

144 FERC ¶ 61,071
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony Clark.

Brookfield White Pine Hydro LLC

Docket No. ER13-1613-000

ORDER ACCEPTING MARKET-BASED RATE TARIFF REVISIONS AND NOTICE
OF SUCCESSION

(Issued July 30, 2013)

1. In this order, the Commission accepts tariff revisions and a notice of succession filed by Brookfield White Pine Hydro LLC (Brookfield White Pine), to become effective June 1, 2013, as discussed below. Specifically, the Commission concludes that Brookfield White Pine may remove certain restrictions on its market-based rate authority from its market-based rate tariff.

2. Additionally, we find that Brookfield White Pine meets the criteria for a Category 1 seller in the Southeast, Central, Southwest Power Pool, Southwest, and Northwest regions, and is so designated.¹

Background

3. On May 31, 2013, pursuant to section 205 of the Federal Power Act,² Brookfield White Pine submitted a notice of succession and tariff revisions. Brookfield White Pine explains that FPL Energy Maine Hydro, LLC (FPL Energy Maine) was recently acquired by Brookfield Power US Holding America Co. (Brookfield Power) and that

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*, 133 S. Ct. 26 (2012).

² 16 U.S.C. § 824d (2006).

on May 1, 2013, FPL Energy Maine's name was changed to Brookfield White Pine Hydro LLC (Brookfield White Pine). In the instant filing, Brookfield White Pine adopts the FPL Energy Maine market-based rate tariff and proposes tariff revisions associated with its succession to the tariff.³

4. Specifically, Brookfield White Pine filed proposed revisions to remove from the market-based rate tariff the prohibition on market-based rate sales in peninsular Florida and to reflect the seller's new name, Brookfield White Pine. Brookfield White Pine notes that the existing market-based rate tariff states that "Seller shall not make wholesale sales of energy or capacity to, or purchases of energy from, peninsular Florida without first receiving advance approval by [the Commission] pursuant to a separate filing under section 205 of the Federal Power Act."⁴ Brookfield White Pine states that as a result of the acquisition, it is no longer affiliated with any public utility in peninsular Florida. Brookfield White Pine further states that neither it nor its affiliates own or control generation assets in peninsular Florida or the relevant first-tier market.⁵ Thus, Brookfield White Pine concludes that the restriction in its market-based rate tariff is no longer necessary.

5. Brookfield White Pine also requests that the Commission grant it Category 1 seller status in all regions except the Northeast region and accept revisions to its market-based rate tariff in this regard.

³ FPL Energy Maine and other Brookfield Power affiliates submitted a related change in status on April 1, 2013. *See Alta Wind VIII, LLC*, Docket No. ER11-3417-004 (July 11, 2013) (delegated letter order) (finding that FPL Energy Maine and other Brookfield Power affiliates continue to satisfy the requirements for market-based rate authority after Brookfield Power's acquisition of White Pine Hydro Investments, LLC, indirect owner of FPL Energy Maine).

⁴ Brookfield White Pine May 31, 2013 Application at 2-3. This restriction on sales in peninsular Florida dates back to Florida Power & Light Company's original request for market-based rate authority for sales to customers north and west of Peninsular Florida. *See Florida Power & Light Co.*, 81 FERC ¶ 61,107 (1997). As an affiliate of Florida Power & Light Company, such restrictions applied to FPL Energy Maine too. *See Order No. 697-A*, FERC Stats & Regs. ¶ 31,268 at P 335 ("[M]itigated sellers and their affiliates are prohibited from selling power at market-based rates in the balancing authority area in which a seller is found, or presumed, to have market power.").

⁵ *Id.* at 3.

Notices

6. Notice of Brookfield White Pine's May 31, 2013 filing was published in the *Federal Register*, 78 Fed. Reg. 34,658 (2013) with interventions and comments due on or before June 21, 2013. None was filed.

Discussion

7. The Commission will grant Brookfield White Pine's request to remove the prohibition on market-based rates sales into peninsular Florida from its market-based rate tariff. We note that the restriction was applied by FPL Energy Maine because of the self-imposed limitation of its affiliate, Florida Power & Light Company, to not make sales at market-based rates to customers in peninsular Florida.⁶ Given Brookfield Power's acquisition, Brookfield White Pine is not affiliated with Florida Power & Light Company. Moreover, based on Brookfield White Pine's representation that neither it nor its affiliates owns or controls assets in peninsular Florida or the relevant first-tier market, Brookfield White Pine does not have market power in peninsular Florida.⁷ Therefore, there is no need to limit Brookfield White Pine's sales at market-based rates to exclude peninsular Florida.

8. Likewise, we will also grant Brookfield White Pine's request for Category 1 seller designation in the Southeast, Central, Southwest Power Pool, Southwest, and Northwest regions. In Order No. 697, the Commission created two categories of sellers.⁸ Category 1 sellers are defined as 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 generating facilities to the transmission grid (or have been granted waiver of the requirements of Order No. 888)⁹; that are not affiliated with

⁶ See *Florida Power & Light Co.*, 81 FERC ¶ 61,107 (1997).

⁷ See Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 232.

⁸ *Id.* P 848.

⁹ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

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.¹⁰ Sellers that do not fall into Category 1 are designated as Category 2 sellers and are required to file updated market power analyses.¹¹

9. Brookfield White Pine maintains that in each of those regions, it qualifies for Category 1 seller status because: (1) its generation facilities are only located in the Northeast region, and it does not own or control any generation facilities in any of the other regions; (2) the only transmission facilities it owns are the limited equipment necessary to connect its facility to the transmission system; (3) while its affiliates own generation assets (and limited interconnection facilities to deliver power from such generation assets) that are located in the other regions, such assets are not attributable to Brookfield White Pine because it does not own or control them and they are not located in the same region in which its generation assets and limited interconnection facilities are located; (4) it is not an affiliate of a franchised public utility in any of the regions; and (5) there are no other vertical market power concerns.

10. Based on Brookfield White Pine's representations, we designate Brookfield White Pine as a Category 1 seller in the Southeast, Central, Southwest Power Pool, Southwest, and Northwest regions; however, the Commission reserves the right to require an updated market power analysis at any time for any region.¹² Brookfield White Pine continues to meet the criteria as a Category 2 seller in the Northeast region.¹³

¹⁰ 18 C.F.R. § 35.36(a)(2) (2012).

¹¹ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 849-850.

¹² *See id.* P 853.

¹³ *See Backbone Mountain Windpower LLC*, Docket No. ER02-2559-008 (February 3, 2009) (delegated letter order) (finding FPL Energy Maine met the criteria for a Category 2 seller). Brookfield White Pine must file an updated market power analysis for all regions in which it is designated as a Category 2 seller in compliance with the regional reporting schedule adopted in Order No. 697. Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 848-850.

The Commission orders:

Brookfield White Pine's revised market-based rate tariff is hereby accepted for filing, effective June 1, 2013, as requested, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.