

152 FERC ¶ 61,011
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Balko Wind Transmission, LLC

Docket No. ER15-1676-000

ORDER GRANTING MARKET-BASED RATE AUTHORIZATION AND
REQUEST FOR WAIVERS

(Issued July 2, 2015)

1. In this order, the Commission grants Balko Wind Transmission, LLC (Balko Wind Transmission) authority to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates, effective May 7, 2015, as requested. Also, as discussed below, we grant Balko Wind Transmission'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.¹ We also grant Balko Wind Transmission's request for other waivers commonly granted to market-based rate sellers, except as noted herein.
2. Additionally, we find that Balko Wind Transmission meets the criteria for a Category 1 seller in all regions, and is so designated.²

¹ We note that in Order No. 807 (effective June 30, 2015), the Commission amended its regulations to waive the OATT requirements of 18 C.F.R. § 35.28, the OASIS requirements of Part 37, and the Standards of Conduct requirements of Part 358, under certain conditions, for entities that own interconnection facilities. *See Open Access and Priority Rights on Interconnection Customer's Interconnection Facilities*, Order No. 807, 80 Fed. Reg. 17,654 (Apr. 1, 2015), FERC Stats. & Regs. ¶ 31,367 (2015).

² *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,

(continued ...)

I. Background

3. On May 6, 2015, pursuant to section 205 of the Federal Power Act (FPA),³ Balko Wind Transmission filed an application for market-based rate authority with an accompanying tariff providing for the sale of electric energy, capacity, and ancillary services at market-based rates.⁴

4. Balko Wind Transmission states that it owns and operates a 345 kilovolt, five-mile, electric transmission line and associated facilities located in Beaver County, Oklahoma (Interconnection Facilities). Balko Wind Transmission represents that the Interconnection Facilities are necessary to connect an approximately 300 megawatt (MW) wind generation facility (Project) owned by its parent company, Balko Wind, LLC (Balko Wind), to the electric transmission system owned by Oklahoma Gas and Electric Company within the SPP market. Balko Wind Transmission states that it does not own or control any electric generation facilities.

5. Balko Wind Transmission states that it will utilize the Interconnection Facilities to interconnect the Project to the transmission system operated by SPP. Balko Wind Transmission represents that the Interconnection Facilities do not comprise an integrated transmission system and are limited and discrete. Balko Wind Transmission requests that

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).

³ 16 U.S.C. § 824d (2012).

⁴ Balko Wind Transmission 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), as well as authorization to engage in the sale of certain ancillary services as a third-party provider in other markets.

the Commission grant it waiver of Order Nos. 888,⁵ 889,⁶ 890,⁷ and section 35.28,⁸ and Parts 37⁹ and 358¹⁰ of the Commission's regulations with respect to the Interconnection Facilities.

6. Balko Wind Transmission states that it is a wholly owned subsidiary of Balko Wind, which in turn is a wholly owned subsidiary of DESRI VI Balko Wind Holdings, L.L.C. (Holdco). Holdco is an indirect, wholly owned subsidiary of DESRI VI Acquisition Holdings, L.L.C., which, in turn, is a wholly owned subsidiary of DESRI VI, L.L.C. (the Fund). D. E. Shaw Renewable Investments, L.L.C. (DESRI) is the manager of the Fund. DESRI is a wholly owned subsidiary of D. E. Shaw & Co., L.P. (DESCO LP). D. E. Shaw & Co., Inc. (DESCO Inc.) is the general partner of DESCO LP. Balko Wind Transmission identifies an individual as the chairman, president, and sole stockholder of DESCO Inc.

⁵ *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).

⁶ *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).

⁷ *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 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).

⁸ 18 C.F.R. § 35.28 (2014).

⁹ 18 C.F.R. pt. 37 (2014).

¹⁰ 18 C.F.R. pt. 358 (2014).

II. Notice of Filings

7. Notice of Balko Wind Transmission's filing was published in the *Federal Register*,¹¹ with interventions and protests due on or before May 27, 2015. None was filed.

8. Notice of Balko Wind Transmission's request for blanket authorization under Part 34 of the Commission's regulations was separately published in the *Federal Register*,¹² with interventions or protests due on or before June 22, 2015. None was filed.

III. Discussion

9. As discussed below, we will grant Balko Wind Transmission's request for authorization to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates and we will accept its market-based rate tariff, effective May 7, 2015, as requested.¹³ We will also grant Balko Wind Transmission's request for certain waivers.

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.¹⁴

¹¹ 80 Fed. Reg. 27,302 (2015).

¹² 80 Fed. Reg. 32,556 (2015).

¹³ We note that Balko Wind Transmission 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 Balko Wind Transmission 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).

¹⁴ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 62, 399, 408, 440.

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.¹⁵ 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.¹⁶

12. Balko Wind Transmission represents that it does not own any generation assets in any region. As noted above, Balko Wind Transmission's parent company, Balko Wind, owns generation in the SPP market. Balko Wind Transmission relies on Origin Wind Energy, LLC's recently accepted market power analysis to demonstrate that it passes both the pivotal supplier and wholesale market share screens in the SPP market.¹⁷ Balko Wind Transmission represents that its market share in the SPP market is less than 1.0 percent in all seasons. Based on Balko Wind Transmission's representations, we find that Balko Wind Transmission satisfies the Commission's requirements for market-based rates regarding horizontal market power.

2. Vertical Market Power

13. 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 OATT on file or that the seller has received waiver of the OATT requirement before granting a seller market-based rate authorization.¹⁸ Balko Wind Transmission states that neither Balko Wind Transmission nor any of its affiliates owns transmission facilities other than those limited and discrete facilities that are necessary to interconnect generation facilities.¹⁹ As discussed more fully below, the Commission will grant Balko

¹⁵ *Id.* P 62.

¹⁶ *Id.* PP 33, 62-63.

¹⁷ *See Origin Wind Energy, LLC*, 149 FERC ¶ 61,088 (2014).

¹⁸ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408.

¹⁹ On May 20, 2015, the Commission granted Balko Wind Transmission's parent company, Balko Wind, authority to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates and also granted Balko Wind's request for waiver of the Commission's requirements to file an OATT, to establish and maintain an OASIS, and to comply with the Commission's Standards of Conduct. *Balko Wind, LLC*, 151 FERC ¶ 61,162 (2015).

Wind Transmission's request for waiver of the requirement to have an OATT on file for the Interconnection Facilities.

14. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.²⁰ 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).²¹ 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.²² 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.²³

15. Regarding other barriers to entry, Balko Wind Transmission states that neither Balko Wind Transmission nor any of its affiliates owns or controls intrastate natural gas transportation, storage, or distribution facilities, or sources of coal supplies or equipment for transporting coal supplies. Balko Wind Transmission's filing discloses sites for new generation capacity.

16. Finally, consistent with Order No. 697, Balko Wind Transmission affirmatively states that it and its affiliates have not erected, and will not erect, barriers to entry in the relevant market.

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

²⁰ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 440.

²¹ Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

²² Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

²³ *Id.* P 446.

B. Waiver Requests

1. OATT, OASIS, and Standards of Conduct

18. Balko Wind Transmission 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.²⁴ In support, Balko Wind Transmission states that the Interconnection Facilities will be limited and discrete transmission facilities that do not form an integrated transmission grid. Balko Wind Transmission states that it will use the facilities to interconnect the Project to the transmission grid. Further, Balko Wind Transmission represents that it does not own or control transmission facilities other than the Interconnection Facilities.

19. 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, 2004,²⁵ and 717²⁶ and Part 358 of the Commission's regulations require

²⁴ Balko Wind Transmission states that, because Order No. 807 will not be effective as of the requested effective date of its market-based rate authorization, Balko Wind Transmission requests that the Commission grant its request for waiver herein. Balko Wind Transmission's May 6, 2015 Filing at 16 n.41.

²⁵ *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).

²⁶ *Standards of Conduct for Transmission Providers*, Order No. 717, FERC Stats. & Regs. ¶ 31,280 (2008), *order on reh'g*, Order No. 717-A, 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).

public utilities to abide by certain Standards of Conduct.²⁷ In prior orders, the Commission has enunciated the standards for exemption from some or all of the requirements of Order Nos. 888, 889, and 890.²⁸ The Commission has stated that the criteria for waiver of the requirements of Order No. 890 and Order No. 2004 are unchanged from those used to evaluate requests for waiver under Order Nos. 888 and 889.²⁹ Order No. 717 did not change those criteria.³⁰

20. 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.³¹

21. 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

²⁷ 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.

²⁸ 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*).

²⁹ 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).

³⁰ See Order No. 717, FERC Stats. & Regs. ¶ 31,280 at PP 31-33.

³¹ *Black Creek*, 77 FERC ¶ 61,232 at 61,941.

circumstances are present that indicate that a waiver would not be justified.³² 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 used its access to information about transmission to benefit the utility or its affiliate (for Standards of Conduct waivers).³³

22. Based on the statements in Balko Wind Transmission's application, we find that the Interconnection Facilities qualify as limited and discrete. Accordingly, we will grant Balko Wind Transmission 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 Balko Wind Transmission 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.³⁴

23. The Commission will also grant Balko Wind Transmission 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 Balko Wind Transmission'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.³⁵ Likewise, Balko Wind Transmission's waiver of the Standards of Conduct will remain in effect unless and until

³² *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 annually.

³³ *Entergy*, 112 FERC ¶ 61,228 at P 23 (citing *Central Minnesota Mun. 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*)).

³⁴ *Black Creek*, 77 FERC ¶ 61,232 at 61,941.

³⁵ *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).

the Commission takes action on a complaint by an entity that Balko Wind Transmission has unfairly used its access to information to unfairly benefit itself or its affiliates.³⁶

24. We note that the Commission recently explained how market-based rate applicants and sellers may demonstrate a lack of vertical market power once the blanket waiver provided for in 18 C.F.R. § 35.28(d)(2) takes effect.³⁷ The Commission explained in *Kingfisher Wind* that in Order No. 807, the Commission modified its policy to provide an additional method for obtaining waiver of the OATT requirements. In Order No. 807, the Commission stated that a market-based rate seller or any of its affiliates that owns, operates, or controls transmission facilities may satisfy the vertical market power requirements in 18 C.F.R. § 35.37(d) by one of the following: (1) have a Commission-approved OATT on file; (2) receive waiver of the OATT requirement under 18 C.F.R. § 35.28(d)(1); or (3) satisfy the requirements for a blanket waiver under 18 C.F.R. § 35.28(d)(2).³⁸

25. An applicant that qualifies for the blanket OATT waiver under 18 C.F.R. § 35.28(d)(2) should affirm in its market-based rate application that it qualifies for the blanket OATT waiver. As the Commission stated in Order No. 807, “[s]uch a waiver is justified because the usually limited and discrete nature of [Interconnection Customer’s Interconnection Facilities (ICIF)] and ICIF’s dedicated interconnection purpose means that such facilities do not typically present the concerns about discriminatory conduct that the Commission’s OATT, OASIS, and Standards of Conduct requirements were intended to address.”³⁹ In accordance with Order No. 807, the waivers referenced in 18 C.F.R. § 35.28(d)(2) shall be deemed in effect unless revoked as of the date the public utility ceases to satisfy the qualifications of 18 C.F.R. § 35.28(d)(2), and also may be revoked by the Commission if the Commission determines that it is in the public interest to do so.⁴⁰ Thus, applicants who attest that they qualify for the blanket authorization do not

³⁶ *Id.* Balko Wind Transmission 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).

³⁷ *Kingfisher Wind, LLC*, 151 FERC ¶ 61,276 (2015) (*Kingfisher Wind*).

³⁸ Order No. 807, FERC Stats. & Regs. ¶ 31,367 at P 57.

³⁹ Order No. 807, FERC Stats. & Regs. ¶ 31,367 at P 55.

⁴⁰ *Id.* P 101 (“[T]he [blanket] waiver would be deemed to be revoked as of the date the public utility ceases to satisfy the qualifications for such waiver. . . . [I]f the ICIF that are covered by a blanket waiver become integrated into a transmission system such that

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need to request, nor should they request, a waiver of the OATT, OASIS and Standards of Conduct requirements. We also note that the Commission stated in Order No. 807 that an entity that has already been issued a waiver of the OATT, OASIS and Standards of Conduct requirements and that is eligible for the blanket waiver under Order No. 807 will be deemed to be operating under the blanket waiver without further filings necessary with respect to the previously-issued waiver.⁴¹

26. As stated above, Balko Wind Transmission requests that we grant its request for waiver because Order No. 807 will not be effective as of the requested effective date of Balko Wind Transmission's market-based rate authorization,⁴² and thus we hereby grant this waiver.

2. Other Waivers and Authorizations

27. Balko Wind Transmission 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 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 FPA⁴³ and Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability.

28. The Commission will grant the requested waivers and authorizations consistent with those granted to other entities with market-based rate authorizations.⁴⁴

they can no longer be considered ICIF, the blanket waiver would be deemed to be revoked.”). After revocation of its waivers, the public utility must comply with the requirements that had been waived within 60 days of revocation. 18 C.F.R. § 35.28(d)(2)(i).

⁴¹ *Id.* P 176 (referencing P 89, which states, in part, that “if an entity has previously received a specific waiver of the OATT and related obligations pursuant to the Commission's ‘limited and discrete’ or ‘small entity’ standards, the blanket waiver will supersede the existing waiver”).

⁴² Balko Wind Transmission's May 6, 2015 Filing at 16 n.41

⁴³ 16 U.S.C. § 824c (2012).

⁴⁴ 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

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Notwithstanding the waiver of the accounting and reporting requirements, the Commission expects Balko Wind Transmission to keep its accounting records in accordance with generally accepted accounting principles.

29. We direct Balko Wind Transmission to submit a compliance filing containing revisions to the limitations and exemptions sections of its market-based rate tariff to include a citation to this order.⁴⁵

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")).

⁴⁵ *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at Appendix C, *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 384. These tariff revisions may be filed the next time Balko Wind Transmission makes a market-based rate filing with the Commission.

C. Reporting Requirements

30. An entity with market-based rate authorization must file an Electric Quarterly Report (EQR) with the Commission, consistent with Order Nos. 2001⁴⁶ and 768,⁴⁷ to fulfill its responsibility under FPA section 205(c)⁴⁸ to have rates on file in a convenient form and place.⁴⁹ Balco Wind Transmission must file EQRs electronically with the Commission consistent with the procedures set forth in Order No. 770.⁵⁰ Failure to timely and accurately file an EQR is a violation of the Commission's regulations for which Balco Wind Transmission may be subject to refund, civil penalties, and/or revocation of market-based rate authority.⁵¹

⁴⁶ *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 clarification*, Order No. 2001-H, 121 FERC ¶ 61,289 (2007), *order revising filing requirements*, Order No. 2001-I, FERC Stats. & Regs. ¶ 31,282 (2008).

⁴⁷ *Electricity Mkt. Transparency Provisions of Section 220 of the Federal Power Act*, Order No. 768, FERC Stats. & Regs. ¶ 31,336 (2012), *order on reh'g*, Order No. 768-A, 143 FERC ¶ 61,054 (2013).

⁴⁸ 16 U.S.C. § 824d(c) (2012).

⁴⁹ *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).

⁵⁰ Order No. 770, FERC Stats. & Regs. ¶ 31,338.

⁵¹ 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.

31. Additionally, Balko Wind Transmission 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.⁵²

32. In Order No. 697, the Commission created two categories of sellers.⁵³ 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 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.⁵⁴ Sellers that do not fall into Category 1 are designated as Category 2 sellers and are required to file updated market power analyses.⁵⁵

33. Balko Wind Transmission represents that it meets the criteria for Category 1 seller status in all regions. Balko Wind Transmission represents that it and its affiliates own or control less than 500 MW of generation capacity in aggregate in all regions. Balko Wind Transmission states that it does not own, operate, or control, and is not affiliated with any entity that owns, operates, or controls transmission facilities other than the limited facilities that are necessary to interconnect their generation facilities to the grid. Balko Wind Transmission further represents that it is not affiliated with a franchised public utility in the same region as Balko Wind Transmission's generation assets and that Balko Wind Transmission does not present any other vertical market power concerns.

34. Based on Balko Wind Transmission's representations, we designate Balko Wind Transmission 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.⁵⁶

⁵² *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).

⁵³ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 848.

⁵⁴ 18 C.F.R. § 35.36(a) (2014).

⁵⁵ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 850.

⁵⁶ *Id.* P 853.

The Commission orders:

(A) Balko Wind Transmission's market-based rate tariff is hereby accepted for filing, effective May 7, 2015, as requested, as discussed in the body of this order.

(B) Balko Wind Transmission is hereby directed to submit a compliance filing, as discussed in the body of this order.

(C) Balko Wind Transmission'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.

(D) 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.

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

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

(G) 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 Balko Wind Transmission's issuance of securities or assumptions of liability.

(H) Balko Wind Transmission is hereby required to file EQRs in compliance with Order Nos. 2001 and 768. If the effective date of Balko Wind Transmission's market-based rate tariff falls within a quarter of the year that has already expired, Balko

Wind Transmission's EQRs for the expired quarter are due within 30 days of the date of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.