

155 FERC ¶ 61,108  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

April 28, 2016

In Reply Refer To:

NRG Power Marketing LLC	Docket Nos. ER10-2265-006
Bayou Cove Peaking Power, LLC	ER10-2791-012
Bendwind, LLC	ER10-2333-005
Big Cajun I Peaking Power LLC	ER10-2792-012
Boston Energy Trading and Marketing LLC	ER14-1818-006
Community Wind North 1 LLC	ER14-1668-003
Community Wind North 2 LLC	ER14-1669-003
Community Wind North 3 LLC	ER14-1674-003
Community Wind North 5 LLC	ER14-1670-003
Community Wind North 6 LLC	ER14-1671-003
Community Wind North 7 LLC	ER14-1675-003
Community Wind North 8 LLC	ER14-1673-003
Community Wind North 9 LLC	ER14-1676-003
Community Wind North 10 LLC	ER14-1677-003
Community Wind North 11 LLC	ER14-1678-003
Community Wind North 13 LLC	ER14-1679-003
Community Wind North 15 LLC	ER14-1672-003
Cottonwood Energy Company LP	ER10-1575-010
CP Power Sales Seventeen, L.L.C.	ER10-2339-008
CP Power Sales Nineteen, L.L.C.	ER10-2338-008
CP Power Sales Twenty, L.L.C.	ER10-2340-008
DeGreeff DP, LLC	ER10-2336-005
DeGreeffpa, LLC	ER10-2335-005
Energy Alternatives Wholesale, LLC	ER12-2413-010
Energy Plus Holdings LLC	ER11-2062-015
GenConn Energy LLC	ER10-1291-016
GenOn Energy Management, LLC	ER11-2508-014
Green Mountain Energy Company	ER11-4307-015
Groen Wind, LLC	ER10-2347-005
Hillcrest Wind, LLC	ER10-2350-005
Independence Energy Group LLC	ER12-261-014
Jeffers Wind 20, LLC	ER10-2351-005
Larswind, LLC	ER10-2352-005
Louisiana Generating LLC	ER10-2876-012
North Community Turbines LLC	ER11-2107-006

North Wind Turbines LLC	ER11-2108-006
Norwalk Power LLC	ER10-2888-015
NRG Sterlington Power LLC	ER10-2931-012
NRG Wholesale Generation LP	ER13-1965-009
Reliant Energy Northeast LLC	ER11-4308-015
RRI Energy Services, LLC	ER11-2805-014
Sierra Wind, LLC	ER10-2356-005
TAIR Windfarm, LLC	ER10-2360-005

King & Spalding LLP  
1700 Pennsylvania Avenue, NW  
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Attention: David G. Tewksbury

Reference: Updated Market Power Analysis in Compliance with Order No. 697 and  
Request for Waiver

Dear Mr. Tewksbury:

1. On June 26, 2015, you filed on behalf of the above-captioned entities (collectively, NRG Sellers),<sup>1</sup> an updated market power analysis for the Central region in compliance

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<sup>1</sup> NRG Sellers include: NRG Power Marketing LLC; Bayou Cove Peaking Power, LLC; Bendwind, LLC; Big Cajun I Peaking Power LLC; Boston Energy Trading and Marketing LLC; Community Wind North 1 LLC; Community Wind North 2 LLC; Community Wind North 3 LLC; Community Wind North 5 LLC; Community Wind North 6 LLC; Community Wind North 7 LLC; Community Wind North 8 LLC; Community Wind North 9 LLC; Community Wind North 10 LLC; Community Wind North 11 LLC; Community Wind North 13 LLC; Community Wind North 15 LLC; Cottonwood Energy Company LP; CP Power Sales Seventeen, L.L.C.; CP Power Sales Nineteen, L.L.C.; CP Power Sales Twenty, L.L.C.; DeGreeff DP, LLC; DeGreeffpa, LLC; Energy Alternatives Wholesale, LLC; Energy Plus Holdings LLC; GenConn Energy LLC; GenOn Energy Management, LLC; Green Mountain Energy Company; Groen Wind, LLC; Hillcrest Wind, LLC; Independence Energy Group LLC; Jeffers Wind 20, LLC; Larswind, LLC; Louisiana Generating LLC; North Community Turbines LLC; North Wind Turbines LLC; Norwalk Power LLC; NRG Sterlington Power LLC; NRG Wholesale Generation LP; Reliant Energy Northeast LLC; RRI Energy Services, LLC; Sierra Wind, LLC; and TAIR Windfarm, LLC.

with the regional reporting schedule adopted in Order No. 697.<sup>2</sup>

2. As discussed below, we find that NRG Sellers' submittal filed in the above-referenced dockets satisfies the Commission's standards for market-based rate authority and we will accept it for filing.

3. NRG Sellers state that each NRG Seller is a partially or wholly owned indirect subsidiary of NRG Energy, Inc.<sup>3</sup> NRG Sellers state that they own and operate 5,010 megawatts (MW) of generation capacity located in the Midcontinent Independent System Operator, Inc. (MISO) market.<sup>4</sup> NRG Sellers state that they are affiliated with ten entities that own a total of 21 MW of generation capacity in the Western Area Power Administration Upper Great Plains East (WAUE) balancing authority area, which will be part of the Central region until the WAUE balancing authority area is integrated into the Southwest Power Pool, Inc. (SPP).<sup>5</sup>

4. NRG Sellers state that although none of NRG Sellers own or control generation facilities in the WAUE balancing authority area, NRG Sellers recognize that the WAUE balancing authority area is considered a relevant market for the NRG Sellers that are power marketers, because they have affiliates that own generation in the WAUE balancing authority area. They state that their affiliates own 21 MW of qualifying facility (QF) generation capacity, all of which is fully committed to non-affiliates under long-term contracts. NRG Sellers request waiver of Section 35.37 of the Commission

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<sup>2</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 882-893, *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). *See also 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, FERC Stats. & Regs. ¶ 31,374, at Appendix C (2015).

<sup>3</sup> NRG Sellers Filing at 3.

<sup>4</sup> *Id.* at Ex. NRG-1 at 3.

<sup>5</sup> *Id.* at 26.

regulations<sup>6</sup> to the extent that it would require the preparation and submission of indicative screens for the WAUE balancing authority area in connection with this filing. NRG Sellers state that the WAUE balancing authority will no longer be a relevant market or part of the Central region when the WAUE balancing authority area is integrated into the SPP market.<sup>7</sup>

5. Notice of NRG Sellers' updated market power analysis was published in the *Federal Register*,<sup>8</sup> with interventions or protests due on or before August 22, 2015. None was filed.

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.<sup>9</sup>

7. NRG Sellers prepared the pivotal supplier and wholesale market share screens for the MISO market, consistent with the requirements of Order No. 697. NRG Sellers state that the pivotal supplier screen indicates that NRG Sellers' uncommitted capacity is less than the total net uncommitted supply in the MISO market. The market share screen indicates that NRG Sellers' market shares are approximately 16 percent or less when the Commission-accepted Simultaneous Transmission Import Limit (SIL) values for this area are applied.<sup>10</sup>

8. With regard to NRG Sellers' request for waiver of Section 35.37 of the Commission's regulations, we note the October 1, 2015 integration of the WAUE balancing authority area into the SPP market<sup>11</sup> and we determine that, given the

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<sup>6</sup> 18 C.F.R. § 35.37 (2015).

<sup>7</sup> NRG Sellers Filing at 26.

<sup>8</sup> 80 Fed. Reg. 38,442 (2015).

<sup>9</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 62, 399, 408, 440.

<sup>10</sup> *Wolverine Power Supply Cooperative, Inc.*, 153 FERC ¶ 61,246 at PP 9-10 (2015) (accepting SIL values for the MISO market and stating that the Commission will use these SIL values when reviewing updated market power analyses for the Central region).

<sup>11</sup> See *Southwest Power Pool, Inc.*, 149 FERC ¶ 61,113 (2014), *order on reh'g and clarification*, 153 FERC ¶ 61,051 (2015).

circumstances presented here, we will not require NRG Sellers to submit a study for the WAUE balancing authority area in connection with this filing. Thus, NRG Sellers' request for waiver is granted in this regard.

9. Based on NRG Sellers' representations, we find that NRG Sellers' submittal satisfies the Commission's requirements for market-based rate authority regarding horizontal market power.

10. 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).<sup>12</sup>

11. NRG Sellers state that they do not own or control electric transmission facilities, other than those limited transmission facilities necessary to interconnect generation facilities with the transmission grid. NRG Sellers are affiliated with The United Illuminating Company, which owns transmission facilities located in the ISO New England Inc. (ISO-NE) market. NRG Sellers state that The United Illuminating Company has transferred operational control over its transmission facilities to ISO-NE,<sup>13</sup> and service is provided over those facilities pursuant to ISO-NE's OATT.<sup>14</sup>

12. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.<sup>15</sup> The Commission requires a seller to provide a description of its ownership or control of, or affiliation with an entity that owns or

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<sup>12</sup> See *Open Access and Priority Rights on Interconnection Customer's Interconnection Facilities*, Order No. 807, FERC Stats. & Regs. ¶ 31,367 at P 57, *order on reh'g*, Order No. 807-A, 153 FERC ¶ 61,047 (2015). 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 *Balko Wind Transmission, LLC*, 152 FERC ¶ 61,011, at PP 24-25 (2015).

<sup>13</sup> NRG Sellers Filing at n.143.

<sup>14</sup> ISO-NE, FERC FPA Electric Tariff, ISO New England Inc. Transmission, Markets and Services Tariff.

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

controls, intrastate natural gas transportation, storage or distribution facilities; sites for generation capacity development;<sup>16</sup> and physical coal supply sources and ownership of or control over who may access transportation of coal supplies (collectively, inputs to electric power production).<sup>17</sup> 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.<sup>18</sup> 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.<sup>19</sup>

13. NRG Sellers state that through their affiliate, GenConn Energy, they are affiliated with three natural gas local distribution companies.<sup>20</sup> NRG Sellers are also affiliated with intrastate natural gas pipelines through their affiliate, Hudson Valley Gas Corporation. Other than these affiliations, neither NRG Sellers nor any of their affiliates own or control intrastate natural gas transportation, intrastate natural gas storage or distribution facilities. NRG Sellers state that they own and control sites for new generation capacity development. Furthermore, NRG Sellers represent that they and their affiliates do not own and control any sources of physical coal supplies or access to transportation of coal supplies. Additionally, consistent with Order No. 697, NRG Sellers affirmatively state that they and their affiliates have not erected barriers to entry and will not erect barriers to entry into the relevant market.<sup>21</sup>

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<sup>16</sup> We note that sites for generation capacity development are no longer required to be included as part of the vertical market power reporting requirements. However, the seller's affirmative statement regarding barriers to entry does include such land acquisitions. *See* Order No. 816, FERC Stats. & Regs. ¶ 31,374, at PP 207, 210, 212 (2015).

<sup>17</sup> Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

<sup>18</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

<sup>19</sup> *Id.* P 446.

<sup>20</sup> The natural gas local distribution companies are: Connecticut Natural Gas Corporation, Southern Connecticut Gas Company, and Berkshire Gas Company, all of which are located in the ISO-NE market. NRG Sellers Filing at n.146.

<sup>21</sup> NRG Sellers Filing at 29.

14. Based on NRG Sellers' representations, we find that NRG Sellers' submittal satisfies the Commission's requirements for market-based rate authority regarding vertical market power.

15. NRG Sellers must file an Electric Quarterly Report (EQR) with the Commission, consistent with Orders Nos. 2001<sup>22</sup> and 768<sup>23</sup> to fulfill their responsibility under FPA section 205(c)<sup>24</sup> to have rates on file in a convenient form and place.<sup>25</sup> NRG Sellers must file EQRs electronically with the Commission consistent with the procedures set forth in Order No. 770.<sup>26</sup> Failure to timely and accurately file an EQR is a violation of the Commission's regulations for which NRG Sellers may be subject to refund, civil penalties, and/or revocation of market-based rate authority.<sup>27</sup>

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<sup>22</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>23</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>24</sup> 16 U.S.C. § 824d(c) (2012).

<sup>25</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>26</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>27</sup> 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.

16. NRG Sellers 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.<sup>28</sup>

17. Additionally, NRG Sellers must file updated market power analyses for all regions in which they are designated as Category 2 sellers in compliance with the regional reporting schedule adopted in Order No. 697.<sup>29</sup> The Commission also reserves the right to require such an analysis at any intervening time.<sup>30</sup>

By direction of the Commission.

Kimberly D. Bose,  
Secretary.

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<sup>28</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 1015-1046; 18 C.F.R. § 35.42 (2015). *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).

<sup>29</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 882-893. *See also* Order No. 816, FERC Stats. & Regs. ¶ 31,374 at Appendix C.

<sup>30</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 853.