



BILLING CODE 6717-01-P
DEPARTMENT OF ENERGY
Federal Energy Regulatory Commission

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

Kingfisher Wind, LLC

[Docket Nos. ER15-1308-000
ER15-1308-
001]

Order Granting Market-Based Rate Authorization and
Request for Waivers and Providing Guidance on Vertical Market Power Representations

1. In this order, we grant Kingfisher Wind, LLC (Kingfisher Wind) authority to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates, effective June 30, 2015, as requested. Also, as discussed below, we grant Kingfisher 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. In addition, as discussed below, we provide guidance with regard to interconnection facilities that qualify for the blanket OATT waiver provided in Order No. 807.¹ We also grant Kingfisher Wind's request for other waivers commonly granted to market-based rate sellers, except as noted herein.

2. Additionally, we find that Kingfisher Wind meets the criteria for a Category 1 seller in the Northwest, Northeast, Southwest, Southeast, and Central regions and a Category 2 seller in the Southwest Power Pool (SPP) region, and is so designated.

¹ Subsequent to the filing of this application, the Commission issued Order No. 807, which will be effective June 30, 2015. In Order No. 807, the Commission amended its regulations to waive the OATT requirements of 18 CFR 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, FERC Stats. & Regs. ¶ 31,367 (2015).

Kingfisher Wind must file updated market power analyses for the SPP region in compliance with the regional reporting schedule adopted in Order No. 697.²

I. Background

3. On March 17, 2015, as amended May 18, 2015, pursuant to section 205 of the Federal Power Act (FPA),³ Kingfisher Wind 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. Kingfisher Wind states that it owns a 298 megawatt (MW) wind generation facility located in Canadian and Kingfisher Counties, Oklahoma (the Project), within the SPP market.

5. Kingfisher Wind states that it will also own limited interconnection facilities which will consist of 34.5 kilovolt (kV) collection lines and related facilities, including a collection substation, transformers and disconnect switches, and a share of a 25-mile, 345 kV generator tie line and related equipment and facilities (Shared Facilities)⁵ that are

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) (Clarification Order), *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).

³ 16 U.S.C. 824d (2012).

⁴ Kingfisher 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. (MISO), and SPP, as well as authorization to engage in the sale of certain ancillary services as a third-party provider in other markets.

⁵ Kingfisher Wind states that it will acquire 30 percent tenancy-in-common interests of the Shared Facilities from Canadian Hills Wind, LLC (Canadian Hills). Kingfisher adds that Canadian Hills is an exempt wholesale generator which owns and operates a wind generation facility that is interconnected with the Oklahoma Gas and Electric Company (OG&E) transmission system via the Shared Facilities. Kingfisher Wind states that the Commission granted Canadian Hills waiver of the OATT

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necessary to interconnect the Project to the 345 kV Cimarron substation owned by OG&E and the transmission system operated by SPP.

6. Kingfisher Wind states that it will utilize the interconnection facilities solely to interconnect the Project to the transmission system operated by SPP. Kingfisher Wind states that the interconnection facilities do not comprise an integrated transmission system and are limited and discrete. Kingfisher Wind requests that the Commission waive the requirements under Order Nos. 888,⁶ 889,⁷ 890,⁸ 2004,⁹ and

requirement. *See Canadian Hills Wind, LLC*, 143 FERC ¶ 61,261 (2013); *see also Canadian Hills Wind, LLC*, Docket No. ER15-1372-000 (May 14, 2015) (delegated letter order).

⁶ *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).

⁷ *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).

⁸ *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).

⁹ *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).

717,¹⁰ and section 35.28,¹¹ and Parts 37¹² and 358¹³ of the Commission's regulations for all of the limited interconnection facilities, including but not limited to, the Shared Facilities.

7. Kingfisher Wind states that it is a wholly-owned subsidiary of FR Kingfisher Holdings II LLC, which is an indirect subsidiary of First Reserve Energy Infrastructure Fund II, L.P. (Fund II), which is controlled by senior officers of First Reserve, a global private equity firm focused on the energy industry. Kingfisher Wind states that Fund II is managed and controlled by its general partner, First Reserve Energy Infrastructure GP II, L.P., which in turn, is managed and controlled by its general partner, First Reserve Energy Infrastructure G.P. II Limited (First Reserve GP II). Kingfisher Wind states that its affiliates that own or control generation facilities in the United States are either exempt wholesale generators or owners of qualifying facilities under the Public Utility Regulatory Policies Act of 1978.¹⁴ Kingfisher Wind represents that it is affiliated with approximately 918 MW of generation capacity in the SPP market, all of which is fully committed under long-term power purchase agreements.

II. Notice of Filings

8. Notices of Kingfisher Wind's filings were published in the *Federal Register*,¹⁵ with interventions and protests due on or before June 9, 2015. None was filed.

9. Notice of Kingfisher Wind's request for blanket authorization under part 34 of the Commission's regulations was separately published in the *Federal Register*,¹⁶ with interventions or protests due on or before April 7, 2015. None was filed.

¹⁰ *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).

¹¹ 18 CFR 35.28 (2014).

¹² 18 CFR 37 (2014).

¹³ 18 CFR 358 (2014).

¹⁴ 16 U.S.C. 2601 *et seq.* (2012).

¹⁵ 80 FR 15,779 (2015); 80 FR 30,223 (2015).

¹⁶ 80 FR 15,784 (2015).

III. Discussion

10. As discussed below, we will grant Kingfisher Wind'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 June 30, 2015, as requested.¹⁷ We will also grant Kingfisher Wind's request for certain waivers.

A. Market-Based Rate Authorization

11. 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.¹⁸

1. Horizontal Market Power

12. The Commission has adopted two indicative screens for assessing horizontal market power: the pivotal supplier screen and the wholesale market share screen.¹⁹ 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.²⁰

13. Kingfisher Wind represents that it relies on Westar Energy, Inc.'s recently accepted market power analysis to demonstrate that Kingfisher Wind passes both the pivotal supplier and the wholesale market share screens for the SPP market.²¹

¹⁷ We note that Kingfisher 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 Kingfisher 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).

¹⁸ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 62, 399, 408, 440.

¹⁹ *Id.* P 62.

²⁰ *Id.* PP 33, 62-63.

²¹ *See Westar Energy, Inc.*, Docket No. ER14-724-000 (Feb. 28, 2014) (delegated letter order). Kingfisher Wind relies on historical data for the SPP market for the study

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14. Based on Kingfisher Wind's representations, we find that Kingfisher Wind satisfies the Commission's requirements for market-based rates regarding horizontal market power.

2. Vertical Market Power

15. 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.²² Kingfisher Wind states that neither Kingfisher Wind nor its affiliates owns transmission facilities other than those limited and discrete facilities that are necessary to interconnect generation facilities to the transmission grid. As discussed more fully below, the Commission will grant Kingfisher Wind's request for waiver of the requirement to have an OATT on file for the interconnection facilities.

16. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.²³ 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).²⁴ 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.²⁵ 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

period of December 2011 through November 2012 contained in the Westar pivotal supplier and market share screens study. Kingfisher Wind states that the use of more recent data (i.e., December 2012 through November 2013) would not result in significantly higher market shares because conditions would not change materially over one year. *See* Clarification Order, 121 FERC ¶ 61,260 at P 12.d.

²² Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408.

²³ *Id.* P 440.

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

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

not allow a seller to raise entry barriers but will allow intervenors to demonstrate otherwise.²⁶

17. Regarding other barriers to entry, Kingfisher Wind states that neither it nor any of its affiliates owns or controls physical coal supply sources, entities that may access transportation of coal supplies, or sites to develop new generation capacity. Kingfisher Wind states that it has affiliates that own or control intrastate natural gas transportation, storage or distribution facilities, but that these assets will not allow Kingfisher Wind to erect barriers to entry.²⁷

18. Finally, consistent with Order No. 697, Kingfisher Wind affirmatively states that it and its affiliates have not erected, and will not erect, barriers to entry in SPP.

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

B. Waiver Requests

1. OATT, OASIS, and Standards of Conduct

20. Kingfisher 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.²⁸ In support, Kingfisher Wind represents that the interconnection facilities are limited and discrete and that it will utilize them solely to interconnect the Project to the transmission system operated by SPP. Kingfisher Wind further states that the interconnection facilities do not comprise an integrated transmission system.

²⁶ *Id.* P 446.

²⁷ Kingfisher Wind states that it is affiliated with: (1) Crestwood Midstream Partners, LP, which owns gathering pipelines and natural gas storage facilities located in a number of geographic regions, including some gathering pipelines located in or near SPP; (2) the Arthur C. Nielsen Pipeline System and Clearfield Pipeline System, intrastate natural gas pipelines located within Pennsylvania; and (3) FREIF Caliber Holdings, which owns gathering pipelines located in MISO. *See* Kingfisher Wind May 18 Supplement at 2-3.

²⁸ Notwithstanding the issuance of Order No. 807, Kingfisher Wind requests that the Commission rule on its requested waiver herein. Kingfisher Wind May 18 Supplement at n.5.

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.²⁹ In prior orders, the Commission has enunciated the standards for exemption from some or all of the requirements of Order Nos. 888, 889, and 890.³⁰ 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 889.³¹ Order No. 717 did not change those criteria.³²

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.³³

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

²⁹ 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.

³⁰ 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*).

³¹ 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).

³² See Order No. 717, FERC Stats. & Regs. ¶ 31,280 at PP 31-33.

³³ *Black Creek*, 77 FERC at 61,941.

circumstances are present that indicate that a waiver would not be justified.³⁴ 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).³⁵

24. Based on the statements in Kingfisher Wind's application, we find that its interconnection facilities qualify as limited and discrete. Kingfisher Wind will use the facilities solely to interconnect the Project to the transmission grid. Accordingly, we will grant Kingfisher 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 Kingfisher 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.³⁶

25. The Commission will also grant Kingfisher 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 Kingfisher 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.³⁷ Likewise, Kingfisher Wind's waiver of the Standards of Conduct will remain in effect unless and until the Commission takes action

³⁴ *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.

³⁵ *Entergy*, 112 FERC ¶ 61,228 at P 23 (citing *Cent. Minn. 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*)).

³⁶ *Black Creek*, 77 FERC at 61,941.

³⁷ *Entergy*, 112 FERC ¶ 61,228 at P 23 (citing *Central Minnesota*, 79 FERC at 62,127; *Easton*, 83 FERC at 62,343).

on a complaint by an entity that Kingfisher Wind has unfairly used its access to information to unfairly benefit itself or its affiliates.³⁸

26. Given that Order No. 807 will be effective June 30, 2015, we take this opportunity to explain how market-based rate applicants and sellers may demonstrate a lack of vertical market power once the blanket waiver provided for in 18 CFR 35.28(d)(2) takes effect. In Order No. 807, the Commission modified its policy to provide an additional method for obtaining waiver of the OATT requirements. Specifically, the Commission stated that a market-based rate seller or any of its affiliates that own, operate, or control transmission facilities may satisfy the vertical market power requirements in 18 CFR 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 CFR 35.28(d)(1); or (3) satisfy the requirements for a blanket waiver under 18 CFR 35.28(d)(2).³⁹

27. We provide guidance herein that an applicant that qualifies for the blanket OATT waiver under 18 CFR 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.”⁴⁰ In accordance with Order No. 807, the waivers referenced in 18 CFR 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 CFR 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.⁴¹ Thus, applicants who attest that they qualify for the blanket

³⁸ *Id.* Kingfisher 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).

³⁹ Order No. 807, FERC Stats. & Regs. ¶ 31,367 at P 57.

⁴⁰ *Id.* P 55.

⁴¹ *Id.* P 101 (“the [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 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

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authorization do not 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.⁴²

28. As stated above, Kingfisher Wind specifically requests that the Commission rule on its requested OATT waiver, and we hereby grant this waiver.

2. Other Waivers and Authorizations

29. Kingfisher 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 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.

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

requirements that had been waived within 60 days of revocation. *Id.* at regulatory text (to be codified at 18 CFR 35.28(d)(2)(i)).

⁴² *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").

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 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 CFR part 101 to the

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

C. Reporting Requirements

31. An entity with market-based rate authorization must file an Electric Quarterly Report (EQR) with the Commission, consistent with Order Nos. 2001⁴⁵ and 768,⁴⁶ to fulfill its responsibility under FPA section 205(c)⁴⁷ to have rates on file in a convenient form and place.⁴⁸ Kingfisher Wind must file EQRs electronically with the Commission consistent with the procedures set forth in Order No. 770.⁴⁹ Failure to timely and accurately file an EQR is a violation of the Commission's regulations for which

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 *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).

⁴⁶ *Electricity Mkt. Transparency Provisions of Section 220 of the Fed. Power Act*, Order No. 768, FERC Stats. & Regs. ¶ 31,336 (2012), *order on reh'g*, Order No. 768-A, 143 FERC ¶ 61,054 (2013).

⁴⁷ 16 U.S.C. 824d(c) (2012).

⁴⁸ *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).

⁴⁹ Order No. 770, FERC Stats. & Regs. ¶ 31,338.

Kingfisher Wind may be subject to refund, civil penalties, and/or revocation of market-based rate authority.⁵⁰

32. Additionally, Kingfisher 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.⁵¹

33. In Order No. 697, the Commission created two categories of sellers.⁵² 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.⁵³ Sellers that do not fall into Category 1 are designated as Category 2 sellers and are required to file updated market power analyses.⁵⁴

34. Kingfisher Wind requests Category 1 seller status in the Northwest, Northeast, Southwest, Southeast, and Central regions, and Category 2 seller status in the SPP region. Kingfisher Wind states that it is located in the SPP region, where it and its affiliates own or control more than 500 MW of generation capacity. Kingfisher Wind represents that it does not own or control generation in any other region. Kingfisher Wind further represents that neither it nor its affiliates own, operate or control transmission facilities other than limited facilities necessary to connect individual generating facilities to the

⁵⁰ The exact filing dates for these reports are prescribed in 18 CFR 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.

⁵¹ *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 CFR 35.42 (2014).

⁵² Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 848.

⁵³ 18 CFR 35.36(a) (2014).

⁵⁴ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 850.

transmission grid. Kingfisher Wind also represents that it is not affiliated with any entity that owns, operates or controls transmission facilities in the same region as its generation assets nor with a franchised public utility in the same region as its generation assets. Finally, Kingfisher Wind represents that neither it nor its affiliates raise other vertical market power concerns.

35. Based on Kingfisher Wind's representations, we grant Kingfisher Wind Category 1 seller status in the Northwest, Northeast, Southwest, Southeast and Central regions and Category 2 seller status in the SPP region. Kingfisher Wind must file an updated market power analysis for the SPP region in compliance with the regional reporting schedule adopted in Order No. 697.⁵⁵ The Commission also reserves the right to require such an analysis at any time for any region.⁵⁶

The Commission orders:

(A) Kingfisher Wind's market-based rate tariff is hereby accepted for filing, effective June 30, 2015, as requested, as discussed in the body of this order.

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

⁵⁵ *Id.*

⁵⁶ *Id.* P 853.

(E) Blanket authorization under part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability is hereby granted. Kingfisher 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 Kingfisher 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 Kingfisher Wind's issuance of securities or assumptions of liability.

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

(H) The Secretary is hereby directed to publish a copy of this order in the *Federal Register*.

By the Commission.

Issued: June 30, 2015.

Nathaniel J. Davis, Sr.,
Deputy Secretary.