157 FERC ¶ 61,147
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

November 22, 2016

In Reply Refer To:
NRG Energy, Inc. and
NRG Yield, Inc.
Docket No. EC14-78-003

NRG Energy, Inc.
211 Carnegie Center
Princeton, New Jersey 08540

Attention: Abraham Silverman, Esq.

Dear Mr. Silverman:

1. On September 6, 2016, pursuant to section 203 of the Federal Power Act (FPA)[1] and part 33 of the Commission's regulations,[2] NRG Energy, Inc. (NRG Energy) and NRG Yield, Inc. (NRG Yield) (together Applicants) submitted a request to amend a blanket authorization previously granted by the Commission.[3] Specifically, Applicants request that one of the conditions of the blanket authorization be amended to reduce NRG Energy's ownership threshold from 55 percent to 50 percent.[4] As discussed below, we will grant Applicants' request to amend the blanket authorization.

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[1] 16 U.S.C. § 824b (2012).

[2] 18 C.F.R. pt. 33 (2016).

[3] *See NRG Energy, Inc.*, 147 FERC ¶ 61,261 (2014) (June 2014 Order), *amending blanket authorization*, 152 FERC ¶ 61,062 (2015) (July 2015 Order). *See also NRG Energy, Inc.*, 149 FERC ¶ 61,075 (2014) (granting limited modification to quarterly reporting requirement related to blanket authorization).

[4] Request for Amended Blanket Authorization, Docket No. EC14-78-003 (filed Sept. 6, 2016) (Request).

2. In the June 2014 Order, the Commission granted Applicants a three-year blanket authorization under FPA section 203 for direct and indirect transfers from NRG Energy to NRG Yield of interests in public utilities that are Exempt Wholesale Generators and/or Qualifying Facilities (Blanket Authorization). As part of the Blanket Authorization, the Commission imposed certain conditions and restrictions to ensure that transfers under the Blanket Authorization would not result in changes in control over public utilities and their Commission-jurisdictional facilities,[5] and to facilitate ongoing Commission oversight.[6] Specifically, the Blanket Authorization, as amended in the July 2015 Order, applies only:

> when NRG Energy owns at least 55 percent of NRG Yield's outstanding voting securities, and neither NRG Energy nor NRG Yield have actual or constructive notice that any investor, individually or together with its affiliates, owns an amount of NRG Yield's Class A and/or Class C common stock that would equate to 10 percent or more of NRG Yield's outstanding voting securities.[7]

3. In the Request, Applicants explain that, when the Commission granted the Blanket Authorization, NRG Yield had only two classes of common stock, Class A and Class B,[8] and that, at the time, the Class B shares held by NRG Energy represented approximately 65.5 percent of the voting interests in NRG Yield. Applicants state that after completing an offering of NRG Yield's Class A shares on July 29, 2014, NRG Energy's voting interest dropped to approximately 55.3 percent.[9]

4. Applicants explain further that, as a result of a stock split that occurred on May 14, 2015, NRG Yield now has four classes of common stock: Classes A, B, C, and D.[10] According to Applicants, a subsequent offering of NRG Yield's Class C shares

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[5] June 2014 Order, 147 FERC ¶ 61,261 at P 24.

[6] *Id.* P 25.

[7] July 2015 Order, 152 FERC ¶ 61,062 at P 15.

[8] Applicants state that the outstanding Class A shares were, and are, publicly traded on the New York Stock Exchange, and that all of the outstanding Class B shares were, and are, held by NRG Energy. Request at 2.

[9] *Id.*

[10] Applicants state that all of the outstanding shares of Class D common stock are held by NRG Energy. *Id.* at 3.

reduced NRG Energy's voting interest to approximately 55.1 percent, and an at-the-market offering (ATM Offering) of Class C shares initiated on August 9, 2016 is expected to reduce NRG Energy's voting interest to approximately 55.01 percent, if completed.[11]

5. Applicants note that, while NRG Energy's voting interest in NRG Yield is expected to remain above 55 percent following the ATM Offering, future offerings of NRG Yield's Class A or Class C shares could cause NRG Energy's voting interest to fall below the 55 percent threshold, which would preclude Applicants from relying on the Blanket Authorization. Therefore, Applicants request that this threshold be reduced to 50 percent, so that they may continue to rely on the Blanket Authorization in such circumstances.[12]

6. Applicants claim that reducing the NRG Energy ownership threshold from 55 percent to 50 percent will not impact the analysis with respect to any of the other factors that the Commission considers under FPA section 203. Applicants also claim that the transactions executed pursuant to the Blanket Authorization, as proposed to be amended, will not have an adverse impact on competition, rates or regulation, and will not result in cross-subsidization or the pledge or encumbrance of utility assets for the benefit of any associate company.[13]

7. Notice of the filing was published in the *Federal Register*, 81 Fed. Reg. 63,174 (2016), with protests or interventions due on or before September 27, 2016. None was filed.

8. We will grant Applicants' request to amend the Blanket Authorization. We agree with Applicants that, consistent with the June 2014 Order, even after reducing the ownership threshold from 55 percent to 50 percent, it will continue to be the case that project companies "transferred from NRG Energy to NRG Yield will be controlled by NRG Energy both before and after"[14] such transfers take place. As a result, proposed transfers pursuant to the Blanket Authorization, as amended herein, will not result in a change in market concentration or the creation of a new vertical combination of assets, and will thus not have an adverse effect on horizontal or vertical competition. In addition, we continue to find that, even as amended, the conditions and restrictions

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[11] *Id.*

[12] *Id.* at 3-4.

[13] *Id.* at 4-5.

[14] June 2014 Order, 147 FERC ¶ 61,261 at P 24.

applicable to the Blanket Authorization will continue to limit it so that the blanket will not apply when a proposed transfer would result in a change in control over a project company or Commission-jurisdictional facilities. Accordingly, the Blanket Authorization is amended and will only apply:

> when NRG Energy owns at least ~~55~~50 percent of NRG Yield's outstanding voting securities, and neither NRG Energy nor NRG Yield have actual or constructive notice that any investor, individually or together with its affiliates, owns an amount of NRG Yield's Class A and/or Class C common stock that would equate to 10 percent or more of NRG Yield's outstanding voting securities.

By direction of the Commission.

Kimberly D. Bose,
Secretary.