

144 FERC ¶ 61,016
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.

Imperial Valley Solar 1, LLC

Docket No. ER13-1139-002

ORDER ACCEPTING COMPLIANCE FILING ON MARKET-BASED RATE
APPLICATION

(Issued July 8, 2013)

1. On June 7, 2013, Imperial Valley Solar 1, LLC (IVS-1) submitted a filing to address the compliance directives in a May 31, 2013 Commission order.¹ In this order, we accept IVS-1's alternate horizontal market power analysis and grant IVS-1 authority to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates in the Southwest region, effective March 22, 2013, as requested, without further condition.

I. Background

2. On March 21, 2013, as amended on April 17, 2013, pursuant to section 205 of the Federal Power Act (FPA),² IVS-1 filed an application for market-based rate authority with an accompanying tariff providing for the sale of electric energy, capacity, and ancillary services at market-based rates in the markets administered by the California Independent System Operator Corporation (CAISO). IVS-1 stated that it will own a 200 megawatt (MW) solar photovoltaic electric generation facility located in Imperial County, California (the Facility). IVS-1 further stated that all of the output from the Facility will be sold to the San Diego Gas & Electric Company pursuant to a 25-year power purchase agreement. IVS-1 relied on Nevada Power Company's recently-filed

¹ *Imperial Valley Solar 1, LLC*, 143 FERC ¶ 61,195 (2013) (May 31 Order).

² 16 U.S.C. § 824d (2006).

market power analysis³ to demonstrate that IVS-1 passes both the pivotal supplier and the wholesale market share screens for the CAISO market. However, the screen analysis on which IVS-1 relied to support its argument that it does not possess horizontal market power is pending before the Commission in Docket No. ER10-2474-003.

3. On May 31, 2013, the Commission conditionally accepted IVS-1's market-based rate tariff for filing and suspended the tariff for a nominal period, to become effective March 22, 2013, as requested, subject to refund and subject to the outcome of the proceeding in Docket No. ER10-2474-003.⁴ The Commission found that IVS-1 satisfied the Commission's requirements for market-based rates regarding vertical market power in the Southwest region. However, in regards to horizontal market power, since IVS-1 relied on a study pending before the Commission, the Commission stated that it would determine whether IVS-1 passes the indicative screens in the CAISO market upon completion of its review of Docket No. ER10-2474-003. The Commission directed IVS-1 to submit a compliance filing, within 30 days from the date an order is issued in Docket No. ER10-2474-003, updating the record in the instant proceeding to reflect the results of the Commission's determination(s) with respect to the horizontal market power analysis in Docket No. ER10-2474-003.⁵

4. On June 7, 2013, IVS-1 submitted a compliance filing, noting that the conditional acceptance of its tariff and its associated refund obligation have raised significant issues for IVS-1, which will shortly commence the production of test power from the Facility. Therefore, in order to expedite the removal of the conditional acceptance and refund obligation, IVS proposes an alternative approach to address the Commission's concerns with respect to IVS-1's initial horizontal market power analysis. Specifically, IVS-1 submits as its compliance filing a revised horizontal market power analysis that relies on previously-accepted horizontal market power screens submitted by Agua Caliente Solar, LLC (Agua Caliente) for the CAISO market.⁶ IVS-1 states that to present the most conservative case, it assumes that the simultaneous transmission import limit (SIL) values into the CAISO market are zero, thus including no competing imports in the market

³ IVS-1 March 21, 2013 Filing (Application) at Appendix C (citing Nevada Power Co., Updated Market Power Analysis, Docket No. ER10-2474-003 (filed on Dec. 26, 2012)).

⁴ May 31 Order, 143 FERC ¶ 61,195 at P 1.

⁵ *Id.* P 16.

⁶ IVS-1 June 7, 2013 Filing at 2 (citing *Agua Caliente Solar, LLC*, Docket No. ER12-21-004 (Feb. 6, 2013) (delegated letter order)).

power screens.⁷ IVS-1 requests that the Commission issue an order accepting the compliance filing and confirm that: (i) as a result of the Commission's acceptance of its compliance filing, IVS-1 satisfies the Commission's requirements for market-based rate authority without any further condition; (ii) its tariff is no longer subject to refund; and (iii) it is not required to submit the compliance filing referred to in ordering paragraph (B) of the May 31 Order.

II. Notice of Filing

5. Notice of IVS-1's June 7, 2013 filing was published in the *Federal Register*, 78 Fed. Reg. 36,180 (2013), with interventions and comments due on or before June 21, 2013. None was filed.

III. Discussion

6. As discussed below, we grant IVS-1's request for authorization to make wholesale sales of electric energy, capacity and ancillary services at market-based rates in the Southwest region, effective March 22, 2013 without condition.

7. 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.⁸ The Commission has adopted two indicative screens for assessing horizontal market power: the pivotal supplier screen and the wholesale market share screen. The Commission has stated that passage of both screens establishes a rebuttable presumption that the applicant does not possess horizontal market power, while failure of either screen creates a rebuttable presumption that the applicant has horizontal market power.

8. The May 31 Order conditionally accepted IVS-1's market-based rate tariff for filing and suspended the tariff for a nominal period, subject to refund and subject to the outcome of the proceeding in Docket No. ER10-2474-003. The May 31 Order found that IVS-1's request for market-based rate authorization had not been shown to be just and

⁷ We note that IVS-1 and its affiliates have no uncommitted capacity in first-tier markets. IVS-1 June 7, 2013 Filing at Attachment Parts I and II (Pivotal Supplier Analysis and Market Share Analysis).

⁸ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 62, 399, 408, 440.

reasonable because IVS-1's horizontal market power analysis relied upon a market power analysis that was pending in Docket No. ER10-2474-003.⁹

9. In its June 7, 2013 compliance filing, IVS-1 submits revised pivotal supplier and wholesale market share screens for the CAISO market that rely on the previously-accepted analysis submitted by Agua Caliente.¹⁰ IVS-1 states that in the CAISO market, it owns and controls, or is affiliated with, a total of 4,595 MW of installed capacity, 4,316 MW of which is committed through long-term contracts. IVS-1's revised market share screen indicates that its market share in the CAISO market ranges from 1.1 to 1.2 percent.¹¹ IVS-1's revised pivotal supplier screen analysis indicates that the net uncommitted capacity in the CAISO market exceeds IVS-1's uncommitted capacity, indicating that IVS-1 is not a pivotal supplier.

10. The Commission has reviewed IVS-1's pivotal supplier and wholesale market share screens and has determined that IVS-1 passes both screens in the CAISO market. Accordingly, we find that IVS-1 satisfies the Commission's requirements for market-based rate authority regarding horizontal market power in the Southwest region. As a result, IVS-1's tariff is no longer subject to refund, and IVS-1 is not required to submit the compliance filing referred to in ordering paragraph (B) of the May 31 Order.

⁹ May 31 Order, 143 FERC ¶ 61,195 at P 16. The May 31 Order found that IVS-1 did satisfy the Commission's requirements for market-based rates regarding vertical market power in the Southwest region. *Id.* P 22.

¹⁰ See *Agua Caliente Solar, LLC*, Docket No. ER12-21-004 (Feb. 6, 2013) (delegated letter order) (finding that Aqua Caliente's pivotal supplier and wholesale market share screens for the CAISO market were prepared consistent with the requirements of Order No. 697).

¹¹ We note that IVS-1's market share in the CAISO market in its original Application ranges from 0.9 to 1.0 percent. The market share increase can be partly attributed to IVS-1's conservative assumption in the compliance filing of no competing imports. The new analysis in the IVS-1 filing has changed the non-affiliate SIL value for competing imports from 10,956 MW to zero, thereby increasing the market share of IVS-1. We note that IVS-1 also reports no affiliated imports since neither IVS-1 nor its affiliates has generating facilities in the first tier markets. Furthermore, the revised IVS-1 horizontal market power analysis does not rely on Commission approval of the proxy SIL values into the CAISO market filed in Docket No. ER10-2474-003.

The Commission orders:

(A) IVS-1's market-based rate tariff is hereby accepted for filing, effective March 22, 2013, as requested, and will no longer be subject to refund, as discussed in the body of this order.

(B) IVS-1's compliance filing is hereby accepted without any further condition, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.