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DEPARTMENT OF ENERGY**Federal Energy Regulatory
Commission****[Docket No. ER10-956-003]****Vantage Wind Energy LLC; Order
Accepting Updated Market Power
Analysis and Providing Direction on
Submitting Studies**

Before Commissioners: Jon Wellenbrock, Chairman; Philip D. Moeller, John R. Norris, and Cheryl A. LaFleur.

1. In this order, the Commission accepts an updated market power analysis filed by Vantage Wind Energy LLC (Vantage Wind). As discussed below, the Commission concludes that Vantage Wind continues to satisfy the Commission's standards for market-based rate authority. Vantage Wind's next updated market power analysis must be filed according to the regional schedule adopted in Order No. 697.¹

2. Additionally in this order, the Commission provides further direction on the performance of the indicative screens. In the future, when filing updated market power analyses with the Commission, filers that are load-serving entities should account for their remote generation and long-term firm purchases as described below.²

Background

3. On December 20, 2010, Vantage Wind filed an updated market power analysis in compliance with the regional reporting schedule adopted in Order No. 697 and pursuant to the Commission's order granting Vantage Wind authority to sell electric energy, capacity, and ancillary services at market-based rates.³

¹ *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 882-893, App. D, *clarified*, 121 FERC ¶ 61,260 (2007), at PP 9-10, App. D-1, *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, at Apps. D, D-1, and D-2, *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), at PP 47-48 (amending in part App. D-2), *order on reh'g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010), *aff'd sub nom. Montana Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011).

² Load-serving entities use transmission facilities owned and maintained by a transmission owner to secure energy and transmission service to serve the electrical demand and energy requirements of their end-use customers.

³ See *Vantage Wind Energy LLC*, Docket No. ER10-956-000 (May 26, 2010) (delegated letter order).

In performing the indicative screens, Vantage Wind states that it relied on the updated market power analysis filed by Puget Sound Energy, Inc. (Puget).⁴

4. Vantage Wind owns and operates 90 megawatts (MW) of wind-powered generation facilities located near Kittias County, Washington.

5. Vantage Wind is an indirect, wholly-owned subsidiary of Vantage Wind Holdings LLC (Vantage Holdings). Vantage Wind states that Vantage Class B Holdings LLC (VCB Holdings), an indirect, wholly-owned subsidiary of Invenergy Investment Company LLC (Invenergy Investment), owns the Class B membership interests in Vantage Holdings and is the managing member. Vantage Wind states that Mehetia, Inc. (Mehetia) owns the Class A membership interests in Vantage Holdings. Vantage Wind represents that the Class A membership interests held by Mehetia are passive interests, consistent with the interests found to be passive in *AES Creative Resources, L.P.*⁵

6. Invenergy Investment is a wholly-owned subsidiary of Polsky Energy Investments LLC, which is indirectly owned and controlled by an individual. Vantage Wind states that through subsidiaries, Invenergy Investment is in the business of acquiring or developing, and owning and operating, electric generation facilities and associated interconnecting transmission facilities in the United States or abroad.

7. Vantage Wind states that other than their interests in Vantage Wind, none of Polsky Energy or Invenergy Investment and their respective affiliates own or control electric generation or transmission assets located within the Puget balancing authority area. Invenergy Investment indirectly owns controlling interests in two companies that own generation in the Bonneville Power Administration balancing authority area, which is first-tier to the Puget balancing authority area. The two companies are Grays Harbor Energy LLC, which owns a 650 MW gas-fired generation facility, and Willow Creek Energy LLC, which owns a 72 MW wind-powered generation facility. Vantage Wind states that this generation is accounted for in its market power analysis.

8. On June 17, 2011, the Commission issued an order accepting simultaneous transmission import limit (SIL) values for the Northwest region, including the Puget balancing authority area.⁶ In

⁴ See Puget Sound Energy, Inc. Filing, Docket No. ER99-845-020 (filed Jun. 29, 2010).

⁵ 129 FERC ¶ 61,239 (2009).

⁶ *Puget Sound Energy, Inc.*, 135 FERC ¶ 61,254 (2011) (*NW SIL Order*).

accepting Puget's SIL values, Commission staff adjusted Puget's SIL values to account for long-term firm transmission reservations by using data reported by Puget to derive a "net" SIL value for the Puget balancing authority area. This "net" SIL value is the accepted SIL value for that balancing authority area as set forth in the *NW SIL Order*.⁷ Puget's screens, however, used the higher, "gross" SIL values originally filed by Puget.⁸ Additionally, Puget reported all of its remote generation resources and firm power purchases that Puget controls, as non-firm imports (Line D of the pivotal supplier screen and Line E of the market share screen).⁹

9. In Vantage Wind's December 20, 2010 Filing, Vantage Wind filed screens that utilized the "gross" SIL values that Puget used in its screens. Thus, Vantage Wind needed to revise its indicative screens so that its total imports are consistent with the Commission's accepted SIL values for the Puget balancing authority area.

10. On August 8, 2011, Vantage Wind filed revised pivotal supplier and wholesale share market screens as an amendment to its updated market power analysis to demonstrate that it continues to pass the indicative screens when the Commission-accepted SIL values for the Puget balancing authority area are applied.

Notices and Responsive Pleadings

11. Notice of Vantage Wind's December 20, 2010 and August 8, 2011 filings were published in the **Federal Register**, 75 FR 81,600 (2010) and 77 FR 2518 (2012), with interventions or protests due on or before February 18, 2011 and January 31, 2012. None was filed.

Discussion*Market-Based Rate Authorization*

12. 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.¹⁰ As discussed

⁷ See *NW SIL Order*, 135 FERC ¶ 61,254 at Appendix A.

⁸ We note that Puget accounted for these resources as part of its imports, which artificially increased the SIL values reported in Puget's screens. Commission staff did not ask Puget to amend their screens, because Puget is a net purchaser and passes the screens in its balancing authority area irrespective of whether one applies the accepted net SIL values or the gross SIL values used by Puget.

⁹ Specifically, we refer to Puget's Colstrip plant located in Montana and its firm power purchase agreements with Bonneville. This reporting by Puget did not affect Puget's screen results.

¹⁰ Order No. 697, FERC Stats. & Regs. ¶ 31,252, at PP 62, 399, 408, 440.

below, we find that Vantage Wind satisfies the Commission's standards for market-based rate authority.

1. Horizontal Market Power

13. The Commission has adopted two indicative screens for assessing horizontal market power: the pivotal supplier screen and the wholesale market share screen.¹¹ 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.¹²

14. The Commission explained in Order No. 697 that in performing the indicative screens, uncommitted capacity is calculated by adding the total nameplate or seasonal capacity of generation owned or controlled through contract and firm purchases, less operating reserves, native load commitments and long-term firm sales.¹³ The Commission further explained that uncommitted capacity from a seller's remote generation¹⁴ should be included in the seller's total uncommitted amounts.¹⁵

15. Vantage Wind performed indicative screen analyses for the Puget balancing authority area. Vantage Wind states that it relied on the updated market power analysis filed by Puget to demonstrate that Vantage Wind passes the pivotal supplier screen and the wholesale market share screen in the Northwest region.¹⁶

16. In its updated market power analysis, Puget accounted for both its remote generation from its Colstrip plant located in Montana and its firm power purchase agreements from Bonneville as Imported Power (Line D of the market share screen and the pivotal supplier screen) rather than as Installed Capacity (Line A of the market share screen and the pivotal supplier screen) or a Long-term Firm Purchase (Line B of the market share screen and the pivotal supplier screen), respectively. Consequently, the total SIL shown in Puget's screens exceeded the net SIL value for the Puget balancing authority area as accepted by the

Commission in the *NW SIL Order*. When Vantage Wind applied the Commission-approved SIL values to its analysis without making any other adjustments to Puget's screens, Vantage Wind appeared to fail the screens because Puget's capacity was underreported. In applying the Commission accepted SIL values, Vantage Wind effectively underreported Puget's capacity because some of Puget's capacity was no longer reflected as imports due to the reduced SIL values. Further, when Vantage Wind accounted for Puget's remote generation resources as non-affiliate imports, Vantage Wind's resulting SIL values did not match the "net" SIL for the Puget balancing authority area that the Commission accepted in the *NW SIL Order*.

17. Thus, although Puget's incorrect allocation of both its remote generation and its firm power purchase agreements as Imported Power did not affect its screen results, it resulted in screen failures for a non-affiliate within the same region.

18. Vantage Wind states that in its revised indicative screens, it adjusted the amounts identified as Puget-controlled resources located outside the Puget system. Vantage Wind states that instead of including these amounts as a component of unaffiliated import capacity, it is reporting these amounts as non-affiliate Long-Term Firm Purchases (Line M of the market share screen and Line F of the pivotal supplier screen) in its revised indicative screens.

19. The Commission has reviewed Vantage Wind's revised pivotal supplier and wholesale market share screens for the Puget balancing authority area, as revised by Vantage Wind to account for the proper treatment of remote generation and Long-term Firm Purchases. Specifically, Vantage Wind accounts for Puget's remote generation as non-affiliated Long-term Firm Purchases (Line M of the market share screen and Line F of the pivotal supplier screen) in its revised indicative screens. We find that Vantage Wind passes the pivotal supplier screen and the wholesale market share screen in the Puget balancing authority area with market shares ranging from 8.6 to 15 percent across the four seasons.

20. Accordingly, we find that Vantage Wind satisfies the Commission's requirements for market-based rates regarding horizontal market power.

21. However, to prevent underreporting of load-serving entities' capacity in future updated market power analyses, and thereby affecting the screen results for non-affiliates within the same region, the Commission provides direction on how load-serving

entities filing market power studies should account for both remote generation resources and long-term firm power purchases from generation resources located outside their home balancing authority area when performing the indicative screens. Specifically, load-serving entities should add their share of remote generation to Installed Capacity (Line A of the market share screen and the pivotal market share screen) and the amount of any long-term firm purchases into Long-term Firm Purchases (Line B of the market share screen and the pivotal supplier screen) of the indicative screens, when load-serving entities have long-term firm transmission rights associated with these resources. Load-serving entities should not include these amounts in Imported Power (Line D of the market share screen and the pivotal supplier screen) unless these resources do not have long-term firm reservations or rights to import that power.

2. Vertical Market Power

22. 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 open access transmission tariff (OATT) on file or that the seller has received waiver of the OATT requirement before granting a seller market-based rate authorization.¹⁷ Such waivers can be relied upon to satisfy the lack of transmission market power prong of the market-based rate criteria.¹⁸ If a seller that previously received waiver of the OATT requirement seeks to continue to rely on that waiver to satisfy the vertical market power part of the analysis, it must make an affirmative statement that it previously received such a waiver, that such waiver remains appropriate, and the basis for that claim.¹⁹

23. Vantage Wind states that it does not own or control transmission facilities, other than the limited interconnection facilities that it owns as part of its generation project to deliver its power to its power purchasers. Vantage Wind further states that none of Polsky Energy, Invenergy Investment or their affiliates own or control transmission facilities in the United States other than limited interconnection facilities that Invenergy Investment's exempt wholesale generator subsidiaries (i) use to transmit their power from generation facilities that they own to their respective power

¹¹ *Id.* P 62.

¹² *Id.* PP 33, 62–63.

¹³ *Id.* P 38.

¹⁴ Remote generation refers to any generation capacity owned by a load-serving entity that is located outside of the load-serving entity's balancing authority area.

¹⁵ Order No. 697, FERC Stats. & Regs. ¶ 31,252, at P 38.

¹⁶ Puget's updated market power analysis was accepted on June 23, 2011. See *Puget Sound Energy, Inc.*, Docket No. ER99–845–020 (Jun. 23, 2011) (delegated letter order).

¹⁷ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408.

¹⁸ *Id.*

¹⁹ *Id.*

purchasers or (ii) permit third parties to use but because of the discrete nature of such interconnection facilities have received waivers from the Commission of open access transmission requirements.²⁰ Vantage Wind represents that such waivers remain appropriate because the facts and circumstances upon which they were originally granted have not changed.

24. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.²¹ 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, storage or distribution facilities; sites for 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).²² 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.²³ 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.²⁴

25. With regard to other barriers to entry, Vantage Wind states that it does not, nor does Invenergy Investment, Polsky Energy or their affiliates, own or control in the United States: (i) Intrastate natural gas transportation, storage or distribution facilities or companies that own or control such facilities, or (ii) coal resources or transportation facilities or companies that own or control such things. Moreover, Vantage Wind states that it and its affiliates do not own or control sites located within the Puget balancing authority area that could be used to impose barriers to market entry by other wholesale power suppliers. Vantage Wind states that it owns or has land

rights to the site for its generation facilities and that other affiliates of Invenergy Investment own, or may acquire in the future, certain property rights in land for the potential development of generation in places within in the United States including the Puget balancing authority area.

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

27. Based on Vantage Wind's representations, we find that Vantage Wind satisfies the Commission's requirements for market-based rate authority regarding vertical market power.

B. Reporting Requirements

28. Consistent with the procedures that the Commission adopted in Order No. 2001, an entity with market-based rates must electronically file an Electric Quarterly Report (EQR) with the Commission 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 longer) market-based power sales during the most recent calendar quarter.²⁵ Public utilities must file EQRs no later than 30 days after the end of the reporting quarter.²⁶

29. Additionally, Vantage 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.²⁷

30. Vantage Wind must also file updated market power analyses for all

regions in which it is designated as a Category 2 seller in compliance with the regional reporting schedule adopted in Order No. 697.²⁸ The Commission reserves the right to require an updated market power analysis at any time.²⁹

The Commission orders:

(A) Vantage Wind's updated market power analysis is hereby accepted for filing, as discussed in the body of this order.

(B) Vantage Wind is hereby directed to file an updated market analysis for all regions in which it is designated as a Category 2 seller in compliance with the regional reporting schedule adopted in Order No. 697.

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

Issued April 23, 2012.

By the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12778-004]

Fall Creek Hydro, LLC; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Major License.

b. *Project No.:* 12778-004.

c. *Date filed:* February 28, 2011.

d. *Applicant:* Fall Creek Hydro, LLC.

e. *Name of Project:* Fall Creek Dam Hydroelectric Project.

f. *Location:* The proposed project would be constructed at the existing U.S. Army Corps of Engineer's (Corps) Fall Creek Dam located on Fall Creek near the towns of Springfield and Eugene in Lane County, Oregon. The project would occupy 6.53 acres of Federal lands managed by the Corps.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

²⁰ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 882. See *Vantage Wind Energy, LLC*, Docket No. ER10-956-000, at 2 (May 26, 2010) (delegated letter order).

²¹ *Id.* P 853.

²⁰ Vantage Wind December 20 Filing at 10 (citing *Grand Ridge Energy, LLC*, 128 FERC ¶ 61,134 (2009), *Hardee Power Partners Limited*, 125 FERC ¶ 61,036 (2008), *Wolverine Creek Goshen Interconnection, LLC*, Docket No. ER06-267-000 (Jan. 13, 2006) (delegated letter order); *Hardee Power Partners Limited*, 114 FERC ¶ 61,131 (2006)).

²¹ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 440.

²² *Id.* P 447; Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

²³ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

²⁴ *Id.* P 446.

²⁵ 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 (2003). Attachments B and C of Order No. 2001 describe the required data sets for contractual and transaction information. Public utilities must submit EQRs to the Commission using the EQR Submission System Software, which may be downloaded from the Commission's Web site at <http://www.ferc.gov/docs-filing/eqr.asp>.

²⁶ The exact filing dates for these reports are prescribed in 18 CFR 35.10b (2011). Failure to file an EQR (without an appropriate request for extension), or failure to report an agreement in an EQR, 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.

²⁷ 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(a) (2011).