

150 FERC ¶ 61,230  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;  
Philip D. Moeller, Tony Clark,  
Norman C. Bay, and Colette D. Honorable.

Kay Wind, LLC

Docket No. ER15-647-001

ORDER GRANTING MARKET-BASED RATE AUTHORIZATION AND REQUEST  
FOR WAIVERS

(Issued March 27, 2015)

1. In this order, we grant Kay Wind, LLC (Kay Wind) authority to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates, effective February 16, 2015, as requested. As discussed below, we grant Kay Wind's request for waiver of the Commission's requirements to file an Open Access Transmission Tariff (OATT), to establish and maintain an Open Access Same-Time Information System (OASIS), and to comply with the Commission's Standards of Conduct. We also grant Kay Wind's request for other waivers commonly granted to market-based rate sellers, except as noted herein.
2. Additionally, we find that Kay Wind meets the criteria for a Category 1 seller in all regions and is so designated.<sup>1</sup>

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<sup>1</sup> See *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, at PP 848-850, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010), *aff'd sub nom. Mont. Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011), *cert. denied*, 133 S. Ct. 26 (2012).

## I. Background

3. On December 18, 2014, as amended on January 27, 2015, pursuant to section 205 of the Federal Power Act (FPA),<sup>2</sup> Kay Wind filed an application for market-based rate authority with an accompanying tariff providing for the sale of electric energy, capacity, and certain ancillary services at market-based rates.<sup>3</sup>

4. Kay Wind states that it owns and will operate a 314 megawatt (MW) wind farm generating facility (Facility), which is currently being constructed in Kay County, Oklahoma and which was recently self-certified as an Exempt Wholesale Generator.<sup>4</sup> Kay Wind states the Facility includes a collector substation consisting of step-up transformers, breakers, switches, communication systems and other interconnection assets, including an approximately 100 yard generator tie-line which will connect to an adjacent Oklahoma Gas and Electric Company (Oklahoma Gas and Electric) substation.

5. Kay Wind represents that neither it nor its affiliates own or control any transmission facilities other than limited facilities required to interconnect the Facility to the grid. Kay Wind requests that the Commission waive the requirements under Order Nos. 888<sup>5</sup> and 890<sup>6</sup> and their implementing regulations at

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<sup>2</sup> 16 U.S.C. § 824d (2012).

<sup>3</sup> Kay Wind requests authorization to sell ancillary services in the markets administered by PJM Interconnection, L.L.C., New York Independent System Operator, Inc., ISO New England Inc., California Independent System Operator Corp., Midcontinent Independent System Operator, Inc., and Southwest Power Pool, Inc. (SPP). Kay Wind also requests authorization to engage in the sale of certain ancillary services as a third-party provider in other markets.

<sup>4</sup> Notice of Self-Certification of Exempt Wholesale Generator Status, Docket No. EG15-17-000 (Nov. 19, 2014).

<sup>5</sup> *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *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).

<sup>6</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC (continued...)

section 35.28<sup>7</sup> to file an OATT, the requirements under Order No. 889<sup>8</sup> and Part 37 of the Commission's regulations<sup>9</sup> to establish an OASIS, and the requirements under Order Nos. 889, 2004,<sup>10</sup> and 717,<sup>11</sup> and Part 358 of the Commission's regulations<sup>12</sup> to comply with the Standards of Conduct with respect to its interconnection facilities.

6. Kay Wind states that it is wholly owned by Apex Clean Energy Holdings, LLC (Apex Clean Energy Holdings). Apex Clean Energy Holdings is a privately held

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Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

<sup>7</sup> 18 C.F.R. § 35.28 (2014).

<sup>8</sup> *Open Access Same-Time Information System and Standards of Conduct*, Order No. 889, FERC Stats. & Regs. ¶ 31,035 (1996), *order on reh'g*, Order No. 889-A, FERC Stats. & Regs. ¶ 31,049, *reh'g denied*, Order No. 889-B, 81 FERC ¶ 61,253 (1997).

<sup>9</sup> 18 C.F.R. pt. 37 (2014).

<sup>10</sup> *Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs. ¶ 31,155 (2003), *order on reh'g*, Order No. 2004-A, FERC Stats. & Regs. ¶ 31,161, *order on reh'g*, Order No. 2004-B, FERC Stats. & Regs. ¶ 31,166, *order on reh'g*, Order No. 2004-C, FERC Stats. & Regs. ¶ 31,172 (2004), *order on reh'g*, Order No. 2004-D, 110 FERC ¶ 61,320 (2005), *vacated and remanded as it applies to natural gas pipelines sub nom. National Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831 (D.C. Cir. 2006); *see Standards of Conduct for Transmission Providers*, Order No. 690, FERC Stats. & Regs. ¶ 31,237, *order on reh'g*, Order No. 690-A, FERC Stats. & Regs. ¶ 31,243 (2007); *see also Standards of Conduct for Transmission Providers*, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,611 (2007); Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,630 (2008).

<sup>11</sup> *Standards of Conduct for Transmission Providers*, Order No. 717, FERC Stats. & Regs. ¶ 31,280 (2008), *order on reh'g*, Order No. 717-A, 129 FERC ¶ 61,043, FERC Stats. & Regs. ¶ 31,297, *order on reh'g*, Order No. 717-B, 129 FERC ¶ 61,123 (2009), *order on reh'g*, Order No. 717-C, 131 FERC ¶ 61,045 (2010), *order on reh'g*, Order No. 717-D, 135 FERC ¶ 61,017 (2011).

<sup>12</sup> 18 C.F.R. pt. 358 (2014).

company that is comprised of 66 members, which are individuals and small companies or trusts.<sup>13</sup>

## II. Notice of Filing

7. Notices of Kay Wind's filings were published in the *Federal Register*,<sup>14</sup> with interventions and comments due on or before February 17, 2015. None was filed.

8. Notice of Kay Wind's request for blanket authorization under Part 34 of the Commission's regulations was separately published in the *Federal Register*, 80 Fed. Reg. 1405 (2015), with interventions or protests due on or before January 20, 2015. None was filed.

## III. Discussion

9. As discussed below, we will grant Kay Wind's request for authorization to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates,<sup>15</sup> and we will accept its market-based rate tariff, effective February 16, 2015, as requested. We will also grant Kay Wind's request for certain waivers.

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<sup>13</sup> We note that Kay Wind describes all of Apex Clean Energy Holdings' members and states that, to its knowledge, none of its upstream owners is engaged in any other business in the energy industry, none sits on the board of any other energy companies, and none holds interests in any other energy related companies other than those disclosed in Kay Wind's application.

<sup>14</sup> 79 Fed. Reg. 78,081 (2014); 80 Fed. Reg. 5742 (2015).

<sup>15</sup> We note that Kay Wind 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 Kay Wind seeks such authority, it must make the required showing and receive Commission authorization prior to making such sales. *See Third-Party Provision of Ancillary Services; Accounting and Financial Reporting for New Electric Storage Technologies*, Order No. 784, FERC Stats. & Regs. ¶ 31,349, at PP 200-202 (2013), *order on clarification*, Order No. 784-A, 146 FERC ¶ 61,114 (2014).

**A. 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, horizontal and vertical market power.<sup>16</sup>

**1. Horizontal Market Power**

11. The Commission has adopted two indicative screens for assessing horizontal market power: the pivotal supplier screen and the wholesale market share screen.<sup>17</sup> The Commission has stated that passage of both screens establishes a rebuttable presumption that the applicant does not possess horizontal market power, while failure of either screen creates a rebuttable presumption that the applicant has horizontal market power.<sup>18</sup>

12. Kay Wind relies on Westar Energy Inc.'s recently accepted market power analysis<sup>19</sup> to demonstrate that Kay Wind passes both the pivotal supplier and the wholesale market share screens for the SPP market with market shares ranging from 4.4 to 6.4 percent.

13. Based on Kay Wind's representations, we find that Kay Wind satisfies the Commission's requirements for market-based rates regarding horizontal market power.<sup>20</sup>

**2. Vertical Market Power**

14. In cases where a public utility, or any of its affiliates, owns, operates, or controls transmission facilities, the Commission requires that there be a Commission-approved

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<sup>16</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 62, 399, 408, 440.

<sup>17</sup> *Id.* P 62.

<sup>18</sup> *Id.* PP 33, 62-63.

<sup>19</sup> See *Westar Energy, Inc.*, Docket No. ER14-724-000 (Feb. 28, 2014) (delegated letter order).

<sup>20</sup> Kay Wind passes the indicative screens even when it includes future generation capacity as uncommitted installed capacity. Kay Wind 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 including when such future generation capacity is operational. *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005); 18 C.F.R. § 35.42 (2014).

OATT on file or that the seller has received waiver of the OATT requirement before granting a seller market-based rate authorization.<sup>21</sup>

15. Kay Wind states that it and its affiliates do not own or control transmission facilities other than limited facilities required to interconnect its facilities to the grid. In this case, as discussed more fully below, the Commission will grant Kay Wind's request for waiver of the requirement to have an OATT on file for its interconnection facilities used to connect the Facility to the Oklahoma Gas and Electric grid.<sup>22</sup>

16. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.<sup>23</sup> The Commission requires a seller to provide a description of 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; sites for new generation capacity development; and physical coal supply sources and ownership of or control over who may access transportation of coal supplies (collectively, inputs to electric power production).<sup>24</sup> The Commission also requires sellers to make an affirmative statement that they have not erected barriers to entry into the relevant market and will not erect barriers to entry into the relevant market.<sup>25</sup> The Commission adopted a rebuttable presumption that the ownership or control of, or affiliation with any entity that owns or controls, inputs to electric power production does not allow a seller to raise entry barriers but will allow intervenors to demonstrate otherwise.<sup>26</sup>

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<sup>21</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408.

<sup>22</sup> A generator tie-line is a transmission facility. *See* 16 U.S.C. §§ 796(23), 824(a)-(b) (2012). Kay Wind is subject to the requirement under Order Nos. 888 and 890 to file an OATT, or seek a waiver of the requirement to file an OATT, unless and until it receives a request for transmission service. *See Milford Wind Corridor, LLC*, 129 FERC ¶ 61,149, at P 24 (2009) (noting that the fact that the facilities merely tie a generator to the grid does not render a line exempt from the Commission's regulation of transmission facilities). *See also Evergreen Wind Power III, LLC*, 135 FERC ¶ 61,030, at P 15 n.18 (2011).

<sup>23</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 440.

<sup>24</sup> Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

<sup>25</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

<sup>26</sup> *Id.* P 446.

17. Regarding other barriers to entry, Kay Wind represents that it and its affiliates do not own or control intrastate natural gas transportation, storage, or distribution facilities, coal supply sources, or the transportation of coal supplies. Kay Wind also represents that it and its affiliates own or control sites for generation capacity development, but further states that these sites could not be used to erect barriers to entry.<sup>27</sup>

18. In addition, consistent with Order No. 697, Kay Wind affirmatively states that it and its affiliates have not and will not erect barriers to entry in the relevant geographic market.

19. Based on Kay Wind's representations, we find that Kay Wind satisfies the Commission's requirements for market-based rates regarding vertical market power.

## **B. Waiver Requests**

### **1. Waiver of Order Nos. 888, 889, and 890**

20. Kay Wind seeks waiver of the requirements to file an OATT, establish and maintain an OASIS, and abide by the Standards of Conduct with respect to the interconnection facilities that it owns. In support, Kay Wind represents that the interconnection facilities described in its application are limited and discrete and do not form an integrated transmission grid.

21. Order Nos. 888 and 890 and section 35.28 of the Commission's regulations require public utilities that own, operate, or control facilities used for the transmission of electric energy in interstate commerce to file an OATT. Order No. 889 and Part 37 of the Commission's regulations require public utilities to establish and maintain an OASIS. Order Nos. 889, 2004, and 717 and Part 358 of the Commission's regulations require public utilities to abide by certain Standards of Conduct.<sup>28</sup> In prior orders, the Commission has enunciated the standards for exemption from some or all of the requirements of Order Nos. 888 and 889.<sup>29</sup> The Commission has stated that the criteria for waiver of the requirements of Order Nos. 890 and 2004 are unchanged from those

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<sup>27</sup> Kay Wind included sites for new generation development in its asset appendix.

<sup>28</sup> Order No. 889, FERC Stats. & Regs. ¶ 31,035 at 31,590; Order No. 2004, FERC Stats. & Regs. ¶ 31,155 at P 16; Order No. 717, FERC Stats. & Regs. ¶ 31,280 at P 313.

<sup>29</sup> See, e.g., *Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232, at 61,941 (1996) (*Black Creek*); *Entergy Mississippi, Inc.*, 112 FERC ¶ 61,228, at P 22 (2005) (*Entergy*).

used to evaluate requests for waiver under Order Nos. 888 and 889.<sup>30</sup> Order No. 717 did not change those criteria.<sup>31</sup>

22. The Commission may grant requests for waiver of the obligation to file an OATT to 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.<sup>32</sup>

23. The Commission has also determined that waiver of the requirement to establish an OASIS and abide by the Standards of Conduct would be appropriate for a public utility if the applicant: (1) owns, operates, or controls only limited and discrete transmission facilities (rather than an integrated transmission grid); or (2) is a small public utility that owns, operates, or controls an integrated transmission grid, unless other circumstances are present that indicate that a waiver would not be justified.<sup>33</sup> The Commission has held that 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 unfairly

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<sup>30</sup> See *Alcoa Power Generating Inc.*, 120 FERC ¶ 61,035, at P 3 (2007); *Alcoa Power Generating Inc.*, 108 FERC ¶ 61,243, at P 27 (2004).

<sup>31</sup> See Order No. 717, FERC Stats. & Regs. ¶ 31,280 at PP 31-33.

<sup>32</sup> *Black Creek*, 77 FERC ¶ 61,232 at 61,941.

<sup>33</sup> *Id.* Although the Commission originally precluded waiver of the requirements for OASIS and the Standards of Conduct for a small public utility that is a member of a tight power pool, in *Black Hills Power, Inc.*, 135 FERC ¶ 61,058, at PP 2-3 (2011) (*Black Hills*), the Commission explained that membership in a tight power pool is no longer a factor in the determination for waiver of Standards of Conduct. Moreover, *Black Hills* did not affect waivers based on a public utility disposing of no more than 4 million megawatt hours (MWh) annually.

used its access to information about transmission to benefit the utility or its affiliate (for Standards of Conduct waivers).<sup>34</sup>

24. Based on the statements in Kay Wind's application, we find that its interconnection facilities qualify as limited and discrete. Kay Wind will use the interconnection facilities solely to connect the Facility to Oklahoma Gas and Electric's transmission system. Accordingly, we will grant Kay Wind waiver of the requirements of Order Nos. 888 and 890 and section 35.28 of the Commission's regulations to have an OATT on file with respect to the interconnection facilities. However, if Kay Wind receives a request for transmission service, it must file with the Commission a *pro forma* OATT within 60 days of the date of the request.<sup>35</sup>

25. The Commission will also grant Kay Wind waiver of the requirements of Order No. 889 and Part 37 of the Commission's regulations with respect to OASIS and Order Nos. 889, 2004, and 717 and Part 358 with respect to the Standards of Conduct. We note that Kay Wind's waiver of the requirement to establish an OASIS 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.<sup>36</sup> Likewise, Kay Wind's waiver of the Standards of Conduct will remain in effect unless and until the Commission takes action on a complaint by an entity that Kay Wind has unfairly used its access to information to unfairly benefit itself or its affiliates.<sup>37</sup>

## 2. Other Waivers, Approvals, and Authorizations

26. Kay Wind also requests the following waivers and authorizations: (1) waiver of the filing 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; (2) waiver of the accounting and

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<sup>34</sup> *Entergy*, 112 FERC ¶ 61,228 at P 23 (citing *Central Minnesota Municipal Power Agency*, 79 FERC ¶ 61,260, at 62,127 (1997) (*Central Minnesota*); *Easton Utils. Comm'n*, 83 FERC ¶ 61,334, at 62,343 (1998) (*Easton*)).

<sup>35</sup> *Black Creek*, 77 FERC ¶ 61,232 at 61,941.

<sup>36</sup> *Entergy*, 112 FERC ¶ 61,228 at P 23 (citing *Central Minnesota*, 79 FERC ¶ 61,260 at 62,127; *Easton*, 83 FERC ¶ 61,334 at 62,343).

<sup>37</sup> *Id.* Kay Wind must notify the Commission if there is a material change in facts that affects its waiver within 30 days of the date of such change. *Material Changes in Facts Underlying Waiver of Order No. 889 and Part 358 of the Commission's Regulations*, 127 FERC ¶ 61,141, at P 5 (2009).

other requirements of Parts 41, 101, and 141 of the Commission's regulations, except sections 141.14 and 141.15; and (3) blanket authorization under section 204 of the FPA<sup>38</sup> and Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability.

27. The Commission will grant the requested waivers and authorizations consistent with those granted to other entities with market-based rate authorizations.<sup>39</sup> Notwithstanding the waiver of the accounting and reporting requirements, the Commission expects Kay Wind to keep its accounting records in accordance with generally accepted accounting principles.

### 3. Reporting Requirements

28. An entity with market-based rate authorization must file an Electric Quarterly Report (EQR) with the Commission, consistent with Order Nos. 2001<sup>40</sup> and

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<sup>38</sup> 16 U.S.C. § 824c (2012).

<sup>39</sup> We note that the Commission has examined and approved the continued applicability of the waiver of its accounting and reporting requirements in Parts 41, 101, and 141 of the Commission's regulations, as well as the continued applicability of the blanket authorization for the issuance of securities and the assumption of liabilities in Part 34 of the Commission's regulations. *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 984-985 (regarding waiver of Parts 41, 101, and 141) and PP 999-1000 (regarding blanket approval under Part 34). However, waiver of the provisions of Part 101 that apply to hydropower licensees is not granted with respect to licensed hydropower projects. 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 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 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>40</sup> *Revised Public Utility Filing Requirements*, Order No. 2001, FERC Stats. & Regs. ¶ 31,127, *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* (continued...)

768,<sup>41</sup> to fulfill its responsibility under FPA section 205(c)<sup>42</sup> to have rates on file in a convenient form and place.<sup>43</sup> Kay Wind must file EQRs electronically with the Commission consistent with the procedures set forth in Order No. 770.<sup>44</sup> Failure to timely and accurately file an EQR is a violation of the Commission's regulations for which Kay Wind may be subject to refund, civil penalties, and/or revocation of market-based rate authority.<sup>45</sup>

29. Additionally, Kay Wind 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>46</sup>

30. In Order No. 697, the Commission created two categories of sellers.<sup>47</sup> Category 1 sellers are not required to file regularly scheduled updated market power analyses. Category 1 sellers are wholesale power marketers and wholesale power producers that own or control 500 MW or less of generation in aggregate per region; that do not own, operate, or control transmission facilities other than limited equipment necessary to connect individual generation facilities to the transmission grid (or have been granted

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*clarification*, Order No. 2001-H, 121 FERC ¶ 61,289 (2007), *order revising filing requirements*, Order No. 2001-I, FERC Stats. & Regs. ¶ 31,282 (2008).

<sup>41</sup> *Electricity Mkt. Transparency Provisions of Section 220 of the Fed. Power Act*, Order No. 768, FERC Stats. & Regs. ¶ 31,336 (2012), (cross-referenced at 140 FERC ¶ 61,232), *order on reh'g*, Order No. 768-A, 143 FERC ¶ 61,054 (2013).

<sup>42</sup> 16 U.S.C. § 824d(c) (2012).

<sup>43</sup> *See Revisions to Electric Quarterly Report Filing Process*, Order No. 770, FERC Stats. & Regs. ¶ 31,338, at P 3 (2012) (citing Order No. 2001, FERC Stats. & Regs. ¶ 31,127 at P 31).

<sup>44</sup> Order No. 770, FERC Stats. & Regs. ¶ 31,338.

<sup>45</sup> The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2014). Forfeiture of market-based rate authority may require a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

<sup>46</sup> Order No. 652, FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 ; 18 C.F.R. § 35.42 (2014).

<sup>47</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 848.

waiver of the requirements of Order No. 888); that are not affiliated with anyone that owns, operates, or controls transmission facilities in the same region as the seller's generation assets; that are not affiliated with a franchised public utility in the same region as the seller's generation assets; and that do not raise other vertical market power issues.<sup>48</sup> Sellers that do not fall into Category 1 are designated as Category 2 sellers and are required to file updated market power analyses.<sup>49</sup>

31. Kay Wind requests Category 1 Seller status in all regions. Kay Wind represents that it satisfies the criteria for Category 1 seller status in all regions because it and its affiliates currently do not own, operate, or control more than 500 MW of generation capacity in any region. Kay Wind also states that neither it nor any of its affiliates own or control any transmission facilities in any region other than limited facilities required to connect the Facility to the transmission grid. Kay Wind states that it is not affiliated with a franchised public utility and that it does not present any other vertical market power concerns.

32. Based on Kay Wind's representations, we designate Kay Wind as a Category 1 seller in all regions. The Commission reserves the right to require an updated market power analysis at any time for any region.<sup>50</sup>

The Commission orders:

(A) Kay Wind's market-based rate tariff is hereby accepted for filing, effective February 16, 2014, as requested, as discussed in the body of this order.

(B) Kay Wind's request for waiver of the requirements to file an OATT, to establish and maintain an OASIS, and to comply with the Standards of Conduct is hereby granted, as discussed in the body of this order.

(C) Waiver of the provisions of Subparts B and C of Part 35 of the Commission's regulations, with the exception of sections 35.12(a), 35.13(b), 35.15, and 35.16, is hereby granted.

(D) 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. Waiver of Parts 41 and 141

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<sup>48</sup> 18 C.F.R. § 35.36(a) (2014).

<sup>49</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 850.

<sup>50</sup> *Id.* P 853.

of the Commission's regulations is hereby granted, with the exception of sections 141.14 and 141.15.

(E) Blanket authorization under Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability is hereby granted. Kay Wind 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 Kay Wind, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(F) 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 Kay Wind's issuance of securities or assumptions of liability.

(G) Kay Wind is hereby required to file EQRs in compliance with Order Nos. 2001 and 768. If the effective date of Kay Wind's market-based rate tariff falls within a quarter of the year that has already expired, Kay Wind's EQRs for the expired quarter are due within 30 days of the date of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.