

147 FERC ¶ 62,003
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Northern States Power Company – Minnesota
Border Winds Energy, LLC
Pleasant Valley Wind, LLC

Docket No. EC14-50-000

ORDER AUTHORIZING DISPOSITION
OF JURISDICTIONAL FACILITIES AND MERGER

(Issued April 1, 2014)

On January 30, 2014, as amended on February 7, 2014, Northern States Power Company – Minnesota (NSP Minnesota), Border Winds Energy, LLC (Border Winds), and Pleasant Valley Wind, LLC (Pleasant Valley) (collectively, Applicants) filed an application pursuant to section 203(a)(1)(A) of the Federal Power Act (FPA)¹ requesting authorization for the disposition of jurisdictional facilities that will result from NSP Minnesota's acquisition of Border Winds and Pleasant Valley, and the merger of Border Winds and Pleasant Valley into NSP Minnesota (Transactions). Applicants request that the Commission authorize the disposition of the jurisdictional facilities contemplated by the Transactions for a period of 3 years to allow sufficient time for satisfaction of all conditions precedent to the Purchase and Sales Agreements governing the Transactions. The jurisdictional facilities involved in the Transactions are interconnection facilities, contracts, books, and records associated with the Border Winds and Pleasant Valley Facilities, and the market-based rate tariffs of Border Winds and Pleasant Valley.

Applicants state that NSP Minnesota is one of four Xcel Energy Inc. utility operating companies. NSP Minnesota is a corporation created and organized under the laws of the State of Minnesota, with its principal office in the City of Minneapolis, Minnesota. According to Applicants, NSP Minnesota and Northern States Power Company – Wisconsin (jointly with NSP Minnesota, NSP Companies) operate as a single integrated system and local balancing authority area. The NSP Companies are vertically integrated transmission-owning members of the Midcontinent Independent System Operator, Inc. (MISO). Together, the NSP Companies had a 2013 peak load of approximately 9,500 megawatts (MW), and have over 7,200 miles of transmission lines and approximately 550 substations (transmission and distribution). As of year-end 2013, NSP Minnesota's net production plant was approximately \$4.1 billion and net

¹ 16 U.S.C. § 824b (2006).

transmission plant was approximately \$1.6 billion. The Commission has granted the NSP Companies authority to make sales in interstate commerce, including sales into the MISO day-ahead and real-time energy and ancillary services market at market based rates.

According to Applicants, Border Winds is a limited liability company formed to construct and own a 150 MW wind power project and related facilities in North Dakota (Border Winds Facility). Construction of the Border Winds Facility is scheduled to commence in 2014. Applicants expect that the Border Winds Facility will have a capacity of 150 MW and, once operational, will produce approximately 620 gigawatt-hours (GWh) of electric energy annually. The Border Wind Facility will be interconnected with the NSP transmission system pursuant to the MISO Open Access Transmission Tariff (MISO Tariff). Applicants submit that Border Winds owns no other electric generating assets or transmission assets and has no other ownership interests in electric facilities.

Applicants state that Border Winds is a subsidiary of RES America Development, Inc., a Delaware corporation, which owns 90 percent of Border Winds, and RES America Investments, a Delaware corporation, which owns 10 percent of Border Winds (collectively, RES Americas). The owners of Border Winds are wholly-owned subsidiaries of Renewable Energy Systems Americas, Inc. Applicants state that, with the exception of two wind farms located in the Electric Reliability Council of Texas region, Renewable Energy Systems Americas, Inc. does not own and is not affiliated with any entity that currently owns generation or transmission facilities in the United States.

Applicants state that on December 17, 2013, Border Winds filed a Notice of Self-Certification of Exempt Wholesale Generator (EWG) Status with the Commission notifying the Commission of its status as an EWG. On January 8, 2014, Border Winds submitted an application for market-based rate authorization and accompanying market-based rate tariff that Border Winds proposes to govern the sales of the output of the Border Winds Facility. That application is pending Commission action in Docket No. ER14-965-000.

According to Applicants, Pleasant Valley is a limited liability company formed to construct and own a 200 MW wind power project and related facilities at a site in Minnesota (Pleasant Valley Facility, and jointly with the Border Winds Facility, Facilities). Applicants expect construction of the Pleasant Valley Facility to commence in 2014, and that the Pleasant Valley Facility will produce approximately 795 GWh of electric energy annually. The Pleasant Valley Facility will be interconnected with MISO. Applicants submit that Pleasant Valley owns no other electric generating assets or transmission assets and has no other ownership interests in electric facilities.

Pleasant Valley is also a subsidiary of RES America Development, Inc., which owns 90 percent of Pleasant Valley, and RES America Investments, which owns 10

percent of Pleasant Valley. The owners of Pleasant Valley are wholly-owned subsidiaries of Renewable Energy Systems Americas, Inc.

Applicants state that on December 17, 2013, Pleasant Valley filed a Notice of Self-Certification of EWG Status with the Commission notifying the Commission of its status as an EWG. On January 8, 2014, Pleasant Valley submitted an application for market-based rate authorization and accompanying market-based rate tariff that Pleasant Valley proposes to govern the sales of the output of the Pleasant Valley Facility. That application is pending Commission action in Docket No. ER14-964-000.

Applicants state that pursuant to Minnesota state law, NSP Minnesota is required to generate or procure sufficient electricity generated by an eligible energy technology so that at least 30 percent of the NSP Minnesota's total retail electric sales in Minnesota are generated by renewable resources by 2020. At least 25 percent of retail sales must be met with electricity from wind powered generation. These obligations are known as the Minnesota Renewable Energy Standards (Standards).

In February 2013, NSP Minnesota issued a Request for Proposals (RFP) for additional wind resources. Applicants state that as a result of the RFP, NSP Minnesota identified four proposals that were cost effective. Two of those proposals were for the Border Winds Facility and Pleasant Valley Facility.

Applicants state that acquisition of the Facilities will extend NSP Minnesota's compliance with the Minnesota Standards approximately three years, through 2021. According to Applicants, NSP Minnesota selected RES Americas to construct the two facilities on a "build-transfer" basis through the competitive bid process, since NSP Minnesota does not have significant experience in wind farm development.

Applicants state that the Transactions will be implemented in accordance with two Purchase and Sale Agreements between NSP Minnesota and RES Americas. According to the Purchase and Sale Agreements, NSP Minnesota will acquire the two facilities from RES Americas after the facilities have been placed into commercial service and all conditions precedent to the Purchase and Sale Agreements are satisfied. Immediately upon closing of NSP Minnesota's acquisition of the limited liability company interests of Border Winds and Pleasant Valley, both Border Winds and Pleasant Valley will merge into NSP Minnesota. NSP Minnesota will be the surviving entity of each of these mergers, and Border Winds and Pleasant Valley will cease to exist as of the effective date of their merger into NSP Minnesota. As utility-owned facilities, Border Winds and Pleasant Valley will not operate as EWGs upon their merger into NSP Minnesota.

Applicants state that pursuant to the mergers of Border Winds and Pleasant Valley into NSP Minnesota, the latter will, by operation of law, acquire all of Border Winds' and Pleasant Valley's rights and assets, will assume all of Border Winds' and Pleasant

Valley's liabilities and other obligations, and will take direct ownership of the Facilities, together with related interconnection facilities and books and records. Because Applicants do not expect the Facilities to become operational until late 2015, Applicants request that the Commission's authorization of the Transactions remain effective for no less than three years from the date of the Commission's order authorizing the Transactions.²

Applicants state that the Transactions are consistent with the public interest because they will have no adverse impact on competition, rates, or regulation and will not result in cross-subsidization or the pledge or encumbrance of utility assets for the benefit of an associate company.

Applicants state that the Transactions do not raise any horizontal market power concerns in the MISO market, the only market relevant to the Transactions, where the facilities are located. The Border Winds Facility and Pleasant Valley Facility collectively will represent only 0.2 percent of the installed capacity in the MISO market, and the NSP Companies' post-transaction share of the total installed capacity in the MISO market will equal approximately 6.3 percent. Applicants performed a "2AB"³ analysis to determine the extent to which the proposed Transaction will result in a change in the Herfindahl-Hirschman Index (HHI). Applicants state that applying the 2AB method in the instant case demonstrates that the proposed Transaction results in a change in market concentration (as measured by the HHI) of 2.42 points. Applicants thus conclude that the Transactions will not have an adverse impact with respect to horizontal market power.

Applicants state that the Transactions do not present any vertical market power concerns. The Transactions provide for the disposition of certain generation facilities to be developed in 2014 and placed in service in 2015, but do not result in any vertical combination of upstream inputs to electric generation, such as transmission facilities or natural gas pipelines, with downstream generating capacity. As is the case with other NSP Minnesota assets, the generating facilities to be transferred following their development will remain subject to the functional control of the MISO, and will be subject to the requirements of MISO pursuant to the MISO Tariff. Applicants state that

² See *The Connecticut Light and Power Company and The United Illuminating Company*, 134 FERC ¶ 62,118, (February 7, 2011), *EFS Keenan II, LLC, et al.*, 132 FERC ¶ 62,202 (September 29, 2010), *Calpine Eastern Corporation, et al.*, 109 FERC ¶ 62,158 (December 3, 2004), and *Caprock Wind LLC*, 109 FERC ¶ 62,042 (October 21, 2004).

³ Denoting NSP's share as "a" percent, and Border Winds' plus Pleasant Valley's share as "b" percent, their contribution to the HHI pre-transaction is $a^2 + b^2$ and post-transaction it is $(a+b)^2$. Since $(A+B)^2$ equals $a^2 + b^2 + 2ab$, the increase in the HHI is $2ab$. *Horizontal Merger Guidelines*, 57 Fed. Reg. at 41,558 n.18.

the Transactions proposed herein do not involve inputs to electric generation. In addition, with the exception of distribution lines interconnecting certain NSP Minnesota system generation to non-affiliated interstate natural gas pipelines, NSP Minnesota natural gas assets are used to provide retail gas distribution service and do not provide NSP Minnesota with the ability to erect barriers to entry. NSP Minnesota does not own or control any sites for generation capacity development that raise entry barrier concerns. Further, NSP Minnesota does not control coal supplies or barges and rail cars used for transportation of coal supplies except rail cars leased solely to deliver fuel for coal-fired generating units.

Applicants state that the Transactions will have no adverse impact on transmission service rates. The Facilities subject to the Transactions are generation facilities rather than transmission facilities. Transmission service offered for NSP Minnesota's existing transmission assets is offered under the MISO Tariff on file with the Commission. The cost of interconnection facilities associated with the Border Winds Facility and/or the Pleasant Valley Facility will be recorded as generator outlet (transmission serving generation) costs and not included in MISO transmission rates. The cost of transmission facilities to be constructed and owned by the MISO transmission owners to whom the Facilities will interconnect will be directly assigned to the Facilities or recovered from transmission customers pursuant to the terms of the MISO Tariff.

Similarly, Applicants maintain that the Transactions will have no adverse effect on long-term requirements customers. Applicants state that as of December 31, 2013, NSP Minnesota provides wholesale requirements service to no cooperative or municipal requirements customers. Applicants note further that NSP Wisconsin does not serve any wholesale requirements customers. Since neither NSP Minnesota nor NSP Wisconsin has any wholesale requirements customers, Applicant submit that the Transactions will have no adverse effect on long-term requirements customers. Further, any future wholesale sales of electrical energy from the Facilities will be made under Border Winds' and Pleasant Valley's market-based rate authorization, contingent on Commission approval.

Applicants state that the Transactions will not result in a regulatory gap and will have no adverse effect on federal or state regulation. Following the closing of the Transaction, NSP Minnesota will continue to be regulated by the Commission in the same manner as it is today. Further, the Transactions are subject to the regulatory approval of the Minnesota Public Utilities Commission (Minnesota PUC) and the North Dakota Public Service Commission (North Dakota PSC), the state commissions with jurisdiction over NSP Minnesota. Applicants state that such review ensures that any potential effect of the Transactions on state regulation will be fully evaluated. Applicants state that the Transactions will not affect the ability of the Commission or state regulators to regulate the facilities.

Applicants state that the Transactions pose no concerns with respect to cross-subsidization. Applicants state that the Minnesota PUC has reviewed and approved the Transactions, and the North Dakota PSC is currently reviewing the Transactions. Applicants state that the Minnesota PUC has regulatory protections against inappropriate cross-subsidization among affiliated interests by captive customers. Accordingly, the Applicants claim that the Transactions fall into the “safe harbor” of transactions that are subject to review by a state commission to prevent inappropriate cross-subsidization.

Nevertheless, Applicants submit that, based on facts and circumstances known to it or that are reasonably foreseeable, the Transactions will not result in, at the time of the Transactions or in the future, cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional facilities for the benefit of an associate company, including: (1) any transfer of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company; (2) any new issuance of securities by a traditional public utility associate company that has captive customers or that owns, or provides transmission service over, jurisdictional transmission facilities, for the benefit of an associate company; (3) any new pledge or encumbrance of assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; or (4) any new affiliate contracts between a non-utility associate company and a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, other than non-power goods and service agreements subject to review under sections 205 and 206 of the FPA.

The filings were noticed on January 31, 2014, and February 10, 2014, with comments, protests or interventions were due on or before February 20, 2014, and February 28, 2014, respectively. None were received. Notices of intervention and unopposed timely filed motions to intervene are granted pursuant to the operation of Rule 214 of the Commission’s Rules of Practice and Procedure (18 C.F.R. § 385.214 (2013)). Any opposed or untimely filed motion to intervene is governed by the provisions of Rule 214.

Order No. 652 requires that sellers with market based rate authority 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.⁴ The

⁴ *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 70 Fed. Reg. 8,253 (Feb. 18, 2005), FERC Stats. & Regs. ¶ 31,175, *order on reh’g*, 111 FERC ¶ 61,413 (2005).

foregoing authorization may result in a change in status. Accordingly, Applicants are advised to make a change in status filing as required by Order No. 652, if necessary. In addition, Applicants shall make appropriate filings under section 205 of the FPA, as necessary, to implement the Transactions.

When a controlling interest in a public utility is acquired by another company, whether a domestic company or a foreign company, the Commission's ability to adequately protect public utility customers against inappropriate cross-subsidization may be impaired absent access to the parent company's books and records. Section 301(c) of the FPA gives the Commission authority to examine the books and records of any person who controls, directly or indirectly, a jurisdictional public utility insofar as the books and records relate to transactions with or the business of such public utility. The approval of the Transaction is based on such examination ability.

After consideration, it is concluded that the Transactions are consistent with the public interest and are authorized, subject to the following conditions:

- (1) The Transactions are authorized upon the terms and conditions and for the purposes described above and in the application for, if there are no changes in the facts as stated in the application, a period of up to three years from the date of this order;
- (2) The foregoing authorization is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates, or determinations of cost, or any other matter whatsoever now pending or which may become before the Commission;
- (3) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted;
- (4) The Commission retains authority under sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate;
- (5) If the Transactions result in changes in the status or the upstream ownership of Applicants' affiliated qualifying facilities, if any, an appropriate filing for recertification pursuant to 18 C.F.R. § 292.207 (2013) shall be made;
- (6) Applicants shall make the appropriate filings under section 205 of the FPA, as necessary, to implement the Transaction;
- (7) Applicants must inform the Commission of any change in circumstances

that would reflect a departure from the facts the Commission relied upon in authorizing the Transactions within 10 days of the occurrence of the change in circumstances ; and

- (8) Applicants shall notify the Commission within 10 days of the dates that the disposition of jurisdictional facilities under the Transactions have been consummated.

This action is taken pursuant to the authority delegated to the Director, Division of Electric Power Regulation - West, under 18 C.F.R. § 375.307 (2013). 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 (2013).

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

Document Content(s)

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