

114 FERC ¶ 61,340  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Nora Mead Brownell, and Suedeen G. Kelly.

Eastern Desert Power, LLC	Docket No. ER05-534-002
Elk River Windfarm, LLC	Docket No. ER05-365-004
Flying Cloud Power Partners, LLC	Docket No. ER03-296-004
Klamath Energy LLC	Docket No. ER01-3121-003
Klamath Generation LLC	Docket No. ER02-418-002
Klondike Wind Power LLC	Docket No. ER03-416-005
Klondike Wind Power II LLC	Docket No. ER05-332-002
Moraine Wind LLC	Docket No. ER03-951-004
Mountain View Power Partners III, LLC	Docket No. ER04-94-002
Phoenix Wind Power LLC	Docket No. ER02-417-002 EL05-111-000
Trimont Wind I LLC	Docket No. ER05-481-002

ORDER ACCEPTING UPDATED MARKET POWER ANALYSIS AND TARIFF  
REVISIONS

(Issued March 31, 2006)

1. In this order, we accept the joint triennial market power update filed by Eastern Desert Power, LLC, Elk River Windfarm, LLC, Flying Cloud Power Partners, LLC, Klamath Energy LLC, Klamath Generation LLC, Klondike Wind Power LLC, Klondike

Wind Power II LLC, Moraine Wind LLC, Mountain View Power Partners III, LLC, Phoenix Wind Power LLC, and Trimont Wind I LLC (collectively, PPM Energy Parties). We also accept for filing the PPM Energy Parties' revised tariff sheets, which incorporate the Commission's required language regarding the change in status reporting requirement.<sup>1</sup> We conclude that PPM Energy Parties have satisfied the Commission's standards for market-based rate authority. PPM Energy Parties' next updated market power analysis is due three years from the date of this order. This order also terminates the section 206 proceeding instituted in Docket No. EL05-111-000 with regard to Phoenix Wind Power.

### **Background**

2. On July 29, 2005, PPM Energy Parties submitted an updated market power analysis. They note that on May 31, 2005, the Commission issued an order requiring several entities, including Phoenix Wind Power, to submit updated or revised market power analyses within 60 days to maintain their current market-based rate authorizations.<sup>2</sup> While reviewing the compliance status of the aforementioned entities, PPM Energy Parties state that they determined that Klamath Energy, Klamath Generation, and Klondike Wind Power, although not named in the May 31st Order, may also need to submit updated market power analyses. Further, Applicants state that they submitted the updated market power analysis for Eastern Desert Power, Elk River Windfarm, Flying Cloud Power Partners, Klondike Wind Power II, Moraine Wind, Mountain View Power Partners III, and Trimont Wind in advance of these companies' obligation to make such a filing in an effort to submit future market power update filings for Applicants on the same time "cycle".

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<sup>1</sup> *Reporting Requirement for Changes in Status for Public Utilities With Market-Based Rate Authority*, Order No. 652, 70 Fed. Reg. 8,253 (Feb. 18, 2005), FERC Stats. & Regs. ¶ 31,175 (2005), 110 FERC ¶ 61,097, *order on reh'g*, 111 FERC ¶ 61,413 (2005) (Order No. 652).

<sup>2</sup> *3E Technologies, Inc.*, 111 FERC ¶ 61,295 (May 31st Order).

3. Additionally, PPM Energy Parties submitted revised tariff sheets which include the language required regarding change in status under Order No. 652<sup>3</sup> for Applicants whose tariffs do not already contain such language.<sup>4</sup>

4. PPM Energy Parties state that they are all wholly-owned subsidiaries of PPM Energy, Inc.,<sup>5</sup> which is in turn a direct wholly-owned subsidiary of PacifiCorp Holdings, Inc. PPM Energy Parties are affiliated with PacifiCorp, a vertically-integrated utility and also a direct wholly-owned subsidiary of PacifiCorp Holdings, Inc.<sup>6</sup> PacifiCorp Holding, Inc. is a wholly-owned subsidiary of ScottishPower NA 1 Limited and ScottishPower NA 2 Limited, which are wholly-owned by Scottish Power plc, a publicly-owned entity with shares listed on the New York and London stock exchanges.

5. PPM Energy Parties state that Eastern Desert Power, Elk River Windfarm, Klamath Generation, Klondike Wind Power II, and Trimont Wind I neither own nor control any generating capacity.

6. PPM Energy Parties state that Mountain View Power Partners II owns an approximately 22.4 MW wind-powered generation facility in the California Independent System Operator Corporation (CAISO) market and Phoenix Wind Power owns a 2.1 MW wind-powered generation facility located in the CAISO market.

7. PPM Energy Parties state that Klamath Energy owns a 100 MW (net capacity) simple-cycle, gas-fired combustion generation facility located in the Bonneville Power

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<sup>3</sup> *See supra* note 1.

<sup>4</sup> Flying Cloud Power Partners, Klamath Energy, Klamath Generation, Klondike Wind Power, Moraine Wind, Mountain View Power Partners III, and Phoenix Wind Power.

<sup>5</sup> According to PPM Energy Parties, PPM Energy holds a 50 percent indirect interest in Colorado Green Holdings, LLC, which is the owner of an approximately 162 MW wind-powered generation facility in the Public Service Company of Colorado (PSCo) control area. PPM Energy Parties state that the remaining 50 percent is held indirectly by Shell Wind Energy, Inc.

<sup>6</sup> PPM Energy Parties state that in May 2005, MidAmerican Energy Holdings Company, a subsidiary of Berkshire Hathaway, Inc., executed an agreement with Scottish Power plc to acquire PacifiCorp. PPM Energy Parties expect the transaction to be completed in 2006.

Administration (BPA) control area; and Klondike Wind Power owns a 24 MW wind-powered generation facility also located in the BPA control area.

8. PPM Energy Parties state that Flying Cloud Power Partners owns a 43.5 MW wind-powered generation facility in the Alliant West control area. In addition, PPM Energy Parties assert that Moraine Wind owns an approximately 51 MW wind-powered generation facility in the Northern States Power Company (NSP) control area.

### **Notice of Filing and Responsive Pleadings**

9. Notice of Applicants' filing was published in the *Federal Register*, 70 Fed. Reg. 46,502 (2005), with interventions and protests due on or before August 19, 2005. None was filed.

### **Discussion**

#### **Market-Based Rate Authorization**

10. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated market power in generation and transmission and cannot erect other barriers to entry. The Commission also considers whether there is evidence of affiliate abuse or reciprocal dealing.<sup>7</sup>

11. As discussed below, the Commission concludes that PPM Energy Parties satisfy the Commission's standards for market-based rate authority.

#### **Generation Market Power**

12. In the April 14 Order, as clarified by the July 8 Order, the Commission adopted two indicative screens for assessing generation market power, the pivotal supplier screen and the wholesale market share screen.<sup>8</sup> PPM Energy Parties are interconnected to non-affiliate owned transmission systems and submitted indicative screens for each of the control areas in which they own or control generation capacity. PPM Energy Parties state that they pass both the pivotal supplier and wholesale market share screens in the Alliant

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<sup>7</sup> See, e.g., *Progress Power Marketing, Inc.*, 76 FERC ¶ 61,155, at 61,919 (1996); *Northwest Power Marketing Co., L.L.C.*, 75 FERC ¶ 61,281, at 61,899 (1996); *accord Heartland Energy Services, Inc.*, 68 FERC ¶ 61,223, at 62,062-63 (1994).

<sup>8</sup> *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004) (July 8 Order).

West, BPA, CAISO, and NSP control areas. Based on PPM Energy Parties' representation, the Commission finds that the PPM Energy Parties satisfy the Commission's generation market power standard for the grant of market-based rate authority.<sup>9</sup>

### **Transmission Market Power**

13. PPM Energy Parties state that they do not own any transmission facilities (other than the limited transmission facilities needed to interconnect generating facilities to the grid). However, PPM Energy Parties are affiliated with PacifiCorp, which does own transmission assets. Applicants state that PacifiCorp does have an OATT on file with the Commission, which mitigates any transmission market power that an entity may possess.<sup>10</sup> Further, no intervenor has raised any transmission market power concerns.

14. Based on PPM Energy Parties' representation, the Commission finds that PPM Energy Parties satisfy the Commission's transmission market power standard for the grant of market-based rate authority.

### **Other Barriers to Entry**

15. In evaluating market-based rate applications, the Commission considers whether an applicant may be able to erect other barriers to market entry, for example, through ownership of electric generation input facilities.<sup>11</sup> PPM Energy Parties state that they neither own nor control any natural gas transmission facilities or any natural gas distribution systems. PPM Energy Parties further state that neither they, nor any of their affiliates, are engaged in the manufacture of electrical equipment, have the ability to hinder the siting of new generation plants or block others from siting new plants, or own or control resources that could impede potential competitors from gaining access to alternative generation suppliers. Further, no intervenor has raised concerns regarding barriers to entry. Based on PPM Energy Parties' representations, the Commission is satisfied that PPM Energy Parties cannot erect barriers to entry.

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<sup>9</sup> The Commission notes that, although PacifiCorp and PPM Energy failed the Commission's generation market power screens in the Idaho Power and PacifiCorp East control areas, that fact is not relevant here because none of the generating facilities owned or controlled by the PPM Energy Parties is located in those two control areas. *See PacifiCorp and PPM Energy, Inc.*, 111FERC ¶ 61,205 (2005).

<sup>10</sup> *See Pacific Gas & Electric Co.*, 77 FERC ¶ 61,025 (1996).

<sup>11</sup> *See Heartland Energy Services, Inc.*, 68 FERC ¶ 61,223, at 62,042 (1994).

### **Affiliate Abuse**

16. PPM Energy Parties state that they are subject to codes of conduct included with their respective market-based rates tariffs on file that govern the relationships between affiliates with a franchised service territory, and the PPM Parties will not make any sales to such affiliates without first receiving Commission authorization under section 205 of the Federal Power Act. PPM Energy Parties further state that they will continue to adhere to these codes of conduct and abide by the Commission's policies concerning affiliate transactions and communications. Based on Applicants' representations, the Commission finds that Applicants satisfy the Commission's concerns with regard to affiliate abuse.

### **Reporting Requirements**

17. In Order No. 664, the Commission stated that it intends to no longer grant waivers of the full requirements of Part 45 in its orders granting market-based rate authority. Rather, persons seeking to hold interlocking positions will be required henceforth to comply with the full requirements of Part 45.<sup>12</sup> With respect to an individual who currently is authorized to hold interlocking positions, that individual will not need to refile under the full requirements of Part 45 to continue to hold such interlocking positions (unless and until that individual assumes different or additional interlocking positions).<sup>13</sup> Thus, consistent with Order No. 664, Applicants will be required henceforth to comply with the full requirements of Part 45.

18. Consistent with the procedures the Commission adopted in Order No. 2001, an entity with market-based rates must file electronically with the Commission an Electric Quarterly Report containing: (1) a summary of the contractual terms and conditions in every effective service agreement for market-based power sales; and (2) transaction information for effective short-term (less than one year) and long-term (one year or

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<sup>12</sup> *Commission Authorization to Hold Interlocking Positions*, Order No. 664, 70 Fed. Reg. 17,219 (September 23, 2005), FERC Stats. & Regs. ¶ 31,194 at P 34 (2005), *order on reh'g*, Order No. 664-A, 114 FERC ¶ 61,142 (2006).

<sup>13</sup> *Id.* at P 36.

greater) market-based power sales during the most recent calendar quarter.<sup>14</sup> Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.<sup>15</sup>

19. PPM Energy Parties 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>16</sup> Order No. 652 requires that the change in status reporting requirement be incorporated in the market-based rate tariff of each entity authorized to make sales at market-based rates. We will accept PPM Energy Parties' tariff revisions which include the change in status reporting requirement.

20. PPM Energy Parties are directed to file an updated market power analysis within three years of the date of this order. The Commission also reserves the right to require such an analysis at any intervening time.

**Docket No. EL05-111-000**

21. We find that PPM Energy Parties' updated market power analysis filing for Phoenix Wind Power satisfies the Commission's directive in the May 31 Order. We will therefore terminate the section 206 proceeding instituted in Docket No. EL05-111-000 with regard to Phoenix Wind Power.

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<sup>14</sup> *Revised Public Utility Filing Requirements*, Order No. 2001, 67 Fed. Reg. 31,043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127 (2002). Required data sets for contractual and transactional information are described in Attachments B and C of Order No. 2001. The Electric Quarterly Report must be submitted to the Commission using the EQR Submission System Software, which may be downloaded from the Commission's website at <http://www.ferc.gov/docs-filing/eqr.asp>.

<sup>15</sup> The exact dates for these reports are prescribed in 18 C.F.R. § 35.10b (2004). Failure to file an Electric Quarterly Report (without an appropriate request for extension), or failure to report an agreement in an Electric Quarterly Report, may result in forfeiture of market-based rate authority, requiring filing of a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

<sup>16</sup> *See supra* note 1.

The Commission orders:

(A) PPM Energy Parties' updated market power analysis is hereby accepted for filing, as discussed in the body of this order.

(B) PPM Energy Parties' revised tariff sheets are hereby accepted for filing, as discussed in the body of this order.

(C) The Commission terminates the section 206 proceeding instituted in Docket No. EL05-111-000 with regard to Phoenix Wind Power.

(D) PPM Energy Parties' next updated market power analysis is due within three years of the date of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.