

153 FERC ¶ 61,345
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Latigo Wind Park, LLC

Docket No. ER15-2679-000

ORDER GRANTING MARKET-BASED RATE AUTHORIZATION AND
REQUEST FOR WAIVERS

(Issued December 28, 2015)

1. In this order, we grant Latigo Wind Park, LLC (Latigo Wind Park) authority to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates, effective November 15, 2015, as requested. We also grant Latigo Wind Park's request for certain waivers commonly granted to market-based rate sellers, except as noted herein.
2. Additionally, we find that Latigo Wind Park meets the criteria for a Category 1 seller in all regions and is so designated.¹

I. Background

3. On September 21, 2015, as amended on October 22, 2015 and December 4, 2015, pursuant to section 205 of the Federal Power Act (FPA),² Latigo Wind Park filed an

¹ 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).

² 16 U.S.C. § 824d (2012).

application for market-based rate authority with an accompanying tariff providing for the sale of electric energy, capacity, and ancillary services at market-based rates.³

4. Latigo Wind Park states that it will own a 62 megawatt (MW) wind-powered generation facility (Latigo Project) located in San Juan County, Utah in the PacifiCorp East (PACE) balancing authority area which is in the Northwest region. Latigo Wind Park also states that the output of the Latigo Project is fully committed to PacifiCorp under a long term power purchase agreement.

5. Latigo Wind Park states that it is a wholly owned subsidiary of Sustainable Power Group, LLC, which itself is a wholly owned subsidiary of FTP Power LLC. Latigo Wind Park represents that it is not affiliated with any other generation capacity in the Northwest region. Latigo Wind Park states that it is affiliated with Sandstone Solar LLC, a 45 MW solar photovoltaic power project located in the Salt River Project Agricultural Improvement and Power District (SRP) balancing authority area, which is in the Southwest region and is a first-tier market to the PACE balancing authority area.

II. Notice of Filings and Responsive Pleadings

6. Notice of Latigo Wind Park's September 21, 2015, October 22, 2015, and December 4, 2015 filings was published in the *Federal Register* with interventions and comments due on or before December 14, 2015.⁴

7. On October 22, 2015, Sage Grouse Energy Project, LLC and Summit Wind Power, LLC (collectively, Protestors) submitted a timely intervention and protest. On November 6, 2015, Latigo Wind Park filed an answer to the motion to intervene and to the protest.

8. Notice of Latigo Wind Park's request for blanket authorization under Part 34 of the Commission's regulations was separately published in the *Federal Register*, 80 Fed. Reg. 59,759 (2015), with interventions or protests due on or before October 15, 2015. None was filed.

³ Latigo Wind Park 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., California Independent System Operator Corp., Midcontinent Independent System Operator, Inc., and Southwest Power Pool, Inc. Latigo Wind Park also requests authorization to engage in the sale of certain ancillary services as a third-party provider in other markets.

⁴ 80 Fed. Reg. 57,804; 80 Fed. Reg. 72,430; 80 Fed. Reg. 76,968 (2015).

III. Protest

9. Protestors argue that Latigo Wind Park has made fraudulent representations regarding site control and land rights for its wind farm project in addition to other fraud committed by Latigo Wind Park and its principals. Protestors contend that the project pursued by Latigo Wind Park belongs to the City of Monticello, Utah and San Juan County, Utah and that Latigo Wind Park, or its previous owner (Wasatch Wind), incorrectly used federal grant money from the United States Department of Agriculture and failed to give promised wind data, wind analyses, and feasibility study reports to the City of Monticello, Utah for several years. Protestors also allege that Latigo Wind Park's previous owner usurped the City of Monticello's opportunities to construct a wind farm by using wind data for its own benefit and signing landowners to exclusive wind development options and/or agreements.⁵

10. Protestors also allege that Sustainable Power Group LLC, a company that bought the wind farm project from Wasatch Wind, obtained the wind farm project through bankruptcy fraud because all assets were not disclosed properly during the bankruptcy proceeding.⁶ Additionally, Protestors contend that Latigo Wind Park made fraudulent representations to PacifiCorp regarding its site plan by submitting different interconnection site maps to PacifiCorp and San Juan County's Planning Commission. Further, the map submitted to PacifiCorp crosses land that is not owned or controlled by Latigo Wind Park, but rather is owned by the Protestors.⁷

11. In its answer to the motion to intervene, Latigo Wind Park argues that Protestors' motion to intervene was late filed and that Protestors have not demonstrated good cause to grant the motion.

III. Discussion

As discussed below, we will grant Latigo Wind Park's request for authorization to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates

⁵ Protest at 2-11.

⁶ *Id.* at 11-13.

⁷ *Id.* at 14-16.

and we will accept its market-based rate tariff, effective November 15, 2015, as requested.⁸ We will also grant Latigo Wind Park's request for certain waivers.

A. Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. 385.214 (2015), Protestors' timely motion to intervene serves to make them parties to this proceeding.⁹

13. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2015), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept Latigo Wind Park's answer and will, therefore, reject it.

B. Market-Based Rate Authority

14. 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.¹⁰

1. Horizontal Market Power

15. The Commission has adopted two indicative screens for assessing horizontal market power: the pivotal supplier screen and the wholesale market share screen.¹¹ The Commission has stated that passage of both screens establishes a rebuttable presumption

⁸ We note that Latigo Wind Park 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 Latigo Wind Park 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).

⁹ Notwithstanding Latigo Wind Park's opposition to Protestors' motion to intervene as being untimely, because the comment due date in this proceeding was December 14, 2015, Protestors' motion to intervene was timely filed.

¹⁰ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 62, 399, 408, 440.

¹¹ *Id.* P 62.

that the applicant does not possess horizontal market power, while failure of either screen creates a rebuttable presumption that the applicant has horizontal market power.¹²

16. Latigo Wind Park represents that its and its affiliates' generation capacity in the PACE balancing authority area and first-tier markets is fully committed under a long-term power purchase agreement. Based on these representations, we find that Latigo Wind Park satisfies the Commission's requirements for market-based rates regarding horizontal market power.¹³

2. Vertical Market Power

17. 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 Open Access Transmission Tariff (OATT) on file or that such entity has received waiver of the OATT requirement under 18 C.F.R. § 35.28(d)(1) or satisfies the requirements for blanket waiver under 18 C.F.R. § 35.28(d)(2).¹⁴ Where the seller or its affiliates qualify for the blanket OATT waiver, the seller should affirm in its market-based rate application that it qualifies for the blanket OATT waiver.

18. Latigo Wind Park states that neither it nor any of its affiliates owns transmission facilities in the Northwest region other than those limited interconnection facilities that are necessary to connect the Latigo Project to the transmission grid. Latigo Wind Park affirmatively states that its and its affiliates' interconnection facilities satisfy the Commission's requirements for the blanket OATT waiver under 18 C.F.R. § 35.28(d)(2).

¹² *Id.* PP 33, 62-63.

¹³ The next time Latigo Wind Park 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 Corp.*, 121 FERC ¶ 61,275, at P 8 (2007). *See also* Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 384.

¹⁴ *See Open Access and Priority Rights on Interconnection Customer's Interconnection Facilities*, Order No. 807, FERC Stats. & Regs. ¶ 31,367, at P 57 (2015) (cross-referenced at 150 FERC ¶ 61,211), *order on reh'g*, Order No. 807-A, 153 FERC ¶ 61,047. In Order No. 807, the Commission amended its regulations to waive the OATT requirements of 18 C.F.R. § 35.28, the Open Access Same-Time Information System requirements of Part 37, and the Standards of Conduct requirements of Part 358, under certain conditions, for entities that own interconnection facilities. *See also Oildale Energy, LLC*, 153 FERC ¶ 61,013, at PP 12-14 (2015).

19. 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, intrastate natural gas storage or distribution facilities; sites for new 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 also requires sellers to make an affirmative statement that they have not erected barriers to entry into the relevant market and will not erect barriers to entry into the relevant market.¹⁷ 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.¹⁸

20. Regarding other barriers to entry, Latigo Wind Park represents neither it nor any of its affiliates owns or controls interstate natural gas transportation, storage or distribution, sources of coal supplies, or equipment for transporting coal supplies. Latigo Wind Park also describes certain sites for generation capacity development controlled by its affiliates. Latigo Wind Park states that such control does not raise a concern about Latigo Wind Park raising barriers to entry. Furthermore, Latigo Wind Park commits to file any necessary quarterly site control reports with the Commission in accordance with Commission rules applicable to entities with market-based rate authority.

21. Finally, consistent with Order No. 697, Latigo Wind Park affirmatively states that it and its affiliates have not erected, and will not erect, barriers to entry in the relevant market.

22. Based on Latigo Wind Park's representations, we find that Latigo Wind Park satisfies the Commission's requirements for market-based rates regarding vertical market power.

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

¹⁶ Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

¹⁷ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

¹⁸ *Id.* P 446.

C. Waiver Requests

23. Latigo Wind Park requests the following waivers and authorizations: (1) 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; (2) 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; and (3) blanket authorization under section 204 of the FPA¹⁹ and Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability.

24. The Commission will grant the requested waivers and authorizations consistent with those granted to other entities with market-based rate authorizations.²⁰ Notwithstanding the waiver of the accounting and reporting requirements, the Commission expects Latigo Wind Park to keep its accounting records in accordance with generally accepted accounting principles.

¹⁹ 16 U.S.C. § 824c (2012).

²⁰ We note that the Commission 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. 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 Generation, 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"))).

D. Reporting Requirements

25. An entity with market-based rate authorization must file an Electric Quarterly Report (EQR) with the Commission, consistent with Order Nos. 2001²¹ and 768,²² to fulfill its responsibility under FPA section 205(c)²³ to have rates on file in a convenient form and place.²⁴ Latigo Wind Park must file EQRs electronically with the Commission consistent with the procedures set forth in Order No. 770.²⁵ Failure to timely and accurately file an EQR is a violation of the Commission's regulations for which Latigo Wind Park may be subject to refund, civil penalties, and/or revocation of market-based rate authority.²⁶

²¹ *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).

²² *Electricity Mkt. Transparency Provisions of Section 220 of the Fed. Power Act*, Order No. 768, FERC Stats. & Regs. ¶ 31,336 (2012), *order on reh'g and clarification*, Order No. 768-A, 143 FERC ¶ 61,054 (2013).

²³ 16 U.S.C. § 824d(c) (2012).

²⁴ *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).

²⁵ Order No. 770, FERC Stats. & Regs. ¶ 31,338.

²⁶ 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. Additionally, Latigo Wind Park 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.²⁷

27. In Order No. 697, the Commission created two categories of sellers.²⁸ 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. 888); 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.²⁹ Sellers that do not fall into Category 1 are designated as Category 2 sellers and are required to file updated market power analyses.³⁰

28. Latigo Wind Park requests Category 1 seller status in all regions. Latigo Wind Park states that it is located in the Northwest region, where it and its affiliates own or control less than 500 MW of generation capacity. Latigo Wind Park represents that it does not own or control generation in any region other than the Northwest. Latigo Wind Park also represents that it is not affiliated with any entity that owns, operates or controls transmission facilities in the same region as its generation assets, and is not affiliated with a franchised public utility in the same region as its generation assets. Finally, Latigo Wind Park represents that neither it nor its affiliates raise other vertical market power concerns.

29. Based on Latigo Wind Park's representations, we designate Latigo Wind Park as a Category 1 seller in all regions. The Commission reserves the right to require an updated market power analysis at any time for any region.³¹

²⁷ *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).

²⁸ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 848.

²⁹ 18 C.F.R. § 35.36(a) (2015).

³⁰ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 850.

³¹ *Id.* P 853.

E. Protest

31. Protestors' comments are outside the scope of this proceeding, which concerns Latigo Wind Park's request for market-based rate authorization and certain waivers. As noted above, the Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, horizontal or vertical market power. Protestors' comments do not address issues relevant to the Commission's market-based rate analysis or to the grant of the waivers requested by Latigo Wind Park. Therefore, they are not relevant to this proceeding and will not be addressed herein.

The Commission orders:

(A) Latigo Wind Park's market-based rate tariff is hereby accepted for filing, effective November 15, 2015, as requested, as discussed in the body of this order.

(B) Waiver of the provisions of Subparts B and C of Part 35 of the Commission's regulations, with the exception of sections 35.12(a), 35.13(b), 35.15, and 35.16, is hereby granted.

(C) 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. Waiver of Parts 41 and 141 of the Commission's regulations is hereby granted, with the exception of sections 141.14 and 141.15.

(D) Blanket authorization under Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability is hereby granted. Latigo Wind Park 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 within the corporate purposes of Latigo Wind Park, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(E) 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 Latigo Wind Park's issuance of securities or assumptions of liability.

(F) Latigo Wind Park is hereby required to file EQRs in compliance with Order Nos. 2001 and 768. If the effective date of Latigo Wind Park's market-based rate tariff falls within a quarter of the year that has already expired, Latigo Wind Park's EQRs for the expired quarter are due within 30 days of the date of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.