind-powered electric generation facility, located in Ford County, Kansas within the Southwest Power Pool (SPP) region;¹² and (5) Spinning Spur Wind, LLC (Spinning Spur), which owns and operates a 161 MW wind power generation facility located within the SPP region.¹³

8. The CENG Nuclear Entities state that these new affiliations do not represent a material departure from the characteristics the Commission relied upon in granting market-based rate authority to the CENG Nuclear Entities. They state that none of the CENG Nuclear Entities owns or controls any generation facilities in the Southwest or SPP regions. They add that all of the capacity from their new affiliates' facilities is fully committed under long-term agreements, and thus does not increase the amount of uncommitted capacity that they are affiliated with in the Southwest and SPP regions. The CENG Nuclear Entities further state that none of their new affiliates owns or operates transmission facilities other than interconnection facilities necessary to connect to the grid, and none can erect barriers to entry into the relevant market.

⁹ According to the CENG Nuclear Entities, the capacity of Shiloh IV's facility is fully committed to Pacific Gas and Electric Company under long-term contract.

¹⁰ According to the CENG Nuclear Entities, the capacity of Pacific Wind's facility is fully committed to San Diego Gas and Electric Company (SDG&E) under a long-term contract.

¹¹ According to the CENG Nuclear Entities, the capacity of Catalina's facility is fully committed to SDG&E under a long-term contract.

¹² According to the CENG Nuclear Entities, the capacity of Spearville's facility is fully committed to Kansas City Power and Light Company under a long-term contract.

¹³ According to the CENG Nuclear Entities, the capacity of Spinning Spur's facility is fully committed to Southwestern Public Service Company under a long-term contract.

2. Applicants' Affiliation with Behind-the-Meter Generation

9. Applicants also notify the Commission that certain individual project company subsidiaries of Exelon (Retail QF Subsidiaries) install, own and operate certain very small solar generation facilities on property controlled by their commercial, industrial or governmental electric customers. Applicants state that each of these generation facilities qualifies as a small power production qualifying facility (QF) pursuant to section 292.203(a) of the Commission's regulations. Applicants add that the Retail QF Subsidiaries sell all of the electricity from such behind-the-meter generation facilities directly to their on-site, end-use customers. Applicants further state that the Retail QF Subsidiaries do not participate in the wholesale markets; if the power enters the wholesale market, it only enters at times during which the retail customer does not require all of the output for its use. Applicants state that the Retail QF Subsidiaries do not and cannot control their customers' consumption and the potential availability of any excess generation for delivery to the wholesale market.

10. Applicants state that the generation owned and controlled by the Retail QF Subsidiaries is *de minimis*, totaling less than 35 MW in any one balancing authority area. Applicants maintain that their affiliation with the Retail QF Subsidiaries does not affect the facts upon which the Commission relied in granting them market-based rates.

3. Commission Determination

11. Based on Applicants' representations, we find that Applicants continue to satisfy the Commission's standards for market-based rate authority in all regions. Additionally, with respect to behind-the meter generation, we note that, as discussed below, the Commission has determined that it will not require market-based rate sellers to file notices of change in status to report new affiliations with behind-the-meter generation.¹⁴

B. Waiver Request

1. Applicants' Request

12. Applicants request a waiver of the requirements of section 35.42(a)(2) of the Commission's regulations with respect to future new affiliations with entities that own or control behind-the-meter generation facilities that are 20 MW or smaller until Applicants acquire ownership or control, or become affiliated with entities that own or control,

¹⁴ *Refinements to Policies and Procedures for Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 816, 153 FERC ¶ 61,065, at P 252 (2015).

generation that results in a net increase of 100 MW or more in an applicable geographic market. They state that, consistent with the Commission's guidance in Order No. 697-A, if the requested limited waiver is granted, a notice of change in status will be filed with respect to such new affiliations where there is a net increase of 100 MW or more in the geographic market that was the subject of the horizontal market power analysis on which the Commission relied in granting the seller market-based rate authority.

13. Applicants state that good cause exists to grant the requested limited waiver. First, the proposed reporting threshold of a net increase of 100 MW or more in a particular geographic market is consistent with the 100 MW threshold that the Commission adopted for reporting changes in status under section 35.42(a)(1) of the Commission's regulations. Applicants state that in originally adopting the 100 MW net increase threshold in Order No. 652, the Commission concluded that the threshold strikes the proper balance between the Commission's duty to ensure that market-based rates are just and reasonable and the Commission's desire not to impose an undue regulatory burden on market-based rate sellers. Applicants maintain that the same is true here. Next, Applicants state that the requested waiver is consistent with the Commission's regulations under the Public Utility Regulatory Policies Act of 1978, which exempt QFs that are 20 MWs or smaller from the filing requirements under section 205 of the Federal Power Act.¹⁵ Applicants also state that the requested limited waiver promotes efficiency by eliminating the need to file a separate notice every time a new Retail QF Subsidiary is created in order to develop small behind-the-meter generation resources. Applicants state that ownership and control of behind-the-meter generation does not convey the ability to exercise market power in any wholesale power market to any of the Applicants or Retail QF Subsidiaries because such entities cannot control whether the output of the generation capacity reaches the market.

2. Commission Determination

14. We will dismiss as unnecessary Applicants' request for a limited waiver of the requirements of section 35.42(a)(2) of the Commission's regulations with respect to future new affiliations with entities that own or control behind-the-meter generation facilities that are 20 MW or smaller until Applicants acquire ownership or control, or become affiliated with entities that own or control, generation that results in a net increase of 100 MW or more in the relevant geographic market.

15. On October 16, 2015, the Commission issued Order No. 816, which addresses the Commission's standards for market-based rate sellers. In Order No. 816, the

¹⁵ 18 C.F.R. § 292.601(c)(1) (2015).

Commission adopted the proposal to establish a 100 MW threshold for reporting new affiliations in change of status filings. The Commission stated that a market-based rate seller that has a new affiliation will not be required to file a change in status for an affiliation with an entity with generation assets until its new affiliations result in a cumulative net increase of 100 MW of capacity in a relevant geographic market.¹⁶ The Commission also determined that it would not count behind-the-meter generation in the 100 MW change in status threshold and that such generation need not be included in a market-based rate seller's asset appendix.¹⁷

16. Therefore, in light of the Commission's determinations in Order No. 816, we will dismiss as unnecessary Applicants' request for a limited waiver of the requirements of section 35.42(a)(2) of the Commission's regulations.

The Commission orders:

(A) Applicants' notices of change in status are hereby accepted for filing, as discussed in the body of this order.

(B) Applicants' request for a limited waiver of the requirements of section 35.42(a)(2) of the Commission's regulations is hereby dismissed, as discussed in the body of the order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁶ Order No. 816, 153 FERC ¶ 61,065 at P 251.

¹⁷ Order No. 816, 153 FERC ¶ 61,065 at P 252. Likewise, the Commission stated that such generation need not be included in the pivotal supplier and the wholesale market share screens the Commission uses for assessing horizontal market power. *Id.*