

FEDERAL ENERGY REGULATORY COMMISSION  
Washington, D.C. 20426

OFFICE OF ENERGY MARKET REGULATION

In Reply Refer To:  
Kelly Creek Wind, LLC  
Docket No. ER16-2227-001

September 28, 2016

Ms. Andrea Wolfman  
Attorney for Kelly Creek Wind, LLC  
Alston and Bird LLP  
950 F Street, N.W.  
Washington, D.C. 20004

Reference: Market-Based Rate Authorization

Dear Ms. Wolfman:

On July 18, 2016, as amended on August 24, 2016, you filed on behalf of Kelly Creek Wind, LLC (Kelly Creek) an application for market-based rate authority with an accompanying tariff. The proposed market-based rate tariff provides for the sale of energy, capacity, and ancillary services at market-based rates.<sup>1</sup> Kelly Creek requests waivers commonly granted to similar market-based rate applicants.

Your filings were noticed on July 18, 2016, and August 25, 2016 with comments, protests or interventions due on or before August 8, 2016 and September 14, 2016. None was filed.

Pursuant to the authority delegated to the Director, Division of Electric Power Regulation - West, under 18 C.F.R. § 375.307, your submittals filed in the referenced docket are accepted for filing, effective September 17, 2016, as requested.<sup>2</sup> Based on

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<sup>1</sup> Kelly Creek requests authorization to sell ancillary services in the markets administered by PJM Interconnection, L.L.C. (PJM), 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). Kelly Creek also requests authorization to engage in the sale of certain ancillary services as a third-party provider in other markets.

<sup>2</sup> We note that Kelly Creek 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

your representations, Kelly Creek meets the criteria for a Category 2 seller in the Northeast region and a Category 1 seller in the Southeast, Central, SPP, Southwest, and Northwest regions and is so designated.<sup>3</sup>

You state that Kelly Creek will own and operate a 184 megawatt (MW) wind-powered electric generation facility located in Kankakee and Ford Counties, Illinois, within the PJM market. You represent that Kelly Creek's ultimate upstream owner is EDF Renewable Energy, Inc. You state that Kelly Creek and its affiliates will own or control 2,147 MW of generation capacity in the PJM market. You state that Kelly Creek's affiliate Sagebrush, a California Partnership (Sagebrush), has an open access transmission tariff (OATT) on file with the Commission.<sup>4</sup> You state that Kelly Creek and its affiliates' transmission facilities, with the exception of Sagebrush, qualify for the blanket OATT waiver under 18 C.F.R. § 35.28(d)(2).<sup>5</sup> Therefore, Kelly Creek and its

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own open access transmission tariff requirements to offer ancillary services to its own customers. If Kelly Creek 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).

<sup>3</sup> *See Refinements to Policies and Procedures for Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 816, FERC Stats. & Regs. ¶ 31,374, at P 320 (2015), *order on reh'g*, Order No. 816-A, 155 FERC ¶ 61,188 (2016); *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). Kelly Creek must file an updated market power analysis for each region in which it is designated as a Category 2 seller in compliance with the regional reporting schedule. *See* Order No. 816, FERC Stats. & Regs. ¶ 31,374 at P 353.

<sup>4</sup> *Sagebrush, a California Partnership*, Docket No. ER10-1988-001 (February 28, 2011) (delegated letter order). *See also Sagebrush, a California Partnership*, 130 FERC ¶ 61,093 (2010).

<sup>5</sup> *See Open Access and Priority Rights on Interconnection Customer's Interconnection Facilities*, Order No. 807, FERC Stats. & Regs. ¶ 31,367, at P 57, *order on reh'g*, Order No. 807-A, 153 FERC ¶ 61,047 (2015) (waiving the OATT requirements of 18 C.F.R. § 35.28, the Open Access Same-Time Information System requirements of

affiliates have mitigated any transmission market power. Further, you affirmatively state that Kelly Creek and its affiliates have not erected barriers to entry and will not erect barriers to entry into the relevant market.

You represent that Kelly Creek qualifies as a Category 1 seller in the Southeast, Central, SPP, Southwest, and Northwest regions because it does not own generation capacity in these regions, it does not own, operate or control transmission facilities in these regions, is not affiliated with a franchised public utility, and does not raise any other vertical market power issues.

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

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>6</sup>

You state that Kelly Creek relies on Panda Liberty, LLC's market power analysis, which has been accepted by the Commission,<sup>7</sup> to demonstrate that Kelly Creek passes both the pivotal supplier and the wholesale market share screens for the PJM market. Accordingly, Kelly Creek's submittals satisfy the Commission's requirements for market-based rate authority regarding horizontal market power.

Based on your representations, Kelly Creek's submittals also satisfy the Commission's requirements for market-based rates regarding vertical market power.

Kelly Creek's request for waiver of Subparts B and C of Part 35 of the Commission's regulations requiring the filing of cost-of-service information, except for sections 35.12(a), 35.13(b), 35.15 and 35.16 is granted. Kelly Creek's request for waiver of Part 41 and Part 141 of the Commission's regulations concerning accounting and reporting requirements is granted with the exception of 18 C.F.R. §§ 141.14 and 141.15.<sup>8</sup> Kelly Creek's request for 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

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Part 37, and the Standards of Conduct requirements of Part 358, under certain conditions, for entities that own interconnection facilities). *See also Oildale Energy, LLC*, 153 FERC ¶ 61,013 at P 14 (2015).

<sup>6</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 62, 399, 408, 440.

<sup>7</sup> *Panda Liberty, LLC*, Docket No. ER15-1841-000 (July 16, 2015) (delegated letter order).

<sup>8</sup> *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 984-985.

hydropower licensees is not granted with respect to licensed hydropower projects.<sup>9</sup> Notwithstanding the waiver of the accounting and reporting requirements here, Kelly Creek is expected to keep its accounting records in accordance with generally accepted accounting principles.

Kelly Creek requests blanket authorization under Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability. A separate notice was published in the Federal Register establishing a period during which protests could be filed. None was filed. Kelly Creek is 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 Kelly Creek, compatible with the public interest, and reasonably necessary or appropriate for such purposes.<sup>10</sup>

Kelly Creek must file an Electric Quarterly Report (EQR) with the Commission, consistent with Order Nos. 2001<sup>11</sup> and 768.<sup>12</sup> Kelly Creek must file EQRs electronically

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<sup>9</sup> Hydropower licensees are required to comply with the requirements of the Uniform System of Accounts pursuant to 18 CFR Part 101 to the extent necessary to carry out their responsibilities under Part I of the Federal Power Act (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 Order No. 816, FERC Stats. & Regs. ¶ 31,374 at PP 345-350; *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>10</sup> See Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 999-1000.

<sup>11</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 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>12</sup> *Elec. 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).

with the Commission consistent with the procedures set forth in Order No. 770.<sup>13</sup> Kelly Creek further 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>14</sup>

This action does not constitute approval of any service, rate, charge, classification, or any rule, regulation, or practice affecting such rate or service provided for in the filed documents; nor shall such action be deemed as recognition of any claimed contractual right or obligation affecting or relating to such service or rate; and such acceptance is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against any of the applicant(s).

This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R § 385.713.

Questions regarding the above order should be directed to:

Federal Energy Regulatory Commission  
Attn: Gregory Basheda  
Phone: (202) 502-6479  
Office of Energy Market Regulation  
888 First Street, N.E.  
Washington, D.C. 20426

Sincerely,

Steve P. Rodgers, Director  
Division of Electric Power  
Regulation - West

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<sup>13</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>14</sup> 18 C.F.R. § 35.42 (2016); see also *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).

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