

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

November 6, 2006

In Reply Refer To:
Alloy Power, L.L.C.
Docket Nos. ER06-1479-000
EL06-108-000
TS06-15-000

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Washington, D.C. 20006-4605

Attention: Hugh E. Hilliard
Attorney for Alloy Power L.L.C.

Reference: Notice of Succession and Request for Waivers and Blanket Authorizations

Dear Mr. Hilliard:

1. On September 7, 2006, you filed on behalf of Alloy Power L.L.C. (Alloy Power), a Notice of Succession requesting a name change from Elkem Metals Company-Alloy, L.P. (Elkem) to Alloy Power on Elkem's Rate Schedule FERC No. 1 (Rate Schedule). You also request various waivers and authorizations on behalf of Alloy Power.
2. Notice of Alloy Power's filing was published in the *Federal Register*, 71 Fed. Reg. 54,644 (2006), with comments, protests and interventions due on or before September 28, 2006. On September 29, 2006, the Commission's staff requested that Docket Nos. TS06-15-000 and EL06-108-000 be included in this proceeding, and established a new comment date. Public notice of the amended notice was issued on September 29, 2006, with comments, protests and interventions due on or before October 6, 2006.
3. You request on behalf of Alloy Power that the Commission permit this Notice of Succession to be effective on the date that the Commission approved the sale of the

hydroelectric facilities (Facilities) to Alloy Power.¹ You note that in the past, Elkem provided the energy and capacity from the Facilities to West Virginia Alloys, Inc. (WVA), a manufacturing facility to which the Facilities are interconnected. Elkem also sold excess energy and capacity from the Facilities to third parties in the Appalachian Power Company (APC) system, pursuant to its market-based rates tariff. The Commission had previously granted Elkem waivers from Order Nos. 888, 889, and 2004 and from Part 358 of the Commission's regulations.²

4. You state that while Alloy Power is succeeding Elkem in ownership of the Facilities, it intends to sell the output from the Facilities only to its affiliate, WVA, for the duration of its ownership. You also state that you are filing the Notice of Succession to reflect that Alloy Power has been assigned Elkem's rights and obligations under the Rate Schedule³ You indicate that Alloy Power plans to charge costs to WVA on a pass-through basis, without profit. The Rate Schedule governs the rates, terms, and conditions for service to WVA. Alloy Power did not purchase and does not adopt Elkem's market-based rates tariff and related agreements⁴ nor does it plan to file for market-based rates.

5. You state that Alloy Power is currently in the process of selling the Facilities to Hawks Nest Hydro LLC.⁵ Upon the closing of the sale of the Facilities to Hawks Nest Hydro, Hawks Nest Hydro will sell an undivided ownership interest in the facilities directly to the manufacturer, WVA.

¹ *Elkem Metals Company – Alloy, L.P.*, 115 FERC ¶ 62, 301 (2006) (*Disposition of Jurisdictional Facilities Order*). The facilities which the Commission approved for sale to Alloy Power in this proceeding were the Rate Schedule No. 1, the interconnection facilities, and associated book, accounts, and records (Facilities).

² *Elkem Metals Company*, 114 FERC ¶ 61,181 (2006) (*Facilities Agreement Order*); *Elkem Metals Company*, 91 FERC ¶ 61,130 (2000).

³ Alloy describes the rate schedule to which it is succeeding as “Elkem Metals Company—Alloy, L.P., Rate Schedule FERC No. 1, Docket Nos. ER06-424-000, *et al.*, Effective Date: December 21, 2005, Designation: Rate Schedule FERC No. 1; Description, Shared Facilities Agreement.” Attachment A, Filing of September 7, 2006.

⁴ The market-based rates tariff, Elkem Metals Company-Alloy L.P., FERC Electric Tariff, Original Vol. No. 1, Original Sheet No. 1, was not transferred in the *Disposition of Jurisdictional Facilities Order*.

⁵ *Alloy Power, L.L.C., and Hawks Nest Hydro LLC*, section 203 application: EC06-158-000, and authorizing transfer of the Project license under section 8 of the FPA: Project No. 2512-060.

6. We will accept Alloy Power's Notice of Succession for filing without suspension or hearing.

7. In addition to the Notice of Succession, you request on behalf of Alloy Power, waiver of the accounting, reporting, and other requirements of Parts 41, 101 and 141 of the Commission's regulations except for sections 141.14 and 141.15 and the requirement to file Form No. 80 and the Annual Conveyance Report. You also request waiver of the filing requirements of Part 35, Subparts B and C, of the Commission's regulations, except for the transmittal requirements of sections 35.12(a) and 35.13(b), and the notification of succession and cancellation of service requirements of sections 35.15 and 35.16, with respect to the Rate Schedule. You note that while Alloy Power does not seek market-based rates authority, the Commission has previously granted market-based waivers and blanket authorizations to utilities that engage in only limited Commission-jurisdictional activities and charge costs only on a pass-through basis, without profit.

8. Although the Commission has granted these waivers to power marketers with market-based rates, it has typically denied these waivers to public utilities with cost-based rates.⁶ Here, however, Alloy Power is selling transmission service and charging only operation and maintenance costs, without profit. Further, Alloy Power has no other rates for jurisdictional service. Based on these facts, and in light of the Commission's action on similar requests,⁷ it is not necessary to impose on Alloy Power the Commission's full accounting and financial reporting requirements or the full requirements of Subparts B and C of Part 35 of the Commission's regulations (except as noted). The Commission will therefore grant the requested waivers.

9. You also request that Alloy Power be granted blanket authorization under section 204 of the Federal Power Act, 16 U.S.C. § 824c (2000), and Part 34 of the Commission's regulations 18 C.F.R. Part 34 (2000), for all future issuances of securities or assumptions of liability, subject to objection by an interested party. Alloy Power's request for blanket

⁶ See, *Ameren Energy Generating Company*, 93 FERC ¶61,024 (2000), *reh'g denied* 95 FERC ¶ 61,009 (2001); *accord DeSoto County Generating Company, LLC*, 103 FERC ¶ 61,337 (2003); *PSEG Fossil, LLC, PSEG Nuclear, LLC, and PSEG Energy Resources and Trade LLC*, 97 FERC ¶ 61,211(2001), *reh'g denied*, 98 FERC ¶ 61,169 (2002).

⁷ See, e.g., *Dominion Retail, Inc.* 104 FERC ¶ 61,091 (2003); *Cliffs Electric Service Company*, 32 FERC ¶ 61,372 (1985) (granting waivers for companies whose principal business is not the sale of electricity at wholesale, and where sales were occasional, opportunity sales of excess energy); *St. Joe Mineral Corporation*, 21 FERC ¶ 61,323 (1982), *on reh'g*, 22 FERC ¶ 61,211 (1983) (granting waivers for an industrial company that sells excess energy not needed for its principal business, zinc smelting).

authorization is comparable to similar requests granted in previous Commission orders.⁸ As the Commission noted in those orders, the purpose of section 204 of the FPA, which Part 34 implements, is to ensure the financial viability of public utilities obligated to serve electric costumers. However, in this instance Alloy Power will only engage in limited Commission jurisdictional activities. As part of the Facilities that were previously acquired from Elkem, Alloy Power acquired certain limited transmission facilities previously used by Elkem for occasional sales of power to third parties and now used by WVA to import retail power from third parties for consumption on-site. Alloy Power has also been assigned Elkem's rights and obligations under the Rate Schedule that allows WVA to use these transmission facilities, but only for purchases of power from third parties. Alloy Power does not make power sales to parties other than its affiliate WVA, and those sales to WVA are for use in the Alloy Plant. Alloy Power has no other customers for electric energy, captive or otherwise. Consistent with the above cited precedent, Alloy Power's request for blanket authorization for all future issuances of securities and assumptions of liability, subject to objection by any interested party will be granted.

10. You also request Alloy Power be granted waiver of the open-access requirements of Order Nos. 888⁹ and 889.¹⁰ In prior orders, the Commission has enunciated the standards for waiver of, or exemption from, some or all of the requirements of Order Nos.

⁸ E.g., *St. Joe Mineral Corp.*, 21 FERC ¶ 61,323 (1982), *order on reh'g*, 22 FERC ¶ 61,211 (1983); *Dominion Retail, Inc.*, 104 FERC ¶ 61,901 (2003).

⁹ *Promoting Wholesale Competition Through Open Access Non-discriminatory Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 61 Fed. Reg. 21,540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, 62 Fed. Reg. 12,274 (March 14, 1997), FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group, v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

¹⁰ *Open-Access Same-time Information System and Standards of Conduct*, Order No. 889, 61 Fed. Reg. 21,737 (May 10, 1996), FERC Stats. & Regs., Regulations Preambles, January 1991- June 1996 ¶ 31,035 (1996), *order on reh'g*, Order No. 889-A, 62 Fed. Reg. 12,484 (March 14, 1997), FERC Stats. & Regs., Regulations Preambles, July 1996-December 2000 ¶ 31,049 (1997), *order on reh'g*, Order No. 889-B, 81 FERC ¶ 61,253 (1997).

888 and 889.¹¹ The Commission grants requests for waiver of Order No. 888 from public utilities that can show that they own, operate, or control only limited and discrete transmission facilities (facilities that do not form an integrated transmission grid), until such time as the public utility receives a request for transmission service. Should the public utility receive such a request, the Commission has determined that the public utility must file with the Commission a pro forma tariff within 60 days of the date of the request, and must comply with any additional requirements that are effective on the date of the request.¹²

11. The Commission has also determined that waiver of Order No. 889 would be appropriate for a public utility: (1) if the applicant owns, operates, or controls only limited and discrete transmission facilities (rather than an integrated transmission grid); or (2) if the applicant is a small public utility that owns, operates, or controls an integrated transmission grid, unless it is a member of a tight power pool, or other circumstances are present that indicate that a waiver would not be justified.¹³ Moreover, the Commission has held that a waiver of Order No. 889 will remain in effect until the Commission takes action in response to a complaint to the Commission that an entity evaluating its transmission needs could not get the information necessary to complete its evaluation (for OASIS waivers) or an entity complains that the public utility has used its access to information about transmission to unfairly benefit the utility or its affiliate (for Standard of Conduct waivers).¹⁴

12. In support of its request for waiver of the requirements of Order Nos. 888 and 889, you assert that Alloy Power has limited transmission interconnection facilities consisting of an 11.6 mile, 138 kV transmission line and an emergency 0.6 mile, 46 kV transmission line, which is currently disconnected, that connect the switchyard adjacent to the WVA manufacturing facility to APC's transmission system, together with a related 13.8 kV bus and transformers. In addition, you contend that Alloy Power satisfies the small utility criterion and does not own or control an integrated transmission grid because the limited transmission facilities acquired by Alloy Power will only be used for the delivery of power purchased by WVA from third parties. You conclude that waiver of the

¹¹ See, e.g., *Entergy Mississippi, Inc. (Entergy)*, 112 FERC ¶ 61,228 at P 22 (2005).

¹² *Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232 at 61,941 (1996).

¹³ *Id.*

¹⁴ *Entergy* at P 23, citing *Central Minnesota Municipal Power Agency*, 79 FERC ¶ 61,260 at 62,127 (1997); *Easton Utilities Commission*, 83 FERC ¶ 61,334 at 62,343 (1998).

Commission's requirements for Order Nos. 888 and 889 is as appropriate for the Facilities today as it was when Elkem owned and operated them.

13. Since there is no material change in circumstances and because Alloy Power is the successor to Elkem, we will continue to grant Alloy Power, consistent with the *Facilities Agreement Order*, a waiver of the requirements of Order Nos. 888 and 889.

14. Lastly, you request waiver of the Standards of Conduct requirement under Part 358 of the Commission's regulations. Waivers of Order No. 2004¹⁵ are granted upon request to: (1) a utility that owns, operates, or controls only limited and discrete transmission facilities (rather than an integrated transmission grid); or (2) a small public utility that owns, operates, or controls an integrated transmission grid unless it is a part of a tight power pool, or unwarranted by other circumstances.¹⁶ You argue that the facts have not changed in any material way with the transfer to Alloy Power, and the continued waiver of the requirements of Order No. 2004 is appropriate.

15. The Commission finds that Alloy Power controls only small, discrete, stand-alone transmission facilities and that the Facilities operated by Alloy Power are not part of the grid and are not operated by any ISO. Under these facts, we will continue to grant Alloy Power, consistent with the *Facilities Agreement Order*, an exemption from the requirements of Order No. 2004 and Part 358 of the Commission's regulations.

By direction of the Commission.

Magalie R. Salas
Secretary.

¹⁵ *Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs., Regulations Preambles ¶ 31,155 (2003), *order on reh'g*, Order No. 2004-A, 107 FERC ¶ 61,032, *order on reh'g*, Order No. 2004-B, 108 FERC ¶ 61,118 (2004), *order on reh'g*, Order No. 2004-C, FERC Stats. & Regs., Regulations Preambles ¶ 31,172; *order on reh'g*, Order No. 2004-D, 110 FERC ¶ 61,320 (2005), appeal pending sub nom. *National Gas Fuel Supply Corp. v. FERC*, No. 04-1183, *et al.* (D.C. Cir. June 15, 2004).

¹⁶ *Central New York Oil and Gas Co., LLC*, 109 FERC ¶ 61,231 at P 26-27 (2004).