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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

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INDIANA UTILITY
REGULATORY COMMISSION

VERIFIED JOINT PETITION OF DUKE)
ENERGY RENEWABLES WIND, LLC AND)
APEX WIND I, LLC FOR APPROVAL OF THE)
TRANSFER OF THE FRANCHISE, WORKS, OR)
SYSTEM OF THE SPARTAN WINDPOWER)
PROJECT TO APEX WIND I, LLC AND FOR)
CONTINUED DECLINATION OF THE)
COMMISSION'S JURISDICTION OVER THE)
SPARTAN WIND POWER PROJECT AND THE)
POWER GENERATING FACILITY)
TRANSFERRED TO APEX WIND I, LLC)
PURSUANT TO INDIANA CODE 8-1-2.5-5)

CAUSE NO. 44440

**VERIFIED JOINT PETITION FOR APPROVAL OF TRANSFER
AND CONTINUED DECLINATION OF JURISDICTION**

Joint Petitioners, Duke Energy Renewables Wind, LLC f/k/a DEGS Wind I, LLC (“Duke Wind”) and Apex Wind I, LLC (“Apex Wind”) (together, the “Joint Petitioners”), respectfully request that the Indiana Utility Regulatory Commission (“Commission”): (1) pursuant to Paragraph 4(e) of the Final Order in Cause No. 43781, approve the transfer of the assets (the “Project Assets”) comprising the Spartan Windpower Project (the “Project”) to Apex Wind, a wholly owned subsidiary of Apex Clean Energy Holdings, LLC; (2) find that Apex Wind possesses the technical, managerial, and financial capability to construct, own, operate and finance the Project and thus meets the criteria of the declination of jurisdiction outlined in the Commission’s Final Order in Cause No. 43781; (3) decline to exercise jurisdiction with respect to the requirement found in Indiana Code § 8-1-2-15 and 170 IAC 4-1-3 that records be kept within the State at the principal place of business of the public utility (or alternatively, approve keeping such records outside of the State); and (4) pursuant to Indiana

Code § 8-1-2.5-5 and the Commission's Order in Cause No. 43781, find that Apex Wind will continue to meet the criteria for succeeding to and succeeds to all of the terms and conditions of the Commission's previous Orders of declination of jurisdiction with respect to the Project, including but not limited to the authority to construct, own, operate and finance a wind generating facility. In support, Joint Petitioners state that:

1. **Background.** In 2009, DEGS Wind I, LLC (DEGS Wind I, LLC amended its Certificate of Formation on October 16, 2013 and changed its name to Duke Energy Renewables Wind, LLC) proposed to develop the Project in Newton County, Indiana. The Commission, in the March 3, 2010 Order in Cause No. 43781 ("Declination Order"), declined jurisdiction and authorized Duke Wind to construct and operate the Project.

2. **Legal Status.** Duke Wind is a limited liability company organized and existing under the laws of the State of Delaware. Duke Wind's principal place of business is at 550 South Tryon, Charlotte, North Carolina 28202. Duke Wind is a wholly owned subsidiary of Duke Energy Renewables, Inc. and Duke Energy Corporation is its ultimate parent.

3. **Legal Status.** Apex Wind I, LLC is a limited liability company duly organized and existing under the laws of the State of Delaware with its principal place of business at 310 4th Street N.E., Suite 200, Charlottesville, Virginia 22902. Apex Wind is a wholly owned subsidiary of Apex Clean Energy Holdings, LLC.

4. **Previous Declination of Commission Jurisdiction in Cause No. 43781.** In the Declination Order, the Commission determined that Duke Wind was a "public utility" under Indiana Code §§ 8-1-2-1 and 8-1-2.5-1 and an "energy utility" under Indiana Code § 8-1-2.5.2. However, pursuant to Indiana Code § 8-1-2.5-5, the Commission determined that it was in the public interest to decline to exercise its jurisdiction over Duke Wind, with the exception of a few

limited provisions that are detailed in the Declination Order, including Paragraph 4(e) of the Declination Order which provides in pertinent part that:

[A] third-party owner and operator may acquire the Project and succeed to [Duke Wind's] declination of jurisdiction, provided: (1) the Commission determines that the successor has the necessary technical, financial and managerial capability to own and operate the facility; and (2) the successor satisfies the same terms and conditions imposed on [Duke Wind] as set forth in this Order.

In the Declination, the Commission authorized Duke Wind to utilize certain rights and privileges of an Indiana public utility, namely the right to use public rights-of-way as a route for its transmission line, for collection system routes, overhead transmission line road crossings, and to make intersection improvements. Finally, the Commission exempted Duke Wind from the public utility fee prescribed by Indiana Code § 8-1-6-1 *et seq.* The Commission specifically retained its authority to regulate the sale of any electricity to any regulated Indiana retail electric utility; to examine Duke Wind's books, accounts, memoranda, contracts, and records; to require under Indiana Code § 8-1-2-83 that Duke Wind obtain prior Commission approval of certain transfers of Duke Wind franchise, works, or system; and to require annual reports under Indiana Code § 8-1-2-49.

5. **Requested Declination of Jurisdiction.** Apex Wind requests that the Commission decline to exercise its jurisdiction over Apex Wind. As Apex Wind will demonstrate in this Cause, Apex Wind will have the necessary technical, financial and managerial capability to own and operate the Project. In addition, Apex Wind agrees to continue to abide by all of the terms and conditions imposed on Duke Wind in the Declination Order, as they relate to the construction, ownership and operation of the Project.

6. The Joint Petitioners request that the Commission decline to exercise jurisdiction with respect to the requirement found in Indiana Code § 8-1-2-15 and 170 IAC 4-1-3 that public

utility records be kept within the State at the principal place of business of the public utility (or alternatively, approve the keeping of such records outside of the State).

7. **Requested Approval of Transfer to Apex Wind.** Pursuant to Paragraph 4(e) of the Final Order in Cause No. 43781, the Joint Petitioners request authority to transfer the Project Assets, held by Duke Wind to Apex Wind.¹ Granting the relief requested in this Joint Petition will facilitate development of the Project and will not delay construction and commercial operation of the Project.

8. **Federal Regulatory Status; Power Sales.**

a. **Service Only to Wholesale Power Market.** The Project is designed to serve the wholesale power market exclusively, and Apex Wind will not recover the costs of the Project from Indiana ratepayers through rate base, rate of return or comparable methods typically associated with retail public utility rates. Apex Wind will not have any franchise, service territory, or retail customers or make any retail sales, in Indiana or elsewhere. Apex Wind will not otherwise dedicate or hold itself out to serve directly the electric needs of the general public; however, the Project will provide significant public benefits, such as job creation and local economic development. The public interest is also served by the production of emission-free power through the use of wind turbines and will further Indiana's strategic energy plan. The project also will benefit the public in Indiana by efficiently adding electric generating capacity that, due to its proximity to the source of generation, will allow for a decrease in the cost of transmitting power over long distances.

¹ Duke Wind will cause the sale of all of the real estate leases and associated zoning and other permits running with the land ("Leases") to Apex Wind before the end of 2013. If the Commission does not approve the transfer of the Project Assets to Apex Wind, the parties have entered into an agreement pursuant to which Duke Wind will buy back the Leases from Apex Wind.

b. **Limited Transmission Activities.** Apex Wind will not engage in the transmission of electric power, other than that which is incidental to the ownership and operation of the Project.

9. **Requested Relief.** Apex Wind has satisfied and agreed to abide by all of the terms and conditions of the Declination Order. In light of this and the other facts and circumstances discussed above and to be presented in testimony, the Joint Petitioners respectfully request that the Commission determine that: (1) pursuant to Paragraph 4(e) of the Final Order in Cause No. 43781, the transfer of Duke Wind's interest in the Project Assets to Apex Wind is reasonable and in the public interest; (2) Apex Wind has the necessary technical, financial, and managerial capability to construct, own, operate and finance the Project; (3) either the Commission should decline to exercise its jurisdiction over the location of the Joint Petitioners' books and records, or the Commission should approve the keeping of such records outside the State; (4) upon completion of the transfer, Apex Wind will succeed to the Previous Declination and Authorizations as they pertain to the Project; and (5) such other relief should be granted as may be reasonable and appropriate.

10. **Applicable Law.** The Joint Petitioners believe that Indiana Code §§ 8-1-2.5-5, 8-1-2-83 and/or 8-1-2-84, 8-1-2-49, 8-1-2-15, and 170 IAC 4-1-3 are or may be applicable to this proceeding.

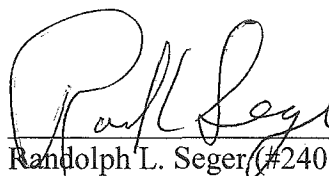
11. **Attorneys.** Counsel for Apex Wind is E. Sean Griggs, Barnes & Thornburg LLP, 11 South Meridian Street, Indianapolis, Indiana 46204, who is duly authorized to accept service of papers in this Cause on behalf of Apex Wind. Counsel for Duke Wind is Randolph Seger and Brenda DeVries of the law firm of Bingham Greenebaum Doll LLP, 2700 Market Tower, 10 West Market Street, Indianapolis, Indiana 46204, who are duly authorized to accept service of papers in this Cause on behalf of Duke Wind.

12. Procedural Schedule and Expedited Treatment. Joint Petitioners seek approval from the Commission on an expedited basis. To expedite this matter, Joint Petitioners respectfully request that the Commission set this matter for evidentiary hearing and give public notice thereof as soon as is practical.

WHEREFORE, Joint Petitioners respectfully request that the Commission:

- a. pursuant to Paragraph 4(e) of the Final Order in Cause No. 43781, approve the transfer of the Project Assets to Apex Wind;
- b. determine that Apex Wind has the technical, managerial, and financial capability to construct, own, operate and finance the Project and meet the criteria described in the Previous Declination Order and Authorizations for continued declination of jurisdiction over the Project;
- c. decline to exercise jurisdiction over, or approve, the keeping of Joint Petitioners' public utility books and records outside of the State;
- d. grant other such relief as may be appropriate in the premises.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Randolph L. Seger", written over a horizontal line.

Randolph L. Seger (#240-49)

Brenda K. DeVries (28229-49)

BINGHAM GREENEBAUM DOLL LLP

2700 Market Tower

10 West Market Street

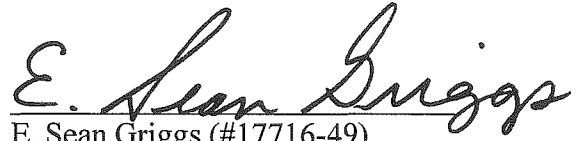
Indianapolis, Indiana 46204

(317) 635-8900 – telephone

(317) 236-9907 – facsimile

*Attorneys for Duke Energy Renewables Wind,
LLC*

Respectfully submitted,

A handwritten signature in black ink that reads "E. Sean Griggs". The signature is written in a cursive style with a horizontal line underneath the name.

E. Sean Griggs (#17716-49)

BARNES & THORNBURG LLP

11 South Meridian Street

Indianapolis, Indiana 46204

(317) 236-1313 – telephone

(317) 231-7433 – facsimile

Attorney for Apex Wind I, LLC

VERIFICATION

I affirm under penalties for perjury that the representations regarding Duke Energy Renewables Wind, LLC are true to the best of my knowledge, information, and belief.


Signed: 
Duke Energy Renewables Wind, LLC

Printed: GREGORY C WOLF

Date: 12-30-2013

VERIFICATION

I affirm under penalties for perjury that the representations regarding Apex Wind I, LLC
are true to the best of my knowledge, information, and belief.

Signed: 
Apex Wind I, LLC

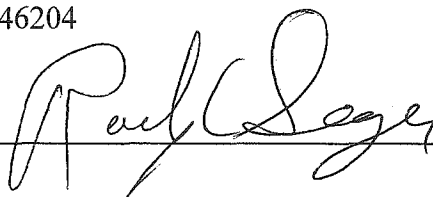
Printed: Mark Goodwin

Date: 12/27/2013

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Verified Joint Petition has been served upon the following counsel by electronic service or hand delivery this 30th day of December, 2013.

Office of the Utility Consumer Counselor
PNC Center
115 W. Washington Street
Suite 1500 South
Indianapolis, Indiana 46204



A handwritten signature in cursive script, appearing to read "Paul Seeger", is written over a horizontal line.