

141 FERC ¶ 61,188
FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

December 4, 2012

In Reply Refer To:
Topaz Solar Farms LLC
Docket Nos. ER12-1626-000
ER13-32-000

Dr. William R. Hollaway
Attorney for Topaz Solar Farms LLC
Gibson Dunn & Crutcher LLP
1050 Connecticut Avenue, NW
Washington, DC 20036-5306

Reference: Request for Waiver, Category Seller Designation and Tariff Revisions

Dear Dr. Hollaway:

1. On October 2, 2012, Topaz Solar Farms LLC (Topaz) filed a request for waiver of the requirement to file an updated market power analysis for the Central region (Waiver Request). Additionally, on October 5, 2012, Topaz filed a request for designation as a Category 1 seller and a corresponding amendment to its market-based rate tariff (Category 1 Request).¹ Topaz requests Category 1 Seller status in the Northeast, Southeast, Central, Southwest Power Pool (SPP), and Northwest regions. Topaz states that it is a Category 2 Seller in the Southwest region because it and its affiliates own or control more than 500 MW in that region. As discussed below, we accept Topaz's revised market-based rate tariff designating Topaz as a Category 1 Seller in the Northeast, Southeast, Central, SPP, and Northwest regions effective December 5, 2012,

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), *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 sub nom. Pub. Citizen, Inc. v. FERC*, 2012 U.S. LEXIS 4820 (U.S. June 25, 2012).

and grant Topaz's request for waiver of the requirement to file an updated market power analysis for the Central region.

2. Notice of Topaz's Waiver Request was published in the *Federal Register*, 77 Fed. Reg. 62,506 (2012), with comments due on or before October 23, 2012. None was filed. Notice of Topaz's Category 1 Request was published in the *Federal Register*, 77 Fed. Reg. 63,307 (2012), with comments due on or before October 26, 2012. None was filed.

3. In support of its request for designation as a Category 1 Seller in all regions except the Southwest region, Topaz represents that it: (1) does not own or control any generation in any of these regions; (2) does not own, operate or control any transmission facilities in any of these regions; (3) is not affiliated with any entity that owns, operates or controls transmission facilities in the same region as its generation assets; (4) is not affiliated with a franchised public utility in the same region as its generation assets; and (5) does not raise other vertical market power issues.

4. Topaz also submitted proposed revisions to its market-based rate tariff to reflect its requested status as a Category 1 Seller in the Northeast, Southeast, Central, SPP, and Northwest regions. In addition, Topaz proposed revisions to its market-based rate tariff to include a citation to the Commission's previous order granting Topaz the requested waivers and blanket authorizations in connection with its market-based rate authority. Topaz requests that the Commission accept the revised Tariff effective December 4, 2012.

5. In Order No. 697, the Commission created two categories of sellers.² 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.³ Sellers that do not fall into Category 1 are designated as Category 2 sellers and are required to file an updated market power analysis.⁴

² Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 848.

³ 18 C.F.R. § 35.36(a) (2012).

⁴ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 850.

6. Based on Topaz's representations, we designate Topaz as a Category 1 seller in all regions except the Southwest region, and we accept Topaz's revised market-based rate tariff to be effective December 5, 2012, 61 days after filing. Topaz must file updated market power analyses for the Southwest region in compliance with the regional reporting schedule adopted in Order No. 697. However, the Commission reserves the right to require an updated market power analysis at any time for any region.⁵

7. In support of its request for waiver of the requirement to file an updated market power analysis for the Central region, Topaz notes that on June 14, 2012, the Commission granted its application for market-based rate authority and accepted its market-based rate tariff, effective June 25, 2012.⁶ Topaz states that updated market power analyses for non-transmission owners in the Central region were due by June 30, 2012, five days after the effective date of Topaz's market-based rate tariff. Topaz further represents that it does not own or control any generation or transmission facilities in the Central region and requests waiver of the requirement to file an updated market power analysis for the Central region.

8. In its April 26, 2012 application for market-based rate authority, Topaz submitted pivotal supplier and market share screens using the December 1, 2009 through November 30, 2010 study period, the same study period specified for Central non-transmission owning sellers filing updated market power analyses in June 2012.⁷ In light of our determination that Topaz meets the requirements for Category 1 seller status in the Central region and the fact that Topaz had submitted a full market power analysis in April 2012, we grant Topaz's request for waiver of the requirement to file its updated market power analysis due in June 2012.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁵ *Id.* P 853.

⁶ See *Topaz Solar Farms LLC*, Docket No. ER12-1626-000 (June 14, 2012) (delegated letter order) (accepting for filing Topaz's market-based rate tariff designating Topaz as a Category 1 seller in the Southeast and SPP regions and a Category 2 seller in the Northeast, Central, Southwest, and Northwest regions).

⁷ See Topaz April 26, 2012 Filing, Docket No. ER12-1626-000.