



Control Number: 14406



Item Number: 1062

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February 15, 2023

Public Utility Commission of Texas  
1701 N. Congress, Room 8-100  
P.O. Box 13326  
Austin, TX 78711-3326

**RE: Project No. 14406**

Enclosed for filing in the above referenced cause, please find the following documents:

1. Power Marketer Registration of Second Foundation US Trading, LLC;
2. Application For Order Accepting Market-Based Rate Tariff for Filing and Granting Waivers and Blanket Approvals and Request For Expedited Treatment; and
3. FERC Order Granting Second Foundation US Trading MBR Authorization

Thank you for your assistance in this matter.

Very truly yours,



Mark Greenberg

MG:erh  
Enclosures

1062



PROJECT NO. 14406

REGISTRATION OF POWER	§	PUBLIC UTILITY COMMISSION
MARKETER PURSUANT TO	§	OF TEXAS
SUBSTANTIVE RULE §25.105	§	

POWER MARKETER REGISTRATION OF  
SECOND FOUNDATION US TRADING, LLC

Pursuant to P.U.C. Subst. R. 25.105 and §35.032 of the Public Utility Regulatory Act, Second Foundation US Trading, LLC ("Second Foundation") hereby submits this registration as a Power Marketer in the State of Texas. In support of this registration, Second Foundation provides the following:

1. **Name and address of the applicant:**

Second Foundation US Trading, LLC  
1209 Orange Street  
Wilmington, DE 19801

2. **Name, address, telephone number, fax number and email address of the persons to whom communications should be addressed:**

Attn: Jakub Sedlacek  
Second Foundation US Trading, LLC  
Na Florenci 2116/15  
110 00 Prague  
Czech Republic  
Phone: 00420 602 747 242  
Email: jakub.sedlacek@second-foundation.eu

3. **Names and types of business of the owners, with percentage of ownership:**

Second Foundation Holding a.s. (100%)

4. **Affiliates that buy or sell electricity at wholesale in Texas, sells electricity at retail in Texas, or is an electric or municipally owned utility in Texas:**

a) None.

**5. Description of the location of any facility in Texas used to provide service:**

Not applicable.

**6. Description of the service provided:**

Second Foundation will conduct wholesale marketing and trading of energy products and services, as well as other business necessary to facilitate said activities, in the Electric Reliability Council of Texas market.

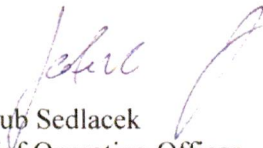
**7. FERC Power Marketing License:**

Docket No. ER22-2959-000, dated November 17, 2022.

**8. Copies of Information filed with FERC:**

Copies of Information filed with FERC by Second Foundation US Trading, LLC have been provided to the Public Utility Commission of Texas concurrent with the filing of this Power Marketer Registration.

RESPECTFULLY SUBMITTED

  
Jakub Sedlacek  
Chief Operating Officer  
Second Foundation US Trading, LLC

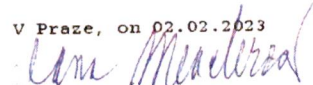
**AFFIDAVIT**

I, Jakub Sedlacek, Chief Operating Officer of Second Foundation US Trading, LLC, hereby represent and certify that I have reviewed the registration of Second Foundation US Trading, LLC as a Power Marketer being filed in PUCT Project No. 14406 and affirm that the information therein is true and accurate to the best of my knowledge, information, and belief that Second Foundation US Trading, LLC will be a Power Marketer as defined under P.U.C. Subst. R. 25.105.

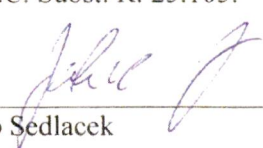
**Certification**

I hereby certify that the following person, whose identity has been proved, has personally signed the document in front of me under the ordinal number 1P4DLRV:  
Jakub Sedláček, 07.06.1995, Charlese de Gaulla  
531/8, Bubeneč, 16000 Praha 6.

V Praze, on 02.02.2023

  
JUDr. Dana Menclerová  
notářská kandidátka  
pověřená JUDr. Markétou Menclerovou  
notářskou se sídlem v Praze



  
\_\_\_\_\_  
Jakub Sedlacek



APOSTILLE	
(Convention de La Haye du 5 octobre 1961)	
1. Česká republika Czech Republic	
Tato veřejná listina This public document	
2. byla podepsána	JUDr. Dana Menclerová
has been signed	
3. funkce	Notářský kandidát
acting in capacity of	
4. opatřena razítkem	JUDr. Markéta Menclerová, notářka v Praze
bears the seal/stamp of	
.....	
OVĚŘENO CERTIFIED	
5. V Praze in Prague	6. dne 02.02.2023 date
7. Notářská komora České republiky Notarial Chamber of the Czech republic	
8. čís. 3NZL7B N°	
9. kolek/razítko duty stamp/stamp	10. Podpis Michaela Křížova Signature
.....	



**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL ENERGY REGULATORY COMMISSION**

Second Foundation US Trading, LLC

)

Docket No. ER22-\_\_\_\_-000

**APPLICATION FOR ORDER ACCEPTING MARKET-BASED RATE TARIFF FOR  
FILING AND GRANTING WAIVERS AND BLANKET APPROVALS AND REQUEST  
FOR EXPEDITED TREATMENT**

Pursuant to Section 205 of the Federal Power Act (“FPA”),<sup>1</sup> and Part 35 of the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) regulations under the FPA,<sup>2</sup> Second Foundation US Trading, LLC, LLC (“Applicant”) hereby submits this application (the “Application”) requesting that the Commission, consistent with its orders authorizing other independent power marketers to engage in such transactions, (1) grant Applicant authorization to make wholesale sales of energy, capacity, and ancillary services at market-based rates (“MBR Authority”) pursuant to the market-based rate tariff (the “Tariff”) attached hereto as Appendix A; (2) accept the proposed Tariff for filing with an effective date of September 30, 2022, one day after filing; and (3) grant the waivers and blanket authorizations of certain Commission regulations under the FPA, as detailed herein.

**I. LIST OF DOCUMENTS SUBMITTED**

In support of this Application, Applicant provides the following:

1. Tariff in RTF format with metadata attached in compliance with Order No. 714;
2. Appendix A: PDF copy of Applicant’s Tariff.

**II. COMMUNICATIONS**

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<sup>1</sup> 16 U.S.C. § 824d (2018)

<sup>2</sup> 18 C.F.R. § 35 (2021).

All communications and service concerning this Application should be addressed to the individuals noted below, and they should be included on the official service list.<sup>3</sup>

Zori G. Ferkin  
KING & SPALDING LLP  
1700 Pennsylvania Ave., NW  
Washington, DC 20006  
(202) 626-5574  
zferkin@kslaw.com

Pavol Krasnovsky  
Second Foundation US Trading, LLC  
Na Florenci 2116/15  
100 00 Prague  
Czech Republic  
+420 604 467 156  
Pavol.krasnovsky@second-foundation.eu  
CC: Jakub.sedlacek@second-foundation.eu

### **III. DESCRIPTION OF APPLICANT AND RELEVANT AFFILIATES**

Pursuant to Section 35.37 of the Commission's regulations,<sup>4</sup> Applicant provides the following descriptions:

#### **A. Applicant**

Applicant is a limited liability company duly organized and existing under the laws of the State of Delaware. Applicant is a power-trading firm that does not currently but which intends to engage in the purchase and sale of physical and/or virtual energy in the day-ahead and real-time markets of various independent system operators and regional transmission organizations, as well as in regions that have not implemented organized markets, within the United States. Applicant does not, directly or indirectly, own or control electric generation or transmission facilities, nor is it affiliated with entities that own or control electric generation or transmission facilities, in each case located within the United States. Applicant also does not, directly or indirectly, own or control, nor is it affiliated with any entity that owns or controls, inputs to electric power production

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<sup>3</sup> Applicant requests waiver of Rule 203(b)(3), 18 C.F.R. § 385.203(b)(3), so that a copy of any communications in this proceeding may be served on all persons listed below.

<sup>4</sup> 18 C.F.R. § 35.37(a)(2)

including any natural gas transportation, storage or distribution facilities, or physical coal supply sources or access to transportation of coal supplies in the United States.

**B. Applicant Upstream Ownership and Relevant Affiliates**

Applicant is owned 100% by Second Foundation Holding a.s. (“Second Foundation”). Second Foundation is a joint-stock company organized under the laws of the Czech Republic. Through various subsidiaries, Second Foundation currently trades electricity and commodities in 18 European countries and expects to enter certain European markets for futures trading. Second Foundation (either itself or through subsidiaries) enters into agreements for the purchase of electricity for resale in the European markets with owners of solar and wind generation assets located in Germany and the Baltics.

Second Foundation has two classes of shares: Class A shares and Class B shares.<sup>5</sup> The Class A shares are the voting securities of Second Foundation. Approximately 73% of the Class A shares are owned and controlled by WXZ13 a.s., a company organized under the laws of the Czech Republic (“WXZ13”). WXZ13 is owned and controlled 49% by Tahoe Invest a.s. (“Tahoe Invest”) and 51% by Trntr s.r.o. (“Trntr”), each of which is a company organized under the laws of the Czech Republic. Tahoe Invest is wholly owned and controlled by Tomáš Krsek, an individual and citizen of the Czech Republic. Trntr is wholly owned and controlled by Vojtěch Kačena, an individual and citizen of the Czech Republic. No other entity or individual owns or controls 10% or more of the Class A shares. Accordingly, with respect to the Class A Shares, Tomáš Krsek and Vojtěch Kačena are “Ultimate Upstream Affiliates” of Applicant.<sup>6</sup> Neither of

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<sup>5</sup> Representatives of Applicant provided information regarding the upstream ownership of and control over Applicant (ii) provided information necessary to make this affirmation; and (iii) reviewed this Application as to the accuracy of such information and affirmation.

<sup>6</sup> 18 C.F.R. § 35.37(a)(2) requires that a market-based rate applicant include a description of its ownership structure that identifies all of its “ultimate upstream affiliate(s)”. The term “ultimate upstream affiliate” has the meaning set forth in 18 C.F.R. § 35.36(a)(10), which is defined as “the furthest upstream affiliate(s) in the ownership chain. The



Tomáš Krsek and Vojtěch Kačena (i) directly or indirectly owns or controls a 10% or greater voting interest in any electric generation or transmission facilities located in the United States or outside of the United States capable of reaching wholesale power markets located within the United States, or any inputs to electric power production or (ii) is employed by, affiliated with, or holds the position of officer or director of any public utility with a franchised electric service territory in the United States. Vojtěch Kacena does not have any ownership or involvement in the global energy industry other than his indirect ownership interests in Second Foundation. Tomáš Krsek indirectly owns share in Green Horizon Renewables a.s. (“GHR”), a Prague-based investment firm investing in renewable energy in Europe. The principal business of GHR is onshore wind and solar power plant development, with projects in the Czech Republic, Slovakia, Finland and the Baltics.

The Class B shares are wholly owned and controlled by Tahoe Invest and are preferred, non-voting securities. Pursuant to Order No. 860,<sup>7</sup> Applicant affirms that the Class B shares consist solely of passive rights that are necessary to protect the investment of the owners of the Class B shares and do not and will not confer control over Second Foundation, Applicant, or Applicant’s FPA-jurisdictional facilities. For these reasons and consistent with *AES Creative*<sup>8</sup>, owners of the Class B shares should not be considered to hold voting securities in Second Foundation, Applicant or the FPA-jurisdictional facilities of Applicant and should, therefore, not be considered affiliates of Applicant.

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term ‘upstream affiliate’ means any entity described in [18 C.F.R.] § 35.36(a)(9)(i).” The term “affiliate” is defined in 18 C.F.R. § 35.36(a)(9).

<sup>7</sup> Data Collection for Analytics and Surveillance and Market-Based Rate Purposes, Order No. 860, 168 FERC ¶ 61,039, at PP 137–141 (2019), reh’g, Order No. 860-A, 170 FERC ¶ 61,129, at PP 35–36 (2020), as modified by, 174 FERC ¶ 61,221 (2021); 18 C.F.R. § 35.37(a)(2) (as amended by Order No. 860).

<sup>8</sup> *AES Creative Resources, L P*, 129 FERC ¶ 61,239 (2009)

#### IV. REQUEST FOR AUTHORIZATION TO SELL ENERGY, CAPACITY AND ANCILLARY SERVICES AT MARKET-BASED RATES

Applicant respectfully requests authorization to sell electric energy, capacity, and ancillary services at market-based rates pursuant to the attached Tariff. The Commission will grant authority to sell electric energy (including capacity and ancillary services) at market-based rates if the seller and each of its affiliates does not have, or have adequately mitigated, market power in generation or transmission; cannot erect other barriers to entry in the relevant markets; and will not engage in affiliate abuse.<sup>9</sup> Pursuant to Order No. 697, Applicant must satisfy a two-part test that considers the following: (1) horizontal market power in the relevant geographic market; and (2) vertical market power, which includes an analysis of the seller's transmission market power and the ability of the seller and its affiliates to erect barriers to entry.<sup>10</sup>

Applicant's application does not raise any concerns regarding market power because Applicant does not own, operate, or control, nor is Applicant affiliated with any entity that owns, operates, or controls, (A) electric generation facilities located within the United States, or (B) electric transmission facilities located within the United States or that could be used to reach wholesale power markets located within the United States or (C) intrastate natural gas transportation, intrastate natural gas storage or distribution facilities or sources of coal supplies or the transportation of coal supplies such as barges and rail cars, in each case located within the

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<sup>9</sup> See *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, 72 Fed. Reg. 39,903, 39,907-08 (July 20, 2007), FERC Stats. & Regs. ¶ 31,252, at PP 13–20 (2007), *clarified*, 119 FERC ¶ 61,295 (2007) (“Order No. 697”), *on reh'g*, 123 FERC ¶ 61,055 (2008) (“Order No. 697-A”), 73 Fed. Reg. 25,831 (May 7, 2008), FERC Stats. & Regs. ¶ 31,268 (2008), *clarified*, 124 FERC ¶ 61,055 (2008), *on reh'g*, 125 FERC ¶ 61,326 (2008) (“Order No. 697-B”), 73 Fed. Reg. 79,610 (Dec. 30, 2008), FERC Stats. & Regs. ¶ 31,285 (2008), *on reh'g*, 127 FERC ¶ 61,284 (2009) (“Order No. 697-C”), 74 Fed. Reg. 30,924 (S 29, 2009), FERC Stats. & Regs. ¶ 31,291 (2009); *on reh'g*, 130 FERC ¶ 61,206 (2010) (“Order No. 697-D”), 75 Fed. Reg. 14,342 (Mar. 25, 2010), FERC Stats. & Regs. ¶ 31,305 (2010), *clarified*, 131 FERC ¶ 61,021 (2010), *aff'd sub nom. Mont Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011).

<sup>10</sup> Order No. 697 at PP 13, 21-22, 397–99.

United States. Therefore, Applicant meets the Commission's criteria, and the Commission should accept Applicant's Tariff for filing.

**A. Applicant Does Not Have Horizontal Market Power**

***(i) Applicant Lacks Horizontal Market Power***

In Order No. 697, the Commission codified two indicative screens for assessing horizontal market power and stated that there is a rebuttable presumption of market power if an applicant for MBR Authority fails either screen. The Commission has acknowledged that applicants can submit streamlined applications when the applicant and its affiliates do not own or control generation.<sup>11</sup> Applicant does not own (in whole or in part), operate, or control any electric generation facilities located within the United States, nor is it affiliated with any entity that owns (in whole or in part), operates, or controls any electric generation facilities located within the United States.<sup>12</sup> Consequently, Applicant does not have uncommitted capacity attributable to it, and it cannot bar entry to the United States' wholesale power markets by virtue of generation market power. Accordingly, Applicant lacks generation market power.

Applicant states there are no contractual or other arrangements that result in (i) the transfer of control of any electric generation assets owned by third parties to Applicant or any of its affiliates or (ii) the transfer of any electric generation assets owned by Applicant to third parties.

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<sup>11</sup> See, e.g., *Saracen Energy LP*, 110 FERC ¶ 61,332 (2005) (granting market-based rates to independent power marketer that lacked generation without requiring generation market power screen analysis).

<sup>12</sup> Because Applicant does not own, operate, or control generation resources in the United States, and Applicant is not affiliated with any entity that owns, operates, or controls generation resources in the United States, the Commission's indicative screens for generation market power are not required for Applicant. See, e.g., *AEP Power Marketing*, 107.

FERC ¶ 61,018, *order on reh'g*, 108 FERC ¶ 61,026 (adopting indicative screens to evaluate generation market power); *Saracen Energy*, 110 FERC ¶ 61,332 (granting market-based rates to independent power marketer without requiring generation market power screen analysis); *Merrill Lynch Commodities, Inc.*, Docket No. ER04-925-000, Letter Order (July 20, 2004) (unpublished) (granting market-based rates to independent power marketer without requiring generation market power screen analysis).

Applicant is not a party to any long-term contract pursuant to which it purchases energy that is supported by long-term transmission capacity reservations.

Accordingly, Applicant and its affiliates do not raise any horizontal market power concerns in the relevant market.

**B. Applicant Does Not Have Vertical Market Power**

In evaluating vertical market power, the Commission considers both transmission market power and the ability of the seller and its affiliates to erect barriers to entry in any market.<sup>13</sup> As demonstrated below, Applicant and their affiliates do not possess vertical market power.

***(i) Lack of Transmission Market Power***

Applicant does not own (in whole or in part), operate, or control, and is not affiliated with any entity that owns (in whole or in part), operates, or controls, any electric transmission facilities within the United States or that could be used to reach wholesale power markets in the United States. Accordingly, Applicant lacks transmission market power and cannot bar entry to the market by virtue of transmission market power.

***(ii) Applicant Cannot Erect Barriers to Entry***

With respect to barriers to entry, the Commission requires that a seller describe “its ownership or control of, or affiliation with an entity that owns or controls, intrastate natural gas transportation, intrastate natural gas storage or distribution facilities” and “[p]hysical coal supply sources and ownership or control over who may access transportation of coal supplies.”<sup>14</sup> None of Applicant or its affiliates own intrastate natural gas, storage or distribution facilities or physical coal supply sources of coal or coal transportation.

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<sup>13</sup> Order No. 697 at P 399.

<sup>14</sup> 18 C.F.R. § 35.73(e).

Applicant affirmatively states that neither it nor its affiliates have erected barriers to entry into the relevant market and will not erect barriers to entry into the relevant market or any market.<sup>15</sup> For these reasons and the reasons stated above, Applicant lacks vertical market power.

### **C. No Potential for Affiliate Abuse**

Order No. 697 requires that any seller with market-based rate authority must comply with applicable affiliate power sales restrictions and other affiliate restrictions.<sup>16</sup> None of Applicant or any of its affiliates is a franchised public utility with captive customers. As required by Appendix C of Order No. 697, Applicant's Tariff contains a provision that Applicant will comply with applicable provisions of Part 35 of the Commission's regulations, which includes the reference to affiliate restrictions set forth in Section 35.39 of the Commission's regulations. However, because neither Applicant nor its affiliates are franchised public utilities with captive customers, the affiliate restrictions in the Commission regulations are not currently applicable to Applicant.

## **V. REQUEST FOR MARKET-BASED RATE AUTHORIZATION TO SELL CERTAIN ANCILLARY SERVICES**

Applicant also seeks authorization to sell certain ancillary services at market-based rates in various markets to the extent authorized for companies permitted to sell power at market-based rates, consistent with the terms of its Tariff. The Commission has held that the authority to sell ancillary services at market-based rates in wholesale markets extends to any entity authorized to make wholesale sales of power market-based rates.<sup>17</sup> As demonstrated above, Applicant satisfies the Commission's requirements to make wholesale sales of power at market-based rates.

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<sup>15</sup> Order No. 697 at P 448; 18 C.F.R. § 35.37(e)(3).

<sup>16</sup> Order No. 697 at P 467.

<sup>17</sup> *Edison Mission Mktg & Trading, Inc*, 86 FERC ¶ 61,072, at 61,268 (1999); *Wisvest-Conn, L L C*, 86 FERC ¶ 61,133, at 61,466 (1999); *Canadian Niagara Power Co Ltd*, 87 FERC ¶ 61,070, at 61,291 (1999); *CH Res., Inc*, 86 FERC ¶ 61,140, at 61,495 (1999); *AES Redondo Beach, L L C, et al.*, 85 FERC ¶ 61,123, at 61,452–53 (1998), *order on reh'g*, 87 FERC ¶ 61,208 (1999), *order on reh'g*, 88 FERC ¶ 61,096 (1999), *order on reh'g*, 90 FERC ¶ 61,036 (2000).

In addition, Applicant seeks authorization to sell ancillary services at market-based rates under requirements set forth in *Avista Corporation*,<sup>18</sup> as modified by Order Nos. 697 and 784,<sup>19</sup> in markets for which the Commission has not accepted a market power study and has not generally authorized the sale of ancillary services at market-based rates. Applicant has included in its Tariff the standard tariff provisions adopted in Order No. 697 for the proposed sales of ancillary services.<sup>20</sup>

## **VI. APPLICANT'S SELLER CATEGORY**

Applicant requests that it be designated as a Category 1 Seller, as defined in Section 35.36(a)(2) of the Commission's regulations, in all regions because it (1) does not own or control, and is not affiliated with any entity that owns or controls, 500 MW or more of generation in any region; (2) does not own, operate, or control transmission facilities; (3) is not affiliated with anyone 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.<sup>21</sup>

## **VII. WAIVERS, AUTHORIZATIONS AND REPORTING REQUIREMENTS**

Applicant requests that the Commission waive certain of its filing requirements and grant such blanket authorizations as are traditionally accorded to applicants seeking to sell power at market-based rates. Specifically, Applicant requests:

- waiver of the reporting requirements of Subparts B and C of Part 35 of

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<sup>18</sup> *Avista Corp.*, 87 FERC ¶ 61,223 (1999), *order on reh'g*, 89 FERC ¶ 61,136 (1999).

<sup>19</sup> See Order No. 697 at P 1058-61; *see also Third-Party Provision of Ancillary Services, Accounting and Financial Reporting for New Electric Storage Technologies*, Order No. 784, 144 FERC ¶ 61,056 (2013), *order on clarification*, Order No. 784-A, 146 FERC ¶ 61,114 (2014).

<sup>20</sup> See Order No. 697 at PP 1058-62, 1069-72.

<sup>21</sup> 18 C.F.R. § 35.36(a)(2)

the Commission's regulations,<sup>22</sup> except Sections 35.12(a), 35.13(b), 35.15, and 35.16;

- waiver of the requirements of Parts 41 and 141 of the Commission's regulations,<sup>23</sup> except Sections 141.14 and 141.15;
- waiver of the requirements of Part 101 of the Commission's regulations<sup>24</sup> (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); and
- blanket authorization under Section 204 of the FPA and Part 34 of the Commission's regulations of all future issuances of securities and assumptions of liability.

#### VIII. REPORTING REQUIREMENTS

Applicant will comply with the Commission's applicable reporting requirements for entities with market-based rates, including the notice of change in status and Electric Quarterly Report ("EQR") requirements set forth in 18 C.F.R. Part 35 of the Commission's regulations. In particular, Applicant will file EQRs concerning its sales in conformance with the Commission's requirements.<sup>25</sup> To the extent applicable, Applicant will file an updated market power analysis

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<sup>22</sup> 18 C.F.R. § 35.

<sup>23</sup> 18 C.F.R. § 141.

<sup>24</sup> 18 C.F.R. §§ 41 & 101.

<sup>25</sup> *Public Utility Filing Requirements*, Order No. 2001, FERC Stats. & Regs. ¶ 31,127, *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074 (2002), *reh'g denied*, Order No. 2001-B, 100 FERC ¶ 61,342 (2002), *order directing filing*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002), *order directing filing*, Order No. 2001-D, 102 FERC ¶ 61,334 (2003), *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 (2007), *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); *Electricity Market Transparency Provisions of Section 220 of the Federal Power Act*, Order No. 768, FERC Stats. & Regs. ¶ 31,336 (2012), *order partially extending compliance date*, 142 FERC ¶ 61,105 (2013), *order on reh'g*, Order No. 768-A, 143 FERC ¶ 61,054 (2013) (requiring market participants excluded from Commission jurisdiction under section 205 of the FPA that have more than a de minimis market presence to file electronic quarterly reports); *Revisions to Electric Quarterly Report Filing Process*, Order No.

pursuant to the Commission's regional schedule adopted in Order No. 697, as modified in Order No. 816.<sup>26</sup> In addition, pursuant to the requirements set forth in section 35.42 of the Commission's regulations, Applicant will timely report changes to the information submitted in the MBR Database and timely file notices of material changes in status that explain whether such changes reflect a departure from the characteristics relied upon by the Commission in originally granting Applicant's MBR authority.<sup>27</sup> Applicant also agrees to comply with the Commission's market behavior rules codified at 18 C.F.R. § 35.41. In accordance with section 35.41(c) of the Commission's regulations, as amended by Order Nos. 768 and 768-A,<sup>28</sup> to the extent Applicant engages in reporting of transactions to publishers of electric or natural gas price indices, Applicant will identify in its EQRs the publishers of electricity and natural gas indices to which Applicant reports its transactions.

#### **IX. REQUEST FOR EXPEDITED ACTION, REQUEST FOR WAIVER OF NOTICE PERIOD, AND REQUESTED TARIFF EFFECTIVE DATE**

Applicant respectfully requests that the Commission issue an order approving this Application as soon as practicable, and request expedited action and a comment period of twenty-one (21) days. In accordance with Commission guidance, Applicant requests an effective date of September 30, 2022, one day after filing. Applicant, to the extent necessary, respectfully requests a waiver of the prior notice requirement<sup>29</sup> in order to permit this proposed effective date. Good cause exists for granting this waiver because the Tariff has been filed with the Commission prior

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770, FERC Stats. & Regs. ¶ 31,338 (2012) (adopting filing of EQRs in XML format).

<sup>26</sup> As set forth in this Application, Applicant currently meets the criteria to be designated as a Category 1 Seller in all regions and, accordingly, is not required to file a triennial updated market analysis in any region

<sup>27</sup> 18 C.F.R. § 35.42. Applicant submitted baseline submissions into the Commission's market-based rate relational database in compliance with Order No. 860 and subsequent related orders. Asset Appendix # 7162.

<sup>28</sup> Order No. 768 at PP 137-138, 178; Order No. 768-A at PP 40, 47.

<sup>29</sup> 18 C.F.R. § 35.3(a).



to the date upon which wholesale sales will commence under the Tariff. Thus, waiver is consistent with *Central Hudson Gas & Electric Corp.*<sup>30</sup>

## **X. CONCLUSION**

For the reasons set forth herein, Applicant submits that it satisfies all of the Commission's requirements to sell power at market-based rates and respectfully requests that the Commission issue an order granting this Application as promptly as practicable, accept the Tariff for filing without suspension or modification and with an effective date of September 30, 2022 and grant the requested waivers and blanket authorizations.

Respectfully submitted,

/s/ Zori Ferkin

Zori G. Ferkin  
KING & SPALDING LLP  
1700 Pennsylvania Ave., NW  
Washington, DC 20006  
zferkin@kslaw.com

September 29, 2022

**Counsel for Second Foundation US Trading,  
LLC**

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<sup>30</sup> 60 FERC ¶ 61,106, at 61,339 (articulating a policy under which waiver of the prior notice filing requirement will be granted for good cause provided the proposed rate schedule is filed prior to commencement of service), reh'g, 61 FERC ¶ 61,089 (1992). The Commission routinely grants waivers of the 60-day prior notice requirement for market-based rate Tariff that are filed less than 60 days before the requested effective date and before the commencement of service. *See, e.g., Airport Solar LLC*, Docket No. ER19-2822-000 (Oct. 18, 2019) (letter order); *Willow Springs Solar, LLC*, Docket No. ER18-2516-000 (Nov. 28, 2018) (letter order); *Gray Hawk Solar, LLC*, Docket No. ER18-697-000 (Mar. 20, 2018); *Dressor Plains Solar, LLC, et al.*, Docket Nos. ER21-1187-000, et al. (Apr. 14, 2021) (letter order)

## APPENDIX A

### TARIFF

#### Second Foundation US Trading, LLC

#### Market-Based Rate Wholesale Power Sale Tariff

1. Seller makes electric energy, electric capacity, and the following ancillary services available under this Rate Schedule FERC No. 1 ("Rate Schedule") to any purchaser, except as prohibited below:
  - (a) PJM: Seller offers regulation and frequency response service, energy imbalance service, and operating reserve service (which includes spinning, 10-minute, and 30-minute reserves) for sale into the market administered by PJM Interconnection, L.L.C. ("PJM") and, where the PJM Open Access Transmission Tariff permits, the self-supply of these services to purchasers for a bilateral sale that is used to satisfy the ancillary services requirements of the PJM Office of Interconnection.
  - (b) New York: Seller offers regulation and frequency response service, and operating reserve service (which include 10-minute non-synchronous, 30-minute operating reserves, 10-minute spinning reserves, and 10-minute non-spinning reserves) for sale to purchasers in the market administered by the New York Independent System Operator, Inc.
  - (c) New England: Seller offers regulation and frequency response service (automatic generator control), operating reserve service (which includes 10-minute spinning reserve, 10-minute non-spinning reserve, and 30-minute operating reserve service) to purchasers within the markets administered by the ISO New England, Inc.
  - (d) California: Seller offers regulation service, spinning reserve service, and non-spinning reserve service to the California Independent System Operator Corporation ("CAISO") and to others that are self-supplying ancillary services to the CAISO.
  - (e) Southwest Power Pool: Seller offers regulation service and operating reserve service (which include 10-minute spinning reserve and 10-minute supplemental reserve) for sale to the Southwest Power Pool, Inc. ("SPP") and to others that are self-supplying ancillary services to SPP.
  - (f) MISO: Seller offers regulation service and operating reserve service (which include 10-minute spinning reserve and 10-minute supplemental reserve) for sale to the Midcontinent Independent System Operator, Inc. ("MISO") and to others that are self-supplying ancillary services to MISO.
  - (g) Third-party ancillary services: Seller offers Regulation Service, Reactive Supply and Voltage Control Service, Energy and Generator Imbalance Service,

Operating Reserve-Spinning, Operating Reserve Supplemental, and Primary Frequency Response Service. Sales will not include the following: (1) sales to an RTO or an ISO, i.e., where that entity has no ability to self-supply ancillary services but instead depends on third parties; and (2) sales to a traditional, franchised public utility affiliated with the third-party supplier, or sales where the underlying transmission service is on the system of the public utility affiliated with the third-party supplier. Sales of Operating Reserve-Spinning and Operating Reserve-Supplemental will not include sales 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, except where the Commission has granted authorization. Sales of Regulation Service and Reactive Supply and Voltage Control Service will not include sales 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, except at rates not to exceed the buying public utility transmission provider's OATT rate for the same service or where the Commission has granted authorization.

2. Applicability. This Rate Schedule is applicable to all wholesale sales by Seller of electric energy, electric capacity, and ancillary services listed in Section 1 of this Rate Schedule not otherwise subject to a tariff or rate schedule of Seller that is on file with the Commission.
3. Rates. All sales shall be made at rates established by agreement between the purchaser and Seller.
4. Other Terms and Conditions. All other terms and conditions of sales shall be established by agreement between the purchaser and Seller.
5. Revisions. This Rate Schedule may be revised by Seller by unilaterally making the appropriate filing with the Commission pursuant to the provisions of Section 205 of the Federal Power Act.
6. Duration. This Rate Schedule shall continue to be effective until terminated or changed. Such termination or change shall take effect in accordance with the applicable regulatory requirements.
7. Compliance with Commission Regulations. Seller shall comply with the provisions of 18 C.F.R. Part 35, Subpart H, as applicable, and with any conditions the Commission imposes in its orders concerning Seller's market-based rate authority, including orders in which the Commission authorizes Seller to engage in affiliate sales under this Rate Schedule or otherwise restricts or limits the Seller's market-based rate authority. Failure to comply with the applicable provisions of 18 C.F.R. Part 35, Subpart H, and with any orders of the Commission concerning Seller's market-based rate authority, will constitute a violation of this Rate Schedule.
8. Limitations and Exemptions Regarding Market-Based Rate Authority.

In *Second Foundation US Trading, LLC*, Docket No. ER22-\_\_\_\_-000, the Commission granted Seller the following waivers and blanket authorization:

- (a) Waiver of the accounting, reporting, and other requirements of 18 C.F.R. Parts 41 (accounts, records and memorandum), 101 (uniform system of accounts)

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, and 141 (statement and reports), except Sections 141.14 and 141.15;

- (b) Waiver of the reporting requirements of Subparts B and C of Part 35 of the Commission's Regulations, except Sections 35.12(a), 35.13(b), 35.15 and 35.16; and
- (c) Blanket authorization under 18 C.F.R. Part 34 of all future issuances of securities and assumptions of liability.

9. Seller Category. Seller is a Category 1 Seller as defined in 18 C.F.R. § 35.36(a) in all regions.
10. Effective Date. This Rate Schedule is effective upon the date specified by the Commission.

FEDERAL ENERGY REGULATORY COMMISSION  
Washington, D.C. 20426

OFFICE OF ENERGY MARKET REGULATION

In Reply Refer To:  
Second Foundation US Trading, LLC  
Docket No. ER22-2959-000

Issued: November 17, 2022

Zori G. Ferkin  
King & Spalding LLP  
1700 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006

Reference: Market-Based Rate Authorization

On September 29, 2022, you filed on behalf of Second Foundation US Trading, LLC (Second Seller) 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.<sup>1</sup> You request on behalf of Second Seller waivers commonly granted to similar market-based rate applicants. Second Seller's market-based rate tariff is accepted for filing, effective September 30, 2022, as requested.<sup>2</sup> Based on your representations, Second Seller meets the criteria for a

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<sup>1</sup> Second Seller 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. Second Seller also requests authorization to engage in the sale of certain ancillary services as a third-party provider in other markets.

<sup>2</sup> Second Foundation US Trading, LLC, Market Based Rates; Section 1, Market Based Rates (0.0.0). The next time Second Seller 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 Elec. Energy, Capacity & Ancillary Servs. by Pub. Utils.*, Order No. 697, 119 FERC ¶ 61,295, at P 916 (2007), *order on reh'g*, Order No. 697-A, 123 FERC ¶ 61,055, at P 384 (2008). *See also Niagara Mohawk Power Corporation*, 121 FERC ¶ 61,275 (2007) at P 8.

Category 1 seller in all regions and is so designated.<sup>3</sup>

Your filing was noticed on September 30, 2022, with comments, protests, or interventions due on or before October 20, 2022. 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.<sup>4</sup>

You represent that Second Seller is owned by Second Foundation Holding a.s. and is a power marketer. You represent that Second Seller and its affiliates do not own or control any generation capacity. Based on your representations, Second Seller satisfies the Commission's requirements for market-based rate authority regarding horizontal market power.<sup>5</sup>

With respect to vertical market power, you represent that Second Seller 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).<sup>6</sup> Further, you

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<sup>3</sup> See *Refinements to Policies and Procedures for Market-Based Rates for Wholesale Sales of Elec. Energy, Capacity & Ancillary Servs. by Pub. Utils.*, Order No. 816, 153 FERC ¶ 61,065, at P 320 (2015).

<sup>4</sup> Order No. 697, 119 FERC ¶ 61,295 at PP 62, 399, 408, 440.

<sup>5</sup> We note that Second Seller 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 Second Seller seeks such authority, it must make the required showing and receive Commission authorization prior to making such sales. See *Third-Party Provision of Ancillary Servs.; Accounting and Financial Reporting for New Elec. Storage Technologies*, Order No. 784, 144 FERC ¶ 61,056, at PP 200-202 (2013), *order on clarification*, Order No. 784-A, 146 FERC ¶ 61,114 (2014).

<sup>6</sup> See *Open Access and Priority Rights on Interconnection Customer's Interconnection Facilities*, Order No. 807, 150 FERC ¶ 61,211, *order on reh'g*, Order No. 807-A, 153 FERC ¶ 61,047 (2015).

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

### **Waivers, Authorizations, and Reporting Requirements**

Second Seller'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. Second Seller'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. § 141.15.<sup>7</sup> Second Seller'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.<sup>8</sup> Notwithstanding the waiver of the accounting and reporting requirements here, Second Seller is expected to keep its accounting records in accordance with generally accepted accounting principles.

Second Seller 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. Second Seller 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 Second Seller, compatible with the public interest, and reasonably necessary or appropriate for such purposes.<sup>9</sup>

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<sup>7</sup> See Order No. 697, 119 FERC ¶ 61,295 at PP 984-985.

<sup>8</sup> Hydropower licensees are required to comply with the requirements of the Uniform System of Accounts pursuant to 18 C.F.R. 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, 153 FERC ¶ 61,065 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"))).

<sup>9</sup> See Order No. 697, 119 FERC ¶ 61,295 at PP 999-1000.

Second Seller must file Electric Quarterly Reports (EQRs) with the Commission, consistent with Order Nos. 2001<sup>10</sup> and 768.<sup>11</sup> Second Seller must file EQRs electronically with the Commission consistent with the procedures set forth in Order No. 770.<sup>12</sup> Second Seller 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.<sup>13</sup>

In Order No. 860,<sup>14</sup> the Commission revised its regulations governing market-based rates for public utilities to collect certain information through a relational database in order to streamline and modernize the Commission's data collection processes. Second Seller must comply with the requirements of Order Nos. 860 and 860-A, as well as the regulations promulgated pursuant to those rules.

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

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<sup>10</sup> *Revised Pub. Util. Filing Requirements*, Order No. 2001, 99 FERC ¶ 61,107, *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, 125 FERC ¶ 61,103 (2008).

<sup>11</sup> *Elec. Mkt. Transparency Provisions of Section 220 of the Fed. Power Act*, Order No. 768, 140 FERC ¶ 61,232 (2012), *order on reh'g*, Order No. 768-A, 143 FERC ¶ 61,054 (2013).

<sup>12</sup> *See Revisions to Elec. Quarterly Report Filing Process*, Order No. 770, 141 FERC ¶ 61,120, at P 3 (2012) (citing Order No. 2001, 99 FERC ¶ 61,107 at P 31).

<sup>13</sup> 18 C.F.R. § 35.42 (2021); *see also Reporting Requirement for Changes in Status for Pub. Utils. with Market-Based Rate Auth.*, Order No. 652, 110 FERC ¶ 61,097, *order on reh'g*, Order No. 652-A, 111 FERC ¶ 61,413 (2005).

<sup>14</sup> *Data Collection for Analytics and Surveillance and Mkt.-Based Rate Purposes*, Order No. 860, 168 FERC ¶ 61,039 (2019), *order on reh'g*, Order No. 860-A, 170 FERC ¶ 61,129 (2020).



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.

Issued by: Carlos D. Clay, Acting Director, Division of Electric Power Regulation – West