

155 FERC ¶ 62,026
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Prairie Breeze Wind Energy II LLC
Prairie Breeze Wind Energy III LLC

Docket No. EC16-72-000

ORDER AUTHORIZING DISPOSITION
OF JURISDICTIONAL FACILITIES

(Issued April 11, 2016)

On February 16, 2016, Prairie Breeze Wind Energy II LLC (Prairie Breeze II) and Prairie Breeze Wind Energy III LLC (Prairie Breeze III) (collectively, Applicants) filed an application under section 203(a)(1) of the Federal Power Act (FPA)¹ requesting authorization for the disposition of jurisdictional facilities. Specifically, TerraForm IWG Acquisition Holdings III, LLC (TerraForm IWG Acquisition III) will acquire from Invenergy Wind Global LLC (IWG) indirect controlling ownership interests in each of Applicants (Proposed Transaction). The affected jurisdictional facilities consist of market-based rate tariffs, rate schedules, power sales agreements, interconnection facilities, and related book and records.

Applicants are exempt wholesale generators with market-based rate authority. Prairie Breeze II owns and operates a 73 megawatt (MW) wind generation project located near Petersburg, Nebraska (Prairie Breeze II Project). Prairie Breeze III is constructing, and will own and operate, a 35.8 MW wind generation project that will be located also near Petersburg, Nebraska (Prairie Breeze III Project). Both the Prairie Breeze II and Prairie Breeze III Projects are situated within the Southwest Power Pool, Inc. (SPP) market, and Applicants represent that the output from both facilities is fully committed pursuant to long-term agreements with unaffiliated entities.

Prairie Breeze II is wholly owned by Prairie Breeze Expansion Holdings LLC (PBE Holdings). Prairie Breeze III is wholly owned by IWG, but Applicants represent that prior to the closing on the Proposed Transaction, will be owned by PBE Holdings. PBE Class B Holdings owns 100 percent of the Class B controlling membership interests in PBE Holdings. BAL Investment & Advisory, Inc. owns the non-controlling Class A membership interests in PBE Holdings. PBE Class B Holdings is wholly owned by IWG, which, in turn, is indirectly wholly owned by Invenergy Wind LLC (Invenergy Wind). Invenergy Wind is an indirect, partially owned subsidiary of Invenergy Investment

¹ 16 U.S.C. § 824b (2012).

Company LLC (Invenergy Investment), which is owned by Polsky Energy Investments LLC (Polsky Energy). Polsky Energy is indirectly majority owned by Michael Polsky.

TerraForm IWG Acquisition III is an indirect subsidiary of SunEdison, Inc. (SunEdison), a publicly traded company that develops wind and solar energy projects and sells photovoltaic energy solutions. According to Applicants, affiliates of SunEdison (SunEdison Affiliates) own or control approximately 549 MW of generation capacity within the SPP market. Applicants represent that all of the output from these facilities is committed under long term agreements with unaffiliated entities. In addition, Applicants state that none of TerraForm IWG Acquisition III or any of its affiliates own or control transmission facilities, other than limited interconnection facilities, or own or control inputs to electric power production.

The Proposed Transaction involves an Amended and Restated Purchase and Sale Agreement between IWG and TerraForm IWG Acquisition III. According to Applicants, TerraForm IWG Acquisition III will acquire from IWG all of the Class A membership interests in PBE Class B Holdings, which will represent 90.1 percent of equity interests, and will become the managing member of PBE Class B Holdings. IWG will directly own all of the Class B membership interests in PBE Class B Holdings, which will equate to 9.9 percent of the equity interests in PBE Class B Holding.

Applicants state that the Proposed Transaction is consistent with the public interest and will have no adverse effect on competition, rates, or regulation. With respect to horizontal market power, Applicants state that the Proposed Transaction raises no concerns. Applicants state that they will no longer be affiliated with Invenergy Investment because IWG will own less than 10 percent of their ownership interests. Applicants further state that all of the output from the Prairie Breeze II Project, Prairie Breeze III Project and capacity owned by the SunEdison Affiliates is fully committed under long-term agreements with unaffiliated entities.

With respect to vertical market power, Applicants state that there are no concerns. Applicants state that, other than limited interconnection facilities, neither they nor PBE Class B Holdings own or control any transmission facilities in the SPP market, nor do they own or control natural gas transmission, storage or distribution assets or companies. Applicants further state that neither TerraForm IWG Acquisition III nor any of the SunEdison Affiliates own transmission facilities, other than limited interconnection facilities, or other upstream relevant products.

With respect to rates, Applicants state that the Proposed Transaction raises no concerns. Applicants state that all of the wholesale sales of electric energy, capacity and ancillary services by Applicants will be made pursuant to their respective market-based rate authority. Applicants add that they do not have captive wholesale customers nor do that they have transmission customers.

With respect to regulation, Applicants state that the Proposed Transaction raises no concern. Applicants state they will continue to be regulated by the Commission to the same degree as before the Proposed Transaction. In addition, Applicants state that the Proposed Transaction will not impair the ability of any state authorities to regulate retail sales because they do not make any retail sales subject to the jurisdiction of a state commission.

Applicants state that, based on facts and circumstances known to them or that are reasonably foreseeable, the Proposed Transaction will not result in, at the time of the closing or in the future, cross-subsidization of a non-utility associate company or the pledge or encumbrance of assets for the benefit of an associate company. Specifically, Applicants state that the Proposed Transaction does not involve a franchised utility with captive customers and will not result in: (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 contract 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 filing was noticed on February 16, 2016, with comments, protests, or interventions due on or before March 8, 2016. None were received.

Information and/or systems connected to the bulk system involved in this transaction may be subject to reliability and cybersecurity standards approved by the Commission pursuant to FPA section 215. Compliance with these standards is mandatory and enforceable regardless of the physical location of the affiliates or investors, information database, and operating systems. If affiliates, personnel or investors are not authorized for access to such information and/or systems connected to the bulk power system, a public utility is obligated to take the appropriate measures to deny access to this information and/or the equipment/software connected to the bulk power system. The mechanisms that deny access to information, procedures, software, equipment, etc., must comply with all applicable reliability and cybersecurity standards. The Commission, North America Electric Reliability Corporation or the relevant regional entity may audit compliance with reliability and cybersecurity standards.

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 Proposed Transaction is based on such examination ability.

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.² To the extent that a transaction authorized under FPA section 203 results in a change in status, sellers that have market-based rates are advised that they must comply with the requirements of Order No. 652.

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

- (1) The Proposed Transaction is authorized upon the terms and conditions and for the purposes set forth in the application;
- (2) Applicants must inform the Commission of any material change in circumstances that departs from the facts or representations that the Commission relied upon in authorizing the Proposed Transaction within 30 days from the date of the material change in circumstances;
- (3) 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 costs, or any other matter whatsoever now pending or which may come before the Commission;
- (4) 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;
- (5) If the Proposed Transaction results in changes in the status or upstream

² 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).

ownership of Applicants' affiliated qualifying facilities, an appropriate filing for recertification pursuant to 18 C.F.R. § 292.207 (2015) shall be made;

- (6) The Commission retains authority under section 203(b) and 309 of the FPA to issue supplemental orders as appropriate;
- (7) Applicants shall make appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transaction; and
- (8) Applicants shall notify the Commission within 10 days of the date that the Proposed Transaction has 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 (2015). 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 (2015).

Steve P. Rodgers, Director
Division of Electric Power
Regulation – West