

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

OFFICE OF ENERGY MARKET REGULATION

In Reply Refer To:
nTherm, LLC
Docket No. ER18-2416-000

Issued: October 16, 2018

Rhett Shumway
nTherm, LLC
Suite 302
1430 Larimer St
Denver, Colorado 80202

Reference: Market-Based Rate Authorization

On September 12, 2018, you filed on behalf of nTherm, LLC an application for market-based rate authority with an accompanying tariff. The proposed market-based rate tariff provides for the sale of energy, capacity, and ancillary services at market-based rates.¹ You request on behalf of nTherm, LLC waivers commonly granted to similar market-based rate applicants. nTherm, LLC's market-based rate tariff is accepted for filing, effective November 12, 2018.² Based on your representations, nTherm, LLC

¹ nTherm, LLC requests authorization to sell ancillary services in all of the regional transmission organization or independent system operator markets for which the Commission has approved sales of specific ancillary services. nTherm, LLC also requests authorization to engage in the sale of certain ancillary services as a third-party provider in other markets.

² nTherm, LLC, FERC FPA Electric Tariff, MBR Tariff; [FERC Electric Tariff, Market Based Rate Tariff 0.0.0](#). The next time nTherm, LLC makes a market-based rate filing with the Commission, it must include a revised tariff in compliance with Order Nos. 697 and 697-A to include appropriate citations. *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 P 916 (2007), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, at P 384 (2008). *See also Niagara Mohawk Power Corporation*, 121 FERC ¶ 61,275 (2007) at P 8.

meets the criteria for a Category 1 seller in all regions and is so designated.³

Your filing was noticed on September 13, 2018, with comments, protests or interventions due on or before October 4, 2018. None was filed.

Market-Based Rate Authorization

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.⁴

You represent that nTherm, LLC is a power marketer. You state that neither nTherm, LLC nor any of its affiliates own or control electric generation facilities. Based on your representations, nTherm, LLC satisfies the Commission's requirements for market-based rate authority regarding horizontal market power.⁵

With respect to vertical market power, you represent that nTherm, LLC and its affiliates either do not own, operate, or control any transmission facilities; or own, operate, or control transmission facilities that: (a) have a Commission-approved Open Access Transmission Tariff (OATT) on file; (b) are under the operational control of a regional transmission organization or an independent system operator; (c) have received waiver of the OATT requirement under 18 C.F.R. § 35.28(d)(1); or (d) satisfy the requirements for a blanket waiver under 18 C.F.R. § 35.28(d)(2).⁶ Further, you

³ See *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 P 320 (2015). *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 (2007).

⁴ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 62, 399, 408, 440.

⁵ We note that nTherm, LLC 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 nTherm, LLC 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).

⁶ See *Open Access and Priority Rights on Interconnection Customer's Interconnection Facilities*, Order No. 807, FERC Stats. & Regs. ¶ 31,367, *order on reh'g*, Order No. 807-A, 153 FERC ¶ 61,047 (2015).

affirmatively state that nTherm, LLC and its affiliates have not erected barriers to entry and will not erect barriers to entry into the relevant market. Based on your representations, nTherm, LLC satisfies the Commission's requirements for market-based rate authority regarding vertical market power.

Waivers, Authorizations, and Reporting Requirements

nTherm LLC's request for waiver of Subparts B and C of Part 35 of the Commission's regulations requiring the filing of cost-of-service information, except for sections 35.12(a), 35.13(b), 35.15 and 35.16 is granted. nTherm, LLC's request for waiver of Part 41 and Part 141 of the Commission's regulations concerning accounting and reporting requirements is granted with the exception of 18 C.F.R. §§ 141.14 and 141.15.⁷ nTherm LLC's request for 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.⁸ Notwithstanding the waiver of the accounting and reporting requirements here, nTherm, LLC is expected to keep its accounting records in accordance with generally accepted accounting principles.

nTherm, LLC requests blanket authorization under Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability. A separate notice was published in the Federal Register establishing a period during which protests could be filed. None was filed. nTherm, LLC is 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 nTherm, LLC, compatible with the public interest, and reasonably necessary or appropriate for such purposes.⁹

⁷ See Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 984-985.

⁸ Hydropower licensees are required to comply with the requirements of the Uniform System of Accounts pursuant to 18 CFR Part 101 to the extent necessary to carry out their responsibilities under Part I of the Federal Power Act (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 Order No. 816, FERC Stats. & Regs. ¶ 31,374 at PP 345-350; *Seneca Gen., 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"))).

⁹ See Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 999-1000.

nTherm, LLC must file Electric Quarterly Reports (EQR) with the Commission, consistent with Order Nos. 2001¹⁰ and 768.¹¹ nTherm, LLC must file EQRs electronically with the Commission consistent with the procedures set forth in Order No. 770.¹² nTherm, LLC further 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.¹³

This action does not constitute approval of any service, rate, charge, classification, or any rule, regulation, or practice affecting such rate or service provided for in the filed documents; nor shall such action be deemed as recognition of any claimed contractual right or obligation affecting or relating to such service or rate; and such acceptance is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against any of the applicant(s).

This action is taken pursuant to the authority delegated to the Director, Division of Electric Power Regulation - West, under 18 C.F.R. § 375.307. This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. § 385.713.

¹⁰ *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).

¹¹ *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).

¹² *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).

¹³ 18 C.F.R. § 35.42 (2018); *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).

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Issued by: Steve P. Rodgers, Director, Division of Electric Power Regulation - West

Document Content(s)

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Summary: Application I, Kristy Beattie will be submitting our FERC information that was requested for our Electricity Application. electronically filed by Mrs. Kristy M Beattie on behalf of nTherm,LLC and Kristy M Beattie