

FEDERAL ENERGY REGULATORY COMMISSION  
Washington, D.C. 20426

February 10, 2005

In Reply Refer To:  
Klondike Wind Power II, LLC  
Docket No. ER05-332-000

Chadbourne & Parke LLP  
Attn: Mr. Adam Wenner, Esq.  
Counsel for Klondike Wind Power II, LLC  
1200 New Hampshire Avenue, N.W.  
Washington, D.C. 20036

Dear Mr. Wenner:

1. On December 14, 2004, Klondike Wind Power II LLC (Klondike II), filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sale of capacity, energy, and ancillary services at market-based rates,<sup>1</sup> the reassignment of transmission capacity, and the resale of firm transmission rights (FTRs) or their equivalents. It also includes the Commission's market behavior rules.<sup>2</sup> Klondike II's submittal, as discussed below, satisfies the Commission's standards for market-based rate authority and is accepted for filing, effective February 27, 2005, as requested.<sup>3</sup>

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<sup>1</sup> Klondike II plans to sell certain ancillary services in the markets administered by the New York Independent System Operator, Inc. (NYISO), the PJM Interconnection LLC (PJM), California Independent System Operator, Inc. (CAISO), and ISO New England, Inc. (ISO-NE). Klondike II also intends to engage in the sale of certain ancillary services to third party suppliers in other markets consistent with *Avista Corp.*, 87 FERC ¶ 61,223, *order on reh'g*, 89 FERC ¶ 61,136 (1999) (*Avista*).

<sup>2</sup> *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218 (2003), *order on reh'g*, 107 FERC ¶ 61,175 (2004).

<sup>3</sup> FERC Electric Tariff, Volume No. 1, Original Sheet Nos. 1-9.

2. Klondike II is a limited liability company with its principal place of business in Portland, Oregon. Klondike II will engage exclusively in the business of owning and operating a 75 MW wind energy facility (project) in Sherman County, Oregon, in the Bonneville Power Administration (BPA) control area. The project is to be constructed in December 2004 and to be in service by September 2005. Klondike II states that Portland General Electric Company (PGE) issued a request for proposal (RFP) for power supply resources on June 18, 2003. Klondike II states that negotiations between PPM Energy (PPM), on behalf of Klondike II, and PGE commenced in November 2003 and continued through the fall of 2004. Klondike II states that on December 8, 2004, a wholesale purchase and sale agreement (PPA) among PGE, PPM and Klondike II was negotiated and entered into as part of the RFP. The PPA provides that the entire output of the project is committed for sale to PGE commencing upon project completion, and that Klondike II will sell, and PGE will purchase, upon completion of the project, all of the energy and environmental attributes generated or produced by the project for a term of thirty years.

3. Klondike II is an affiliate of PPM, which is an affiliate of PacifiCorp and Scottish Power plc. PPM owns or controls generation in the BPA control area, construction of that generation commenced after July 9, 1996.

### **Procedural Matters**

4. Notice of Klondike II's application was published in the *Federal Register*, 69 Fed. Reg. 78,012 (2004), with motions to intervene and protests to be filed by January 4, 2005. None was filed.

### **Discussion**

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

5. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated market power in generation and transmission and cannot erect other barriers to entry. The Commission also considers whether there is evidence of affiliate abuse or reciprocal dealing.<sup>4</sup> As discussed below, the Commission concludes that Klondike II satisfies the Commission's standards for market-based rate authority.

6. Klondike II cites section 35.27(a) of the Commission's regulations, which provides that applicants shall not be required to demonstrate any lack of market power in

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<sup>4</sup> See, e.g., *Progress Power Marketing, Inc.*, 76 FERC ¶ 61,155 at 61,919 (1996), *Northwest Power Marketing Co., L.L.C.*, 75 FERC ¶ 61,281 at 61,899 (1996); *accord Heartland Energy Services, Inc.*, 68 FERC ¶ 61,223 at 62,062-63 (1994).

generation with respect to sales from capacity constructed after July 9, 1996.<sup>5</sup> If an applicant sites generation in an area where it or its affiliate own or control other generator assets, the applicant must study whether its new capacity, when added to existing capacity, raises generation market concerns.<sup>6</sup>

7. Klondike II commenced construction of the facility in 2004. While PPM, an affiliate of Klondike II, owns or controls generation in the BPA control area, construction of that generation also commenced after July 9, 1996. Based on Klondike II's representation, the Commission finds that Klondike II satisfies our generation market power standard for the grant of market-based rate authority.

8. Klondike II states that it does not own transmission assets in the BPA control area, but PacifiCorp, an affiliate of Klondike II owns transmission assets in the western United States, including portions of the Southern Intertie, which is designated as part of BPA's control area. However, Klondike II states that PacifiCorp operates its transmission assets under an approved open access transmission tariff on file with the Commission.<sup>7</sup> Based on Klondike II's representation, the Commission finds that Klondike II satisfies our transmission market power standard for the grant of market-based rate authority.

9. Klondike II states that neither they nor its affiliates have the ability to erect barriers to entry. Further, Klondike II states it does not control or is affiliated with any entity that controls barriers to the electric power generation business. In addition, neither Klondike II nor its affiliates has the ability to site new generation plants or block others from siting new plants. Lastly, Klondike II states that neither they nor any of its affiliates owns or controls resources or inputs associated with power generation that could impede competition. Based on this representation, the Commission is satisfied that neither Klondike II, nor any of its affiliates, can erect barriers to entry.

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<sup>5</sup> 18 C.F.R. §35.27(a) (2004). We note that the Commission intends to address as part of the generic rulemaking proceedings in Docket RM04-7-000 whether to retain or modify section 35.27(a) of its regulations.

<sup>6</sup> *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 at P 69, *order on reh'g*, 108 FERC ¶ 61,026 (2004). We note that PacifiCorp, a Klondike affiliate, operates generation in the control area adjacent to that in which the Klondike facility is located.

<sup>7</sup> *See PacifiCorp*, 98 FERC ¶ 61,224 (2002), *order on reh'g*, 99 FERC ¶ 61,259 (2002).

10. Klondike II states that it is affiliated with PacifiCorp, which has a franchised service territory. However, Klondike II's tariff prohibits it from selling power to, or purchasing power from PacifiCorp or any other affiliated entity that has a franchised service territory. Furthermore, Klondike II has submitted with its tariff a code of conduct that meets the Commission's standards for prevention of affiliate abuse. Based on this representation, the Commission finds that Klondike II satisfies the Commission's concerns with regard to affiliate abuse.

11. Klondike II requests authority to engage in the sale of certain ancillary services (listed in the proposed tariff) at market-based rates into the markets administered by the NYISO, ISO-NE, PJM, and the CAISO. Consistent with Commission precedent granting authority to sellers to engage in such transactions in those markets, the Commission will grant Klondike II's request.<sup>8</sup> Klondike II also intends to engage in the sale of certain ancillary services to third party suppliers in other markets consistent with *Avista Corp.*, 87 FERC ¶ 61,223, *order on reh'g*, 89 FERC ¶ 61,136 (1999). We will grant this request.

12. In addition, Klondike II proposes to sell additional ancillary services in additional geographic markets as the Commission may specify and authorize from time-to-time in orders that extend such authority to all sellers previously authorized to sell energy and/or capacity at market-based rates. We will grant Klondike II's request in this regard; however, our grant does not relieve Klondike II of the requirement to have current and complete tariffs on file with the Commission, pursuant to 18 C.F.R. § 35.1 (2004).<sup>9</sup>

13. Klondike II also requests authority to reassign transmission capacity, and resell FTRs. The Commission finds these provisions consistent with the Commission's requirements.<sup>10</sup> Accordingly, we grant this request.

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<sup>8</sup> See, e.g., *New England Power Pool*, 85 FERC ¶ 61,379 (1998), *reh'g denied*, 95 FERC ¶ 61,074 (2001); *Atlantic City Electric Co.*, 86 FERC ¶ 61,248, *clarified*, 86 FERC ¶ 61,310 (1999); *Central Hudson Gas & Electric Corporation*, 86 FERC ¶ 61,062, *order on reh'g*, 88 FERC ¶ 61,138 (1999); *AES Redondo Beach, L.L.C.*, 85 FERC ¶ 61,123 (1998), *order on reh'g*, 87 FERC ¶ 61,208 (1999), *order on reh'g and clarification*, 90 FERC ¶ 61,036 (2000).

<sup>9</sup> *Calhoun Power Co.*, 96 FERC ¶ 61,056 (2001).

<sup>10</sup> See *Southwestern Public Service Company*, 80 FERC ¶ 61,245 (1997) and *California Independent System Operator, Inc.*, 89 FERC ¶ 61,153 (1999).

### **Other Waivers, Authorizations and Reporting Requirements**

14. Klondike II requests the following waivers and authorizations: (1) 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; (2) waiver of Parts 41, 101 and 141 of the Commission's accounting and periodic reporting requirements; (3) abbreviated filings with respect to interlocking directorates under Part 45 of the Commission's regulations; and (4) blanket authorization under Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability.

15. The Commission will grant the requested waivers and authorizations consistent with those granted other entities with market-based rate authorizations.<sup>11</sup> Notwithstanding the waiver of the accounting and reporting requirements here, the Commission expects Klondike II to keep its accounting records in accordance with generally accepted accounting principles.

16. Within 30 days of the date of the issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Klondike II should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.211 and 385.214.

17. Absent a request to be heard within the period set forth above, Klondike II is hereby authorized to issue securities and assume obligations or liabilities as guarantor, endorser, 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 Klondike II, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

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<sup>11</sup> It should be noted that the Commission is examining the issue of continued applicability of the waivers of its accounting and reporting requirements (18 C.F.R. Parts 41, 101 and 141) as well as continued applicability of the blanket authorization for the issuance of securities and the assumption of obligations and liabilities, (18 C.F.R. Part 34). *See Accounting and Reporting of Financial Instruments, Comprehensive Income, Derivatives and Hedging Activities*, Order No. 627, 67 Fed. Reg. 67,691 at P 23 and P 24 (October 10, 2002), FERC Stats. & Regs. ¶ 32,558 (2002).

18. Until further order of this Commission, the full requirements of Part 45 of the Commission's regulations, except as noted below, are hereby waived with respect to any person now holding or who may hold an otherwise proscribed interlocking directorate involving Klondike II. Any such person instead shall file a sworn application providing the following information:

- (1) full name and business address; and
- (2) all jurisdictional interlocks, identifying the affected companies and the positions held by that person.

19. 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 Klondike II's issuances of securities or assumptions of liabilities, or by the continued holding of any affected interlocks.

20. Consistent with the procedures the Commission adopted in Order No. 2001, an entity with market-based rates must file electronically with the Commission an Electric Quarterly Report containing: (1) a summary of the contractual terms and conditions in every effective service agreement for market-based power sales; and (2) transaction information for effective short-term (less than one year) and long-term (one year or greater) market-based power sales during the most recent calendar quarter.<sup>12</sup> Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.<sup>13</sup> Accordingly, Klondike II must file its first Electric Quarterly Report no later than 30 days after the first quarter Klondike II's rate schedule is in effect.<sup>14</sup>

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<sup>12</sup> *Revised Public Utility Filing Requirements, Order No. 2001*, 67 Fed. Reg. 31,043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127 (2002). Required data sets for contractual and transaction information are described in Attachments B and C of Order No. 2001. The Electric Quarterly Report must be submitted to the Commission using the EQR submission System Software, which may be downloaded from the Commission's website at <http://www.ferc.gov/Electric/eqr/eqr.htm>.

<sup>13</sup> The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10(b).

<sup>14</sup> Failure to file an Electric Quarterly Report (without an appropriate request for extension), or failure to report an agreement in a report, may result in forfeiture of market-based rate authority, requiring filing of a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

21. Klondike II 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. Any change in status must be filed no later than 30 days after the change in status occurs. A change in status includes, but is not limited to each of the following: (i) ownership or control of generation or transmission facilities or inputs to electric power production other than fuel supplies; or (ii) affiliation with any entity not disclosed in the application for market-based rate authority that owns or controls generation or transmission facilities or inputs to electric power production, or affiliation with any entity that has a franchised service area.<sup>15</sup>

22. The Change in Status Final Rule requires that the change in status reporting requirement be incorporated in the market-based rate tariff of each entity authorized to make sales at market-based rates. Accordingly, Klondike II is directed, within 30 days of the date of issuance of this order, to revise its market-based rate tariff to incorporate the change in status reporting requirement adopted in the Change in Status Final Rule.

23. Klondike II is directed to file an updated market power analysis within three years of the date of this order, and every three years thereafter. The Commission also reserves the right to require such an analysis at any intervening time.

By direction of the Commission.

Linda Mitry,  
Deputy Secretary.

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<sup>15</sup> *Reporting Requirement for Changes in Status for Public Utilities With Market-Based Rate Authority*, Order No. 652, 110 FERC ¶ 61,097 (2005) (Change in Status Final Rule). This rulemaking was in Docket No. RM04-14-000.