

168 FERC ¶ 61,089
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, Richard Glick,
and Bernard L. McNamee.

kWantix Trading Fund I, LP

Docket No. ER19-2199-000

ORDER GRANTING MARKET-BASED RATE AUTHORIZATION AND REQUEST
FOR WAIVERS

(Issued August 16, 2019)

1. In this order, we grant kWantix Trading Fund I, LP (Applicant) authority to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates, effective July 1, 2019, as requested. Also, as discussed below, we grant Applicant's request for waivers commonly granted to market-based rate sellers, except as noted herein.
2. Additionally, we find that Applicant meets the criteria for a Category 1 seller in all regions and is so designated.¹

¹ 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, 153 FERC ¶ 61,065, 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, 119 FERC ¶ 61,295, at PP 848-850, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, 123 FERC ¶ 61,055, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, 125 FERC ¶ 61,326 (2008), *order on reh'g*, Order No. 697-C, 127 FERC ¶ 61,284 (2009), *order on reh'g*, Order No. 697-D, 130 FERC ¶ 61,206 (2010), *aff'd sub nom. Mont. Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011), *cert. denied sub nom. Public Citizen, Inc. v. FERC*, 567 U. S. 934 (2012).

I. Background

3. On June 18, 2019, Applicant filed an application pursuant to section 205 of the Federal Power Act (FPA)² and Part 35 of the Commission's regulations³ for market-based rate authority with an accompanying tariff providing for the sale of energy, capacity, and ancillary services at market-based rates.⁴

4. Applicant states that it is a Delaware limited partnership that is solely owned by kWantix, LLC, which is solely owned by Moody Aldrich Partners, LLC. Applicant states that three individuals each own ten percent or more of Moody Aldrich Partners, LLC and that no other individual or company owns ten percent or more of Moody Aldrich Partners, LLC. Applicant represents that it is an energy trader that plans to participate in the PJM Interconnection, L.L.C., Midcontinent Independent System Operator, Inc. (MISO), Electric Reliability Council of Texas, and other energy markets in the United States.⁵

II. Notice of Filing

5. Notice of the Application was published in the *Federal Register*,⁶ with interventions and protests due on or before July 9, 2019. Public Citizen, Inc. (Public Citizen) filed a motion to intervene and comments on July 5, 2019. Applicant filed an answer to Public Citizen's comments on July 15, 2019.

6. Notice of Applicant's request for blanket authorization under Part 34 of the Commission's regulations was separately published in the *Federal Register*,⁷ with interventions or protests due on or before July 9, 2019. None was filed.

² 16 U.S.C. § 824d (2012).

³ 18 C.F.R. pt. 35 (2018)

⁴ kWantix Trading Fund I, LP Jun. 18, 2019 Application (Application).

⁵ Application at 2-3.

⁶ 84 Fed. Reg. 30,707 (2019).

⁷ 84 Fed. Reg. 30,709 (2019).

III. Discussion

A. Procedural Matters

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2018), Public Citizen's timely, unopposed motion to intervene serves to make it a party to this proceeding.

8. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2018), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept Applicant's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

9. As discussed below, we grant Applicant's request for authorization to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates, and we accept its market-based rate tariff, effective July 1, 2019, as requested.⁸ We also grant Applicant's request for certain waivers and blanket authorization.

1. 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.⁹

a. 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.¹⁰ The

⁸ We note that Applicant 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 (OATT) requirements to offer ancillary services to its own customers. If Applicant 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, 144 FERC ¶ 61,056, at PP 200-202 (2013), *order on clarification*, Order No. 784-A, 146 FERC ¶ 61,114 (2014).

⁹ Order No. 697, 119 FERC ¶ 61,295 at PP 62, 399, 408, 440.

¹⁰ *Id.* P 62.

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.¹¹

12. Applicant states that it does not own or control any electric generation facilities. Further, Applicant represents that it does not have any affiliates that own or control any electric generation facilities. Applicant states that it therefore lacks generation market power.¹²

13. Based on Applicant's representations, we find that Applicant satisfies the Commission's requirements for market-based rate authority regarding horizontal market power.

b. Vertical Market Power

14. 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 such entity has received waiver of the OATT requirement under 18 C.F.R. § 35.28(d)(1) (2018) or satisfies the requirements for blanket waiver under 18 C.F.R. § 35.28(d)(2) (2018).¹³

15. Applicant states that it and its affiliates lack transmission market power and cannot bar entry to the market by virtue of transmission market power. Applicant represents that it does not own or control any electric transmission or distribution facilities, and further represents that it does not have any affiliates that own or control any electric transmission or distribution facilities.¹⁴

¹¹ *Id.* PP 33, 62-63.

¹² Application at 4.

¹³ See *Open Access and Priority Rights on Interconnection Customer's Interconnection Facilities*, Order No. 807, 150 FERC ¶ 61,211, 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 Part 37, and the Standards of Conduct requirements of Part 358, under certain conditions, for entities that own interconnection facilities). See also *Balko Wind Transmission, LLC*, 152 FERC ¶ 61,011, at PP 24-25 (2015).

¹⁴ Application at 4.

16. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.¹⁵ 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, and physical coal supply sources and ownership of or control over who may access transportation of coal supplies (collectively, inputs to electric power production).¹⁶ 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.¹⁷ 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.¹⁸

17. Applicant states that it does not own or control any facilities or resources that could be used to restrict market entry by competing power suppliers, marketers or brokers. Applicant further states that it does not have any affiliates that own or control any facilities or resources that could be used to restrict market entry by competing power suppliers, marketers or brokers. Additionally, Applicant represents that it does not own or control, or have an affiliate that owns or controls, any interstate or intrastate natural gas transportation, storage or distribution facilities; any sites for the construction of new generation capacity; fuel supplies, fuel supply transportation facilities or other essential resources or inputs that could be used to restrict market entry of any competing power suppliers. Applicant affirms that it, and any affiliates, have not erected, and will not erect, barriers to entry in any relevant market. Applicant states that therefore it cannot bar entry into the market, nor does Applicant have any affiliates that could bar entry into the market.¹⁹

¹⁵ Order No. 697, 119 FERC ¶ 61,295 at P 440.

¹⁶ Order No. 697-A, 123 FERC ¶ 61,055 at P 176. *See also* Order No. 816, 153 FERC ¶ 61,065 at PP 207-212.

¹⁷ Order No. 697, 119 FERC ¶ 61,295 at P 447. *See also* Order No. 816, 153 FERC ¶ 61,065 at PP 354, 356.

¹⁸ Order No. 697, 119 FERC ¶ 61,295 at P 446.

¹⁹ Application at 4-5.

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

2. Other Waivers, Approvals, and Authorizations

19. Applicant 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 FPA section 204²⁰ and Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability.

20. Applicant also requests a waiver of the Commission's prior notice requirement to allow its market-based rate tariff to become effective on July 1, 2019. Applicant states there is good cause for expedited consideration of its Application. It states that it seeks expedited treatment so that, as soon as possible, it can transact wholesale power sales. Applicant states that it only seeks the standard package of waivers that the Commission routinely grants to other similarly situated applicants, and the Application presents no market power issues.²¹

21. We grant the requested waivers and authorizations consistent with those granted to other entities with market-based rate authorizations.²² Notwithstanding the waiver of the

²⁰ 16 U.S.C. § 824c (2012).

²¹ Application at 8.

²² 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, 119 FERC ¶ 61,295 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. pt. 101 (2018) 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* Order No. 816, 153 FERC ¶ 61,065 at PP 345-350; *Seneca Generation, LLC*, 145 FERC

accounting and reporting requirements, the Commission expects applicants to keep their accounting records in accordance with generally accepted accounting principles. The Commission also waives the prior notice requirement and accepts the tariff with an effective date of July 1, 2019.

3. Reporting Requirements

22. Consistent with the procedures adopted by the Commission, Applicant must file an Electric Quarterly Report (EQR) with the Commission, consistent with Order Nos. 2001.²³ and 768.²⁴ Applicant must file EQRs electronically with the Commission consistent with the procedures set forth in Order No. 770.²⁵ Failure to timely and accurately file an EQR is a violation of the Commission's regulations for which Applicant may be subject to refund, civil penalties, and/or revocation of market-based rate authority.²⁶

¶ 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”)). *See also* Order No. 697, 119 FERC ¶ 61,295 at P 983 & n.1126 (granting waiver of subparts B and C of Part 35 of the Commission's regulations requiring the filing of cost-of-service information, except for 18 C.F.R. §§ 35.12(a), 35.13(b), 35.15 and 35.16)).

²³ *Revised Public Utility Filing Requirements*, Order No. 2001, 99 FERC ¶ 61,107, *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, 125 FERC ¶ 61,103 (2008).

²⁴ *Elec. Mkt. Transparency Provisions of Section 220 of the Fed. Power Act*, Order No. 768, 140 FERC ¶ 61,232 (2012), *order on reh'g*, Order No. 768-A, 143 FERC ¶ 61,054 (2013).

²⁵ *See Revisions to Electric Quarterly Report Filing Process*, Order No. 770, 141 FERC ¶ 61,120, at P 3 (2012) (citing Order No. 2001, 99 FERC ¶ 61,107 at P 31).

²⁶ The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2018). Forfeiture of market-based rate authority may require a new application

23. Additionally, Applicant 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

24. In Order No. 697, the Commission created two categories of sellers.²⁸ 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. 888²⁹); 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.³⁰ Sellers that do not fall into Category 1 are designated as Category 2 sellers and are required to file updated market power analyses.³¹

25. Applicant states that it (i) does not own or control, and is not affiliated with, any generation facilities; (ii) does not own or control, and is not affiliated with, any electric

for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

²⁷ 18 C.F.R. § 35.42 (2018); *see also Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 110 FERC ¶ 61,097, *order on reh'g*, 111 FERC ¶ 61,413 (2005).

²⁸ Order No. 697, 119 FERC ¶ 61,295 at P 848.

²⁹ *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), (cross-referenced at 75 FERC ¶ 61,080) *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, (cross-referenced at 78 FERC ¶ 61,220), *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).

³⁰ 18 C.F.R. § 35.36(a) (2018).

³¹ Order No. 697, 119 FERC ¶ 61,295 at P 850.

generation or transmission facilities; (iii) is not affiliated with a franchised public utility; and (iv) does not raise other vertical market power issues.³²

26. Based on Applicant's representations, we designate it as a Category 1 seller in all regions. The Commission reserves the right to require an updated market analysis at any time for any region.³³

4. Other Issues

27. In its comments, Public Citizen states that Applicant signed a Market Participant Agreement with MISO on January 16, 2015, and that a media report suggests that Applicant "was trading 'real-time power' beginning in January 2015."³⁴ Public Citizen states that based on the Market Participant Agreement and the media report, "it is unclear to Public Citizen whether [Applicant] charged federal electric rates prior to obtaining authorization to do so. If [Applicant] charged rates prior to obtaining FERC authorization, it should be subject to refund authority."³⁵

28. In its answer, Applicant states that its trading activity in MISO has been limited to virtual trades, and that the Commission already has access to Applicant's trading activity in MISO through the market monitor and access to MISO's data. Applicant states that "[a]s the Commission is aware, entities that trade solely virtual transactions in MISO are not required to obtain market-based rate authority."³⁶

29. In Order No. 697, the Commission stated that Commission-approved market rules for Regional Transmission Organizations (RTOs) and Independent System Operators (ISOs) address virtual trading³⁷ to ensure that no market power is exercised in such

³² Application at 6-7.

³³ Order No. 697, 119 FERC ¶ 61,295 at P 853.

³⁴ Public Citizen Comments at 1.

³⁵ *Id.* at 1-2.

³⁶ Applicant Answer at 1.

³⁷ "Virtual trading involves sales or purchases in an RTO/ISO day-ahead market that do not go to physical delivery. For example, virtual bidding allows entities that do not serve load to make purchases in the day-ahead market. Such purchases are subsequently sold in the real-time spot market. Likewise, entities without physical generating assets can make power sales in the day-ahead market that are subsequently purchased in the real-time market. By making virtual energy sales or purchases in the

trades. The Commission also noted that sellers engaging in activities like virtual trading sign a participation agreement with RTOs/ISOs which require them to abide by those market rules. The Commission explained that “[h]ence, the approval of the market rules in conjunction with approval of the generic participation agreement by the Commission constitutes authorization for public utilities to engage in ... virtual transactions, and no separate authorization is required under the FPA.”³⁸ Given that Applicant’s trading activity in MISO has been limited to virtual trades and because such sales do not require Commission authority, no refunds are due.

The Commission orders:

(A) Applicant’s market-based rate tariff is hereby accepted for filing, effective July 1, 2019, as discussed in the body of this order.

(B) 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.

(C) 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.

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

(E) 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 Applicant’s issuance of securities or assumptions of liability.

day-ahead market and settling these positions in the real-time, any market participant can arbitrage price differences between the two markets.” Order No. 697, 119 FERC ¶ 61,295 at P 921 n.1047.

³⁸ *Id.* P 921.

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

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.