

HUSCH BLACKWELL

Frederick G. Jauss
Senior Counsel

1801 Pennsylvania Avenue, NW, Suite 1000
Washington, DC 20006
Direct: 202.378.2309
Fax: 202.378.2319
fred.jauss@huschblackwell.com

November 18, 2024

Ms. Maria Robinson
Department of Energy
Grid Deployment Office
1000 Independence Avenue, S.W.
Washington, DC 20585

Re: Application of XTS LLC For Authority to Transmit Electric Energy to Mexico

Dear Ms. Robinson:

Pursuant to 10 C.F.R. § 205.300, et seq. of the regulations of the Department of Energy, enclosed for filing on behalf of XTS LLC is an original Application for Authority to Transmit Electric Energy to Mexico. In accordance with the requirements of 10 C.F.R. § 205.309, a copy of this application will be provided to the Secretary of the Federal Energy Regulatory Commission.

Should you have any questions or concerns regarding this matter, please do not hesitate to contact the undersigned.

Respectfully,

/s/ Frederick G. Jauss IV
Frederick G. Jauss IV
Husch Blackwell LLP
1801 Pennsylvania Avenue, NW
Suite 1000
Washington, DC 20006-3606
(202) 378-2309
fred.jauss@huschblackwell.com

Counsel for XTS LLC

**UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF ENERGY
GRID DEPLOYMENT OFFICE**

XTS LLC

)
)

Docket No. EA-_____

**APPLICATION OF XTS LLC FOR AUTHORITY TO TRANSMIT ELECTRIC
ENERGY TO MEXICO**

Pursuant to Section 202(e) of the Federal Power Act (“FPA”), 16 U.S.C. § 824a(e) and Part 205, Subpart W of the regulation of the U.S. Department of Energy (the “Department” or “DOE”), 10 C.F.R. § 205.300, *et seq.*, XTS LLC (“XTS” or “Applicant”) hereby submits this application for blanket authorization to export electricity from the United States to Mexico (“Application”) for a period of five years. In support of this Application, XTS respectfully states as follows:

I. DESCRIPTION OF APPLICANT

The exact legal name of applicant is XTS LLC. XTS is authorized to do business in the State of Texas as a limited liability company that participates in the Electric Reliability Council of Texas (“ERCOT”) electric market in Texas as a power marketer by purchasing and selling electricity and ancillary services to its various customers.¹ It does not own or control any transmission facilities and does not have a franchised service area. XTS will purchase the energy to be exported from wholesale generators, electric utilities, and federal power marketing agencies. The instant application relates to XTS as a marketer of electric energy only.

¹ See *XTS LLC*, Docket No. ER25-472-000 (pending market-based rate application).

XTS is wholly owned by is wholly owned by XiiX Trading Solutions, SAPI de CV. XiiX Trading Solutions, SAPI de CV is owned by XIIX Energy Consulting SAPI de CV (60%), Enrique Paramo Villaseñor (30%) and a group of investors that represent less than 10% of the company. XiiX Energy Consulting is owned 50/50 between Pedro Escudero and Eduardo Paramo Villaseñor. None of these individuals owns any interest in energy assets or energy companies in the United States, other than the assets controlled by XTS.

II. PARTNERS

XTS is not seeking authorization to export power on behalf of any of its partners or members.

III. CORRESPONDENCE AND COMMUNICATIONS

All communications and service related to this Application should be directed to the following:

Pedro Escudero y Ramirez de Arellano XTS LLC Javier Barros Sierra 540 Park Plaza I Piso 1 Alvaro Obregon, CDMX Mexico 01210 escuderop@xiix.mx	Frederick G. Jauss IV Husch Blackwell LLP 1801 Pennsylvania Avenue, NW Suite 1000 Washington, DC 20006-3606 (202) 378-2309 fred.jauss@huschblackwell.com
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IV. JURISDICTION

Pursuant to FPA Section 202(e) the Department has jurisdiction over the action proposed in this Application. No other known federal, state, or local government has jurisdiction over the actions to be taken under the authority sought in this application.

V. FACILITIES

Consistent with the Department's prior orders, XTS requests authorization to export power to Mexico over any authorized international transmission facility that is appropriate for open access transmission by third parties in accordance with the export limits authorized by the Department.² Exhibit C to this Application identifies the international transmission facilities that are currently authorized by Presidential Permit and available for open access transmission.³

VI. TECHNICAL DISCUSSION OF PROPOSAL

By this Application, XTS seeks authorization to transmit electric energy to points in Mexico as a power marketer. As noted above, XTS does not currently own or control electric generation or transmission facilities and does not have a power supply of its own in the United States that would cause its electricity exports to have a reliability, fuel use, or system stability impact. XTS will purchase the electricity that it may export, on either a firm or an interruptible basis, from wholesale generators, electric utilities, federal power marketing agencies, and affiliates through negotiated agreements that have been voluntarily executed by the selling

² See, e.g., *Clear Power LLC*, Order Authorizing Electricity Exports to Mexico, Order No. EA-486 (Dec. 9, 2020).

³ See *id.* at 12.

parties after considering their own need for any such electricity. Accordingly, XTS's proposed electricity exports will not impair or tend to impede the sufficiency of electric power supplies in the United States or the regional coordination of electric utility planning or operations.⁴

Additionally, as a power marketer that does not own or operate a transmission system (and therefore must acquire transmission service pursuant to open access transmission and similar tariffs), XTS does not have the ability to cause a violation of the terms and conditions in the existing authorizations associated with international transmission facilities. Specifically, XTS does not have the ability to cause total electricity exports on Presidential Permit facilities to exceed the authorized instantaneous transmission capacity limits for such facilities.

XTS will make all necessary commercial arrangements and will obtain any and all other regulatory approvals required in order to carry out any electricity exports. This would include: (1) scheduling each transaction with the appropriate balancing authority area in compliance with all reliability criteria, standards, and guidelines of the North American Electric Reliability Corporation and the relevant Regional Entities (collectively, "NERC") in effect at the time of export, (2) obtaining market-based rate authority from FERC, and (3) obtaining all necessary transmission access over approved export facilities. XTS agrees to abide by the export limits contained in the relevant export authorization of any transmission facilities over which XTS exports electricity to Mexico. The controls that are inherent in any transaction that complies with all NERC requirements and the export limits imposed by the Department on the international

⁴ See 10 C.F.R. § 205.302(g) (2021).

transmission facilities are sufficient to ensure that exports by XTS would not impede or tend to impede the coordinated use of transmission facilities within the meaning of FPA § 202(e).

VII. CONSISTENCY WITH LAWS

XTS's application is consistent with United States energy policy and will foster the development of a more efficient and competitive North American energy market. XTS will conduct all operations pursuant to this authorization in accordance with the provisions of the FPA and pertinent rules, regulations, and orders adopted or issued thereunder, and in conformity with the applicable reliability criteria, standards, and guidelines of NERC, reliability coordinators, and balancing authority area operator(s), including any applicable regional transmission organizations or independent system operators.

Given that XTS intends only to export power over existing transmission lines, this application qualifies for a categorical exclusion under the Department's regulations implementing the National Environmental Policy Act of 1969.⁵

⁵ See 10 C.F.R. Part 1021, Subpart D, Appendix B, § B4.2 (2021) (providing a categorical exclusion for the "[e]xport of electric energy as provided by Section 202(e) of the [FPA] over existing transmission systems or using transmission system changes that are themselves categorically excluded").

VIII. EXHIBITS AND ATTACHMENTS

In accordance with 10 C.F.R. § 205.303 (2021), the following exhibits are attached hereto:

Exhibit A	Agreements – Not Applicable
Exhibit B	Legal Opinion of XTS’s counsel
Exhibit C	Transmission Facilities (submitted in lieu of maps)
Exhibit D	Non-U.S. Applicant’s Power of Attorney
Exhibit E	State of Foreign Relationship – Not Applicable ⁶
Exhibit F	Operating Procedures – Not Applicable
Exhibit G	Receipt
Attachment 1	Verification
Attachment 2	Copy of FERC market-based rate authority application

IX. CONCLUSION

WHEREFORE, for the reasons set forth herein, XTS respectfully requests that the Department issue an order granting XTS authorization to transmit electric energy to Mexico for a period of five years, effective upon issuance of the order but no later than January 1, 2025.

Respectfully submitted,

/s/ Frederick G. Jauss IV
Frederick G. Jauss IV
HUSCH BLACKWELL LLP
1801 Pennsylvania Avenue, NW
Suite 1000
Washington, DC 20006-3606
(202) 378-2309
fred.jauss@huschblackwell.com

Counsel for XTS LLC

Date: November 18, 2024

⁶ There are no corporate relationships or existing contracts between and any other person, corporation, or foreign government, which in any way relate to the control or fixing of rates for the purchase, sale, or transmission of electric energy.

EXHIBIT A

Agreements

(Not Applicable)

EXHIBIT B

Legal Opinion of XTS's Counsel

EXHIBIT B

Opinion of Counsel

The following opinion, dated November 18, 2024, is given in support of the Application of XTS LLC for Authority to Transmit Electric Energy to Mexico.

1. I am an attorney at law, authorized to practice law in the District of Columbia.
2. I am counsel to XTS LLC with respect to the foregoing application.
3. XTS LLC is a limited liability corporation, validly existing and in good standing under the laws of the State of Texas.
4. XTS LLC has full corporate power and authority to engage in exports of electric energy as requested in the application.
5. XTS LLC has complied or is in the process of complying with all Federal and State laws regarding the matters contemplated in the application.

I am opining here only as the federal laws of the United States, and laws of relevant states within the United States. I express no opinions as to the laws of any other jurisdiction.

/s/ Frederick G. Jauss IV
Frederick G. Jauss IV

Counsel for XTS LLC

EXHIBIT C

Transmission System Information

**International Transmission Facilities
Located at the U.S. – Mexico Border,
Authorized by Presidential Permit, and
Available for Open Access Transmission**

Owner	Location	Voltage	Presidential Permit No. ⁷
Comisión Federal de Electricidad	Falcon Dam, TX	138 KV	N/A
	Redford, TX	7.2 KV	PP-51
	Presidio, TX	13.8 KV	PP-03
Baja California Power, Inc.	Imperial Valley, CA	230 KV	PP-234
Generadora del Desierto – WAPA	San Luis, AZ	230 KV	PP-304*
AEP Texas Inc.	Brownsville, TX	138 KV	PP-425
		69 KV	PP-425
	Laredo, TX	138 KV	PP-423
		230 KV	PP-423
	Eagle Pass, TX	138 KV	PP-424
El Paso Electric Company	Diablo, NM	115 KV	PP-92
	Ascarate, TX	115 KV	PP-48
San Diego Gas & Electric	Miguel, CA	230 KV	PP-68
	Imperial Valley, CA	230 KV	PP-79
Sharyland Utilities	McAllen, TX	138 KV	PP-285
Nogales Transmission	Nogales, AZ	230 KV	PP-420*

*These transmission facilities have been authorized but are not yet constructed or operational.

⁷ These Presidential permit numbers refer to the generic DOE permit number and are intended to include any subsequent amendments to the permit authorizing the facility.

EXHIBIT D

Irrevocable Power of Attorney

Power of Attorney
With Agent Residing Within the United States

This IRREVOCABLE POWER OF ATTORNEY is made this 15 of November 2024, by XTS LLC, a company incorporated under the laws of Texas with its executive offices in Mexico City, Mexico.

1. Appointment. The Principal does hereby appoint Frederick G. Jauss IV, whose principal place of business is Husch Blackwell LLP, 1801 Pennsylvania Avenue, NW, Suite 1000, Washington, DC 20006, as the Principal's true and lawful agent and attorney-in-fact (Attorney-in-Fact) for the limited purpose hereinafter set out.
2. Scope of Authority. The Attorney-in-Fact shall have the limited power and authority to receive service of process for any and all matters relating to Principal's reporting requirements to the Department of Energy pursuant to Principal's authority to transmit electric energy to Mexico.
3. Irrevocability. This Power of Attorney is irrevocable by the Principal for the five year term of the authorization to export electric energy to Mexico.

IN WITNESS WHEREOF, the Principal has caused this Power of Attorney to be duly executed this 15 day of November 2024.

XTS LLC



Pedro Escudero y Ramirez de Arellano

EXHIBIT E

Statement of Corporate Relationship

(Not Applicable)

EXHIBIT F

Operating Procedures

(Not Applicable)

EXHIBIT G

Receipt

Receipt from Pay.gov for \$500 payment on November 18, 2024

From: notification@pay.gov
To: [Jauss, Fred](#)
Subject: Pay.gov Payment Confirmation: DOE General Collections Form
Date: Monday, November 18, 2024 9:28:02 PM

[EXTERNAL EMAIL]



An official email of the United States government

Pay.gov logo



Your payment has been submitted to Pay.gov and the details are below. If you have any questions regarding this payment, please contact Carol Fuster at (301) 903-0534 or carol.fuster@hq.doe.gov.

Application Name: DOE General Collections Form

Pay.gov Tracking ID: 27JCNCIA

Agency Tracking ID: 76886608654

Transaction Type: Sale

Transaction Date: 11/18/2024 09:27:53 PM EST

Account Holder Name: Frederick Jauss

Transaction Amount: \$500.00

Card Type: MasterCard

Card Number: *****8795

Payment Type : Other

Bill Number:

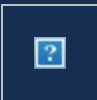
PO Number :

WFO Number:

Other : Filing Fee for Electric Export Authorization under 10 CFR 205.309 for XTS LLC

Comments:

THIS IS AN AUTOMATED MESSAGE. PLEASE DO NOT REPLY.



Pay.gov is a program of the U.S. Department of the Treasury, Bureau of the Fiscal Service

ATTACHMENT 1

Verification

VERIFICATION

I, Pedro Escudero y Ramirez de Arellano, of XTS LLC, have read the above and foregoing Application and have authority with respect thereto. I have knowledge of the matters regarding XTS LLC as set forth in the Foregoing Application. I verify under penalty of perjury under the laws of the United States of America that the statements in said Application regarding XTS LLC are true and correct to the best of my knowledge, information, and belief.



Pedro Escudero y Ramirez de Arellano
XTS LLC

Executed on the 15 day of November, 2024.

ATTACHMENT 2

XTS LLC

FERC MARKET BASED RATE AUTHORITY APPLICATION



Document Info for Accession Number: 20241118-5163

Details

Document: 11/18/2024

Filed: 11/18/2024

Posted: 11/18/2024 03:55:53 PM

First Received Date: 11/18/2024 12:15:58 PM

Security Level: Public

Official: Yes

E-filing: Yes

Non-decisional: No

Category: Submittal

Library: Electric

Aperture: 0

File Type:

Description* :** XTS LLC submits tariff filing per 35.1: Petition for Initial Market-Based Rate Auth. w/Waivers & Expedited Treatment to be effective 1/1/2025 under ER25-472 Filing Type : 390

[File List](#)

Docket	Sub-Docket	Type	Document Class	Document Type
ER25-472	000	On Document	Application/Petition/Request	Tariff Filing

Correspondent	Last Name	First Name	MI	Role/Org
AUTHOR	Jauss	F	G	XTS LLC
AGENT	Jauss	F	G	Husch Blackwell LLP
RECIPIENT	Reese	D	A	Office of the Secretary, FERC

HUSCH BLACKWELL

Frederick G. Jauss IV
Senior Counsel

1801 Pennsylvania Ave NW
Washington, DC 20006
Direct: 202.378.2309
Fax: 202.378.2319
fred.jauss@huschblackwell.com

November 18, 2024

VIA ELECTRONIC DELIVERY

The Honorable Debbie-Anne A. Reese
Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Re: XTS LLC
Petition for Acceptance of Initial Market-Based Rate Tariff, Waivers and Blanket
Authority, and Request for Expedited Treatment
Docket No. ER25-_____

Dear Secretary Bose:

Accompanying this letter is the Petition for Acceptance of Initial Market-Based Rate Tariff, Waivers and Blanket Authority, Request for Expedited Treatment submitted by XTS LLC ("XTS"). XTS hereby requests acceptance of its initial tariff, under which it will engage in wholesale sales of electric energy, capacity, and ancillary services at market-based rates, the grant of certain blanket approvals, and waiver of certain Commission regulations.

XTS hereby submits the following:

1. This transmittal letter;
2. The Petition of XTS for Order Accepting Initial Market-Based Rate Tariff;
3. Attachment A: A clean copy of the Tariff for publication in eLibrary; and
4. Attachment B: Corporate Organizational Chart.

Consistent with the Commission’s direction in Order No. 860 and Order No. 860-A,¹ XTS has submitted baseline data in the relational database, and has used the relational database to produce retrievable asset appendices listing by balancing authority area and geographic region: (1) all affiliates that have MBR authority and all reportable generation assets owned by the Filing Parties or their affiliates; (2) all reportable long-term power purchase agreements of the Filing Parties; and (3) all electric transmission facilities and natural gas intrastate pipelines and/or gas storage facilities owned or controlled by the Filing Parties or their affiliates. The Asset Appendix Serial Number for this filing is 19342, which XTS caused to be created fewer than 15 days before the submission of this filing.²

Respectfully,

HUSCH BLACKWELL LLP

/s/ Frederick G. Jauss IV

Frederick G. Jauss IV

Counsel for XTS LLC

¹ *Data Collection for Analytics and Surveillance and Market-Based Rate Purposes*, 168 FERC ¶ 61,039, at P 16 (2019) (“Order No. 860”), *order on reh’g*, 170 FERC ¶ 61,129 (2020) (“Order No. 860-A”).

² Order No. 860, 168 FERC ¶ 61,039, at P 56.

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

XTS LLC

Docket No. ER25-_____-000

**PETITION OF XTS LLC
FOR ACCEPTANCE OF INITIAL MARKET-BASED RATE TARIFF,
WAIVERS AND BLANKET APPROVALS,
AND REQUEST FOR EXPEDITED TREATMENT**

Pursuant to Section 205 of the Federal Power Act (“FPA”), 16 U.S.C. § 824d (2018), Rules 205 and 207 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. §§ 385.205, 385.207 (2023), and Part 35 of the Commission’s regulations, 18 C.F.R. Part 35 (2022), XTS LLC (“XTS”) petitions for authorization to make market-based sales of wholesale electric energy, capacity, and certain ancillary services. XTS requests that the Commission (i) accept for filing XTS’s proposed market-based rate tariff (“MBR Tariff”) attached hereto as Attachment A, to be effective July 1, 2024; (ii) authorize XTS to make market-based wholesale sales of energy, capacity, and ancillary services pursuant to its MBR Tariff; (iii) grant certain waivers and blanket authorizations consistent with Commission precedent, and (iv) issue an order on this Application as expeditiously as possible, but not later than January 1, 2025.

In compliance with Order No. 860,¹ XTS provides the following reference for its asset appendix: 19342 (asset appendix), which XTS caused to be created fewer than 15 days before the submission of this filing.

¹ *Data Collection for Analytics and Surveillance and Market-Based Rate Purposes*, Order No. 860, 168 FERC ¶ 61,039 (2019), *order on reh’g*, Order No. 860-A, 170 FERC ¶ 61,129 (2020).

I. COMMUNICATIONS

All communications and service related to this Application should be directed to the following:

Pedro Escudero y Ramirez de Arellano XTS LLC Javier Barros Sierra 540 Park Plaza I Piso 1 Alvaro Obregon, CDMX Mexico 01210 escuderop@xiix.mx	Frederick G. Jauss IV Husch Blackwell LLP 1801 Pennsylvania Avenue, NW Suite 1000 Washington, DC 20006-3606 (202) 378-2309 fred.jauss@huschblackwell.com
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II. DESCRIPTION OF APPLICANT

XTS is a Texas limited liability company that participates in the Electric Reliability Council of Texas (“ERCOT”) electric market in Texas as a power marketer by purchasing and selling electricity and ancillary services to its various customers. As shown in Attachment B,² XTS is wholly owned by XiiX Trading Solutions, SAPI de CV. XiiX Trading Solutions, SAPI de CV is 60.72% owned by XIIX Energy Consulting SAPI de CV, and 30.18% by an individual, Enrique Paramo Villaseñor. The remaining 9.1% interest in XiiX Trading Solutions, SAPI de CV is owned by individual minority investors. XIIX Energy Consulting SAPI de CV is 50% owned by an individual, Pedro Escudero, and 50% owned by an individual, Enrique Paramo Villaseñor. None of these companies or individuals owns any interest in energy assets or energy companies in the United States, other than the assets controlled by XTS LLC.³ Pedro Escudero and Enrique

² XTS recognizes that Order No. 860 “remove[d] the requirement for Sellers to submit corporate organizational charts” Order No. 860, 168 FERC ¶ 61,039 at P 124. However, XTS is providing a corporate organizational chart in Attachment B to provide additional clarity.

³ See 18 C.F.R. § 35.37(a)(2) (This rule, as amended by Order No. 860, requires that an applicant submitting a market-based rate application include a description of its ownership structure that

Paramo Villaseñor do not hold any other officer or board of director positions within any companies involved in the energy industry in the United States.

A. Affiliated Generation Facilities

XTS is not affiliated with any reportable generation capacity in the United States. None of XTS or any of its affiliates directly owns or controls (i) any interests in any electric transmission facilities that are used for the transmission of electricity in interstate commerce in the United States or outside the United States that can be used to reach markets in the United States, or (ii) any inputs to electric power production in the United States, as defined in 18 C.F.R. § 35.36(a)(4), including intrastate natural gas transportation, intrastate natural gas storage or distribution facilities, physical coal supply sources, or ownership of or control over who may access transportation of coal suppliers. XTS is not affiliated with any public utility with a franchised electric service territory in the United States.

XTS respectfully requests authorization to sell the ancillary services the Commission has authorized utilities with market-based rate authority to sell in the markets administrated by PJM Interconnection, L.L.C. (“PJM”), New York Independent System Operator (“NYISO”), ISO

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) (as added by Order No. 860), which is defined as “the furthest upstream affiliate(s) in the ownership chain. The 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). However, see *Evergy Kansas Central Inc.*, 181 FERC ¶ 61,044 (2022), *reh’g*, 184 FERC ¶ 61,003 (2023) as to other entities under certain circumstances that may need to be identified as an “ultimate upstream affiliate.” Representatives of XIIX Energy Consulting SAPI de CV have indicated to XTS that the less than 10% owners of XiiX Trading Solutions, SAPI de CV do not raise investor/board facts considered in *Evergy Kansas Central Inc.*, 181 FERC ¶ 61,044 (2022), *reh’g*, 184 FERC ¶ 61,003 (2023). Representatives of XIIX Energy Consulting SAPI de CV have (i) reviewed the descriptions of XTS and its direct and indirect owners and the other information regarding them and their affiliates or owners contained in this filing and (ii) reviewed this filing as to the accuracy of such information and representations.

New England, Inc. (“ISO-NE”), California Independent System Operator Corporation (“CAISO”), and Midcontinent Independent System Operator, Inc. (“MISO”), and Southwest Power Pool, Inc. (“SPP”).⁴ In accordance with the Commission’s requirements, XTS has listed in its MBR Tariff the applicable provisions including specific ancillary services it may sell in such markets.⁵

III. REQUEST FOR BLANKET AUTHORIZATION TO SELL ELECTRICITY AT MARKET-BASED RATES

XTS requests authorization to sell electric energy, capacity, and ancillary services at market-based rates pursuant to the attached MBR Tariff. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated,

⁴ *E.g.*, *Atlantic City Electric Co.*, 86 FERC ¶ 61,248 (1999); *PJM Interconnection, L.L.C.*, 91 FERC ¶ 61,021 (2000) (granting market-based rate authorization for specified ancillary services in the PJM market); *Central Hudson Gas & Electric Corp.*, 86 FERC ¶ 61,062, *order on reh’g*, 88 FERC ¶ 61,138 (1999) (granting market-based rate authorization for specified ancillary services in markets administered by the NYISO); *New England Power Pool*, 83 FERC ¶ 61,045 (1998), *reh’g denied*, 95 FERC ¶ 61,074 (2001) (granting market-based rate authorization for specified ancillary services in markets administered by the ISO-NE); *AES Redondo Beach, L.L.C.*, 83 FERC ¶ 61,358, *order on reh’g*, 85 FERC ¶ 61,123 (1998), *order on reh’g*, 87 FERC ¶ 61,208, *order on reh’g*, 88 FERC ¶ 61,096 (1999), *order on reh’g and clarification*, 90 FERC ¶ 61,036 (2000) (granting market-based rate authorization for specified ancillary services in markets administered by the California ISO); *Midwest Independent Transmission System Operator, Inc.*, 123 FERC ¶ 61,297, at PP 1, 46 (2008) (granting market-based rate authorization for specified ancillary services in markets administered by the MISO).

⁵ *See, e.g.*, *Minergy Neenah L.L.C.*, 88 FERC ¶ 61,102 at 61,242 (1999).

horizontal and vertical market power.⁶ The Commission has also codified affiliate restrictions in its regulations which must be satisfied on an ongoing basis.⁷

The Commission allows wholesale sales of energy and capacity at market-based rates provided that the seller, and each of its affiliates, does not have, or has adequately mitigated, horizontal market power (*i.e.*, generation market power) and vertical market power (*i.e.*, transmission market power). The Commission also considers whether a seller and its affiliates can erect barriers to entry. As demonstrated below, XTS satisfies all requirements for Commission approval to sell at market-based rates.

A. Horizontal Market Power

The Commission reviews horizontal market power by assessing the market power of the seller and any of its affiliates that own or control generation in the relevant market. The Commission requires that an applicant proposing to sell power at market-based rates show its lack of horizontal market power by demonstrating that it passes the Pivotal Supplier and the Market Share Screens in the relevant geographic markets. If the applicant fails either screen, then the applicant or seller can provide other evidence showing lack or mitigation of horizontal market power.⁸ If the applicant passes both screens, there is a rebuttable presumption that the applicant or seller does not possess horizontal market power in the relevant geographic market.⁹

⁶ See 18 C.F.R. § 35.37; *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, 119 FERC ¶ 61,295 at PP 12-32 (2007) (“Order No. 697”), *order on reh’g and clarification*, 123 FERC ¶ 61,055 (2008) (“Order No. 697-A”), *order on reh’g and clarification*, 125 FERC ¶ 61,326 (2008) (“Order No. 697-B”), *order on reh’g and clarification*, 127 FERC ¶ 61,284 (2009) (“Order No. 697-C”).

⁷ 18 C.F.R. § 35.39; Order No. 697, 119 FERC ¶ 61,295 at P 467.

⁸ Order No. 697, 119 FERC ¶ 61,295 at PP 33–44; 18 C.F.R. § 35.37.

⁹ Order No. 697, 119 FERC ¶ 61,295 at PP 33, 62; 18 C.F.R. § 35.37.

The Commission permits applicants to file streamlined applications to show that they pass the Indicative Screens.¹⁰ The Commission does not require an applicant to file indicative screens if all of an applicant's generation is sold on a long-term, firm basis.¹¹

The Pivotal Supplier Screen determines whether an applicant can exercise market power based on the BAA's peak demand, whereas the Market Share Screen determines an applicant's market share of uncommitted capacity on a seasonal basis. Both the Pivotal Supplier Screen and Market Share Screen allow the Commission to measure market power at both peak and off-peak times, and to examine the seller's ability to exercise market power unilaterally and in coordinated interaction with other sellers.¹² Order No. 697 provides that if a seller passes both of the indicative screens, there is a rebuttable presumption that it does not possess horizontal market power.¹³

In Order No. 861, the Commission revised its regulations governing horizontal market power analyses for market-based sellers studying certain RTO/ISO markets and submarkets therein.¹⁴ As described above, XTS is not associated with generation in the United States. As

¹⁰ See Order No. 697, 119 FERC ¶ 61,295 at PP 215, 321; *see also* *AEP Power Marketing, Inc.*, 108 FERC ¶ 61,026 at P 107 (2004).

¹¹ Order No. 816, 153 FERC ¶ 61,065 at P 39.

¹² See Order No. 697, 119 FERC ¶ 61,295 at PP 36, 65, 70.

¹³ See *id.* at P 62; *see also* 18 C.F.R. § 35.37(c)(1).

¹⁴ *Refinements to Horizontal Market Power Analysis for Sellers in Certain Reg'l Transmission Org. & Indep. Sys. Operator Mkts.*, Order No. 861, 168 FERC ¶ 61,040 (2019), *order on reh'g and clarify.*, 170 FERC ¶ 61,106 (2020) (revising section 35.37(c) of the Commission's regulation to provide, in relevant part, that: "[i]n lieu of submitting the indicative market power screens, Sellers studying regional transmission organization (RTO) or independent system operator (ISO) markets that operate RTO/ISO-administered energy, ancillary services, and capacity markets may state that they are relying on Commission-approved market monitoring and mitigation to address potential horizontal market power Sellers may have in those markets." 18 C.F.R § 35.37(c)).

such, pursuant to Order No. 861, XTS has sufficiently demonstrated that it does not have the ability to exercise horizontal market power in the relevant markets.

B. Vertical Market Power

XTS and its affiliates lack vertical market power. To determine whether an applicant has vertical market power, the Commission considers the ownership, operation or control of transmission facilities.¹⁵ If a seller or its affiliates own such facilities, they may demonstrate a lack of market power by having an Open Access Transmission Tariff (OATT) on file with the Commission.¹⁶ Finally, an applicant must state that it will not erect barriers to entry in the relevant market.¹⁷

XTS and its relevant affiliates do not own, operate, or control any transmission-related equipment necessary to connect generation facilities to the transmission grid in the United States.¹⁸ Therefore, neither XTS nor its affiliates can exercise transmission market power in the relevant market. Accordingly, XTS and its affiliates satisfy the Commission's standards with respect to any vertical market power concerns.¹⁹

XTS and its affiliates do not own, operate or control any inputs to electric power production in the United States, and therefore have no ability to create barriers to entry for other

¹⁵ 18 C.F.R. § 35.37(d).

¹⁶ *Id.*

¹⁷ *Id.* at (e).

¹⁸ The Commission has previously found that temporary ownership and subsequent transfer of transmission assets to a transmission owner pursuant to an agreement does not create a barrier to satisfying the Commission's requirements for market-based rate authority regarding vertical market power. *See Tecolote Wind LLC, et al.*, Docket Nos. ER21-2336-000, ER21-2333-000, ER21-2330-000, and ER21-2331-000 (unpublished letter order) (Oct. 15, 2021).

¹⁹ *See* Order No. 697, 119 FERC ¶ 61,295 at P 21; *see also* Order No. 816, 153 FERC ¶ 61,065 at P 210.

entities. Neither XTS nor its affiliates own, control, or operate any interstate natural gas or coal transportation or distribution facilities in the U.S., and therefore, could not deny or hinder the ability of generators/competitors to access fuel supplies. XTS does not own, operate or control electric transmission or distribution facilities, nor does it have an open access transmission tariff (“OATT”). XTS affirms that it and its affiliates have not erected barriers to entry into the relevant market and will not erect barriers to entry into the relevant market. This assurance, along with the facts discussed above, demonstrates that XTS and its affiliates do not have vertical market power.

C. Affiliate Restrictions

The Commission’s regulations restrict transactions between companies who have received market-based rate authority and affiliated public utilities.²⁰ In Order No. 697, however, the Commission clarified that these regulations do not apply when captive customers are not present.²¹ The term “captive customer” only refers to customers served under cost-based rate regulation,²² and does not refer to customers who have the ability to select a retail supplier based on rates, terms, and conditions.²³ XTS’s customers do not and will not fit the Commission’s definition of “captive customer.” Further, XTS is not affiliated with a franchised public utility. Thus, the affiliate restrictions do not apply to XTS or its affiliates.

²⁰ 18 C.F.R. § 35.39.

²¹ Order No. 697, 119 FERC ¶ 61,295 at PP 552, 589.

²² 18 C.F.R. § 35.36(a)(6).

²³ Order No. 697, 119 FERC ¶ 61,295 at P 479; see also Order No. 697-A, 123 FERC ¶ 61,055 at PP 192, 198.

IV. ANCILLARY SERVICES

XTS requests authorization to sell certain ancillary services in various markets as authorized for other companies permitted to sell at market-based rates, under the terms of XTS's MBR Tariff. XTS's MBR Tariff contains terms and conditions for the sale of certain ancillary services at market-based rates consistent with Commission precedent.²⁴

V. SELLER CATEGORY

A. Category 1 Status

A Category 1 seller is a seller that meets the following criteria:

- (i) it is either a wholesale power marketer that controls or is affiliated with 500 MW or less of generation in aggregate per region or a wholesale power producer that owns, controls or is affiliated with 500 MW or less of generation in aggregate in the same region as its generation assets;
- (ii) it does not own, operate or control transmission facilities other than limited equipment necessary to connect individual generation facilities to the transmission grid (or has been granted waiver of the requirement to file an OATT or satisfies the requirements for a blanket waiver under 18 C.F.R § 35.28(d)(2));

²⁴ Order No. 697-A, 123 FERC ¶ 61,055 at Appendix C; *Midwest Independent Transmission System Operator, Inc.*, 123 FERC ¶ 61,297, at P 46 (2008); *Southwest Power Pool, Inc.*, 144 FERC ¶ 61,224, at P 412 (2013); and *Third-Party Provision of Ancillary Services; Accounting and Financial Reporting for New Electric Storage Technologies*, Order No. 784, 144 FERC ¶ 61,056 (2013) ("Order No. 784"). As required by Order No. 784, XTS's MBR Tariff states that it will not make third-party sales of operating reserves to a public utility that is purchasing ancillary services to satisfy its own OATT requirements to offer ancillary services to its own customers unless it has made a future filing with the Commission seeking such authorization by making the required showing and receiving Commission authorization prior to making such sales. *Id.* at PP 200-202.

- (iii) it is not affiliated with anyone that owns, operates, or controls transmission facilities in the same region as the seller's generation assets;
- (iv) it is not affiliated with a franchised public utility in the same region as the seller's generation assets; and
- (v) it does not raise other vertical market power concerns.

XTS submits that it is a Category 1 Seller in the Northeast, Central, Northwest, Southeast, Southwest Power Pool and Southwest regions. XTS does not own any physical electric assets located in any other region. XTS does not own or operate or control transmission facilities other than as necessary for the interconnection of generation to the interconnected transmission grid. Additionally, XTS is not affiliated with a franchised public utility in any region and does not raise any other vertical market power issues.

VI. REPORTING REQUIREMENTS

XTS agrees to comply with all the reporting requirements normally imposed on sellers permitted to sell power at market-based rates, including filing Electric Quarterly Reports, updated market power analyses, and notices of material changes in status.²⁵ XTS also agrees to comply with the market behavior rules.²⁶ XTS does not intend to report transactions to publishers of electricity or natural gas price indices.

VII. REQUEST FOR WAIVERS AND ADDITIONAL BLANKET AUTHORITY

XTS requests waivers from the following Commission regulations, blanket approvals, and authorizations, which have been granted to other market-based rate sellers:

²⁵ 18 C.F.R. §§ 35.10(b), 35.42.

²⁶ 18 C.F.R. § 35.41.

- 1) Subparts B and C of Part 35, regarding the filing of rate schedules, except sections 35.12(a), 35.13(b), 35.15, and 35.16;
- 2) Part 41, regarding accounts, records, and memoranda;
- 3) Part 101, with the exception that waiver of the provisions that apply to hydropower licensees has not been granted with respect to licensed hydropower projects, regarding the uniform system of accounts; and
- 4) Part 141, regarding statements and reports, except sections 141.14 and 141.15;
- 5) Blanket authorization to issue securities or assume liabilities under Section 204 of the FPA and Part 34 of the Commission's regulations; and
- 6) Any other waiver or authorization that the Commission finds appropriate.

VIII. REQUEST FOR EXPEDITED ACTION, REQUEST FOR WAIVER OF NOTICE PERIOD, AND REQUESTED TARIFF EFFECTIVE DATE

In order to meet its commercial obligations, XTS respectfully requests that the Commission grant expedited treatment of this Application and issue an order by January 1, 2025. Pursuant to Section 35.11 of the Commission's regulations, XTS requests waiver of the prior notice requirement contained in Section 35.3(a) of the Commission's regulations to permit the MBR Tariff to become effective as of January 1, 2025. Good cause exists for granting this waiver because the MBR Tariff has been filed with the Commission prior to the date upon which wholesale sales will commence under the Tariff.²⁷

²⁷ *Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106, at 61,339 (1992) (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 tariffs 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) (letter order).

IX. LIST OF MATERIALS SUBMITTED

XTS submits the following in support of this Application:

1. Attachment A: XTS's proposed MBR Tariff (FERC Electric Tariff No. 1); and
2. Attachment B: Corporate Organizational Chart.

X. CONCLUSION

WHEREFORE, XTS respectfully requests that the Commission issue an order granting its petition for market-based rate authorization and accepting the MBR Tariff no later than January 1, 2025 and accepting the MBR Tariff to be effective January 1, 2025; and granting the waivers and blanket authorizations requested herein.

Respectfully submitted,

/s/ Frederick G. Jauss IV

Frederick G. Jauss IV
HUSCH BLACKWELL LLP

Counsel for XTS LLC

Date: November 18, 2024

Attachment A

FERC Electric Tariff No. 1
of
XTS LLC

**FERC Electric Tariff No. 1
of
XTS LLC**

1) Availability

XTS LLC (“Seller”) makes electric energy, capacity, and ancillary services available under this tariff to any purchaser, except as prohibited below.

2) Rates

All sales shall be made at rates established by agreement between the purchaser and Seller.

3) Other Terms and Conditions

All other terms and conditions shall be established by agreement between the purchaser and the Seller.

4) Seller Category

Seller is a Category 1 Seller in the Northeast, Central, Northwest, Southeast, Southwest Power Pool and Southwest regions, as defined in 18 CFR § 35.36(a).

5) Compliance with Commission Regulations

Seller shall comply with the provisions of 18 CFR 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 tariff or otherwise restricts or limits the Seller’s market-based rate authority. Failure to comply with the applicable provisions of 18 CFR Part 35, Subpart H, and with any orders of the Commission concerning Seller’s market-based rate authority, will constitute a violation of this tariff.

6) Limitations and Exemptions Regarding Market-Based Rate Authority

Seller has received waiver of: Subparts B and C of Part 35, except for sections 35.12(a), 35.13(b), 35.15 and 35.16; Part 41, Part 101 with the exception that waiver of the provisions that apply to hydropower licensees has not been granted with respect to licensed hydropower projects, and Part 141, except sections 141.14 and 141.15; and received blanket authorization for all future issuances of securities or assumptions of liabilities pursuant to Section 204 of the Federal Power Act, 16 U.S.C. § 824e and Part 34 of the Commission’s regulations. *XTS LLC*, ER25-____-000 (20__).

7) Ancillary Services

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.

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.

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.

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.

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.

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.

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.

8) Effective Date

This Tariff is effective on and after the date on which the Commission permits it to become effective.

Attachment B

Corporate Organizational Chart

Ownership Chart for XTS, LLC

