

109 FERC ¶ 61,107  
FEDERAL ENERGY REGULATORY COMMISSION  
Washington, D.C. 20426

October 29, 2004

In Reply Refer To:  
Caprock Wind LLC  
Docket No. ER04-1220-000

Andrews Kurth LLP  
Attn: Kenneth L. Wiseman, Esq.  
Attorney for Caprock Wind LLC  
1701 Pennsylvania Ave. NW, Ste. 300  
Washington, DC 20006

Dear Mr. Wiseman:

1. On September 14, 2004, Caprock Wind LLC (Caprock) filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sale of capacity and energy at market-based rates. It also includes the Commission's market behavior rules.<sup>1</sup> Caprock's submittal, as discussed below, satisfies the Commission's standards for market-based rate authority and is accepted for filing, effective November 1, 2004, as requested.<sup>2</sup>

2. Caprock is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business in San Francisco, California. Once construction is completed, Caprock is expected to own an approximately 80 MW wind farm in Quay County, New Mexico. Caprock states that it will sell all of the output of its facility to Southwestern Public Service Company under a power purchase agreement with a term of 20 years. It is anticipated that the project will commence commercial operations in December 2004.

3. Caprock's membership interests currently are owned 90 percent by Caprock Wind, Limited Partnership (CWLP) and 10 percent by Babcock & Brown Caprock, LLC (B&B Caprock). CWLP is owned 2 percent by Babcock & Brown Caprock GP LLC, 49 percent by Babcock & Brown Holdings Inc., and 49 percent by Babcock & Brown Power Operating Partners LLC. Caprock states that it is simultaneously filing an

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<sup>1</sup> *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218 (2003), *order on reh'g*, 107 FERC ¶ 61,175 (2004).

<sup>2</sup> Caprock Wind LLC, FERC Electric Tariff, Volume No. 1, Original Sheets Nos. 1-3. Waiver of section 35.3 of the Commission's regulations is granted to allow for the effective date noted above.

application under section 203 of the Federal Power Act (FPA) to transfer indirect control of its facilities through transfers of these membership interests to entities that will contribute equity to the project and become passive investors.<sup>3</sup>

### **Procedural Matters**

4. Notice of Caprock's filing was published in the *Federal Register*, 69 Fed. Reg. 59,913 (2004), with comments, protests, and interventions due on or before October 6, 2004. None was filed.

### **Discussion**

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

5. The Commission allows power sales at market-based rate 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>4</sup> As discussed below, the Commission concludes that Caprock satisfies the Commission's standards for market-based rate authority.

6. Caprock cites section 35.27 of the Commission's regulations, which provides that applicants shall not be required to demonstrate any lack of market power in generation with respect to sales from capacity constructed after July 9, 1996.<sup>5</sup> If an applicant sites generation in an area where it or its affiliates own or control other generation assets, the applicant must study whether its new capacity, when added to existing capacity, raises generation market power concerns.<sup>6</sup>

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<sup>3</sup> That application is pending before the Commission in Docket No. EC04-158-000.

<sup>4</sup> See, e.g., *Progress Power Marketing, Inc.*, 76 FERC ¶ 61,155 at 61,919 (1996); *Letter Order Approving Settlement*, 79 FERC ¶ 61,149 (1997); *Northwest Power Marketing Co., L.L.C.*, 75 FERC ¶ 61,281 at 61,899 (1996); *accord Heartland Energy Services, Inc., et al.*, 68 FERC ¶ 61,223 at 62,062-63 (1994).

<sup>5</sup> 18 C.F.R. § 35.27(a) (2004).

<sup>6</sup> *AEP Power Marketing, Inc., et al.*, 107 FERC ¶ 61,018 at P 69, *order on reh'g*, 108 FERC ¶ 61,026 (2004).

7. Caprock commenced construction of the facility after July 9, 1996, and it does not have other generation or affiliated generation in the area. Accordingly, the Commission finds that Caprock satisfies the Commission's generation market power standard for the grant of market-based rate authority.
8. Caprock states that neither it nor any of its affiliates owns or controls any transmission facilities other than generation interconnection facilities. The Commission finds that Caprock satisfies the Commission's transmission market power standard for the grant of market-based rate authority.
9. Caprock states that neither it nor any of its affiliates is able to erect barriers to entry because they do not control potential barriers to the electric generation business, do not have the ability to site new generation plants or to block others from siting new plants, and do not own or control any resources that could impede potential competition from accessing alternative generation suppliers. Based on Caprock's representations, the Commission is satisfied that neither Caprock nor its affiliates can erect barriers to entry.
10. Caprock states that neither it nor any of its affiliates has a franchised service area for the sale of electricity. Based on this representation, we find that Caprock satisfies the Commission's concerns with regard to affiliate abuse.
11. Caprock also requests authority to reassign transmission capacity. We find these provisions consistent with the Commission's requirements.<sup>7</sup>

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

12. Caprock requests the following waivers and authorization: (1) waiver of Subparts B and C 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; (2) waiver of Parts 41, 101, and 141 of the Commission's accounting and periodic reporting requirements; (3) abbreviated filings with respect to interlocking directorates under Part 45 of the Commission's regulations; (4) blanket authorization under section 204 of the FPA and Part 34 of the Commission's regulation for all futures issuances of securities and assumptions of liability.

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<sup>7</sup> See *Southwestern Public Service Company*, 80 FERC ¶ 61,245 (1997).

13. The Commission grants the requested waivers and authorizations consistent with those granted other entities with market-based rate authorizations.<sup>8</sup> Notwithstanding the waiver of the accounting and reporting requirements here, the Commission expects Caprock to keep its accounting records in accordance with generally accepted accounting principles.

14. Within 30 days of the date of the issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Caprock should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 383.211 and 385.214 (2004).

15. Absent a request to be heard within the period set forth above, Caprock is hereby 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 Caprock, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

16. Until further order of this Commission, the full requirements of Part 45 of the Commission's regulations, except as noted below, are hereby waived with respect to any person now holding or who may hold an otherwise proscribed interlocking directorate involving the applicant. Any such person shall instead file a sworn application providing the following information.

- (1) full name and business address; and
- (2) all jurisdictional interlocks, identifying the affected companies and the positions held by that person.

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<sup>8</sup> It should be noted that the Commission is examining the issue of continued applicability of the waivers of its accounting and reporting requirements (18 C.F.R. Parts 41, 101, and 141) as well as continued applicability of the blanket authorization for the issuance of securities and the assumption of obligations and liabilities (18 C.F.R. Part 34). *See Accounting and Reporting of Financial Instruments, Comprehensive Income, Derivatives and Hedging Activities*, Order No. 627, 67 Fed. Reg. 67,691 at P 23-24 (October 10, 2002), FERC Stats. & Regs. ¶ 32,558 (2002).

17. The Commission reserves the right to modify this order to require a further showing that neither the public nor private interests will be adversely affected by continued Commission approval of Caprock's issuances of securities or assumptions of liabilities, or by the continued holding of any affected interlocks.

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 greater) market-based power sales during the most recent calendar quarter.<sup>9</sup> Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.<sup>10</sup> Accordingly Caprock must file its first Electric Quarterly Report no later than 30 days after the first quarter Caprock's rate schedule is in effect.<sup>11</sup>

19. Caprock is directed to inform the Commission promptly of any change in status that would reflect a departure from the characteristics the Commission has relied upon in approving market-based pricing. These characteristics include, but are not limited to: (1) ownership of generating or transmission facilities or inputs to electric power

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<sup>9</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 transaction 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/Electric/eqr/eqr.htm>.

<sup>10</sup> The exact dates for these reports are prescribed in 18 C.F.R. § 35.10b (2004).

<sup>11</sup> 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.

production other than fuel supplies; or (2) affiliation with any entity not disclosed in the filing that owns generation or transmission facilities or inputs to electric power production, or affiliation with any entity that has a franchised service area.<sup>12</sup>

20. Caprock is directed to file an updated market analysis within three years of the date of this order, and every three years thereafter. The Commission also reserves the right to require such an analysis at any intervening time.

By direction of the Commission.

Linda Mitry,  
Acting Secretary.

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<sup>12</sup> The Commission issued a Notice of Proposed Rulemaking in Docket No. RM04-14-000 in which the Commission is proposing to amend its regulations and to modify the market-based rate authority of current market-based rate sellers to establish a reporting obligation for changes in status that apply to public utilities authorized to make wholesale power sales in interstate commerce at market-based rates. *Reporting Requirement for Changes in Status for Public Utilities With Market-Based Rate Authority*, 69 Fed. Reg. 61,180 (Oct. 15, 2004), FERC Stats. & Regs. ¶ 32,576 (2004). The change of status requirements outlined herein are subject to the outcome of the rulemaking.