

155 FERC ¶ 62,050
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Passadumkeag Windpark, LLC

Docket No. EC16-86-000

ORDER AUTHORIZING DISPOSITION
OF JURISDICTIONAL FACILITIES

(Issued April 20, 2016)

On March 11, 2016, Passadumkeag Windpark, LLC (Applicant) filed an application under section 203(a)(1)(A) of the Federal Power Act (FPA)¹ requesting Commission authorization for the transfer and sale of its membership interests held by Quantum Wind Acquisition I, LLC (Quantum Wind) to Southern Renewable Energy, Inc. (Southern Renewable Energy or Buyer) (Proposed Transaction). The jurisdictional facilities associated with the Proposed Transaction are Applicant's market-based rate tariff, interconnection facilities, wholesale power sales agreements, and related books and records.

Applicant is an exempt wholesale generator with market-based rate authority whose sole member is Quantum Wind. Applicant states it has constructed a 40 megawatt (MW) wind-powered electric generation facility (Facility) located near Bangor, Maine within the ISO New England Inc. (ISO-NE) market. Applicant further states that the Facility is expected to commence operations in April 2016 and will interconnect to the transmission system of ISO-NE. Applicant explains that it will sell approximately 38.46 MW from the Facility to an unaffiliated entity, Western Massachusetts Electric Company (WMECO) pursuant to a long-term power purchase agreement. Applicant adds that it will only own and operate limited interconnection facilities necessary to connect the Facility to the transmission grid, and that it will not own or operate any transmission facilities.

According to Applicant, Quantum Wind's sole and managing member is Quantum Funding, LLC (Quantum Funding), and more than 95 percent of Quantum Funding is owned by Quantum Power Investment Partners, which is majority owned by Quantum Energy Partners V, LP.

According to Applicant, Southern Renewable Energy is a wholly owned subsidiary of Southern Power Company (Southern Power). Southern Power is a wholly owned subsidiary of The Southern Company, a public utility holding company.

¹ 16 U.S.C. § 824b (2012).

Applicant indicates that Southern Power has no state or local franchised service rights and serves no requirements customers. Southern Power is not a transmission provider, and does not own or operate distribution facilities. Southern Power owns or controls, directly and indirectly, generation facilities in various markets in the U.S. Additionally Applicant states that Southern Power's ownership of these facilities is held directly and indirectly through Buyer and Southern Renewable Partnerships, LLC (SRP). Applicant states that the Buyer does not own and is not affiliated with any generation capacity located in the ISO-NE market.

According to Applicant, under the Proposed Transaction, Buyer will acquire 100 percent of the membership interests in Passadumkeag presently held by Quantum Wind. As a result, Passadumkeag will become a wholly owned subsidiary of Southern Renewable Energy. Quantum Wind will not hold any ownership interest in Passadumkeag following consummation of the Proposed Transaction.

Applicant states that the Proposed Transaction is consistent with the public interest and will have no adverse effect competition, rates or regulation, nor will it result in any cross-subsidization issues. With respect to competition, Applicant states that the Proposed Transaction raises no horizontal market power issues because it will not result in any new combination of electric generating assets that could have an impact on the competitive situation in the relevant market. Applicant states that Buyer is not affiliated with any generation capacity in the ISO-NE market. Further, Applicant states that the 40 MW Facility represents only 0.13 of the 29,923 MW of total capacity in the ISO-NE market which, according to Applicant, is *de minimis*. Therefore, according to Applicant, the Proposed Transaction does not raise any horizontal market power concerns.

Applicant also states that the Proposed Transaction raises no vertical market power concerns. Applicant represents that it and Buyer are not affiliated with entities that own or control transmission facilities except for the limited interconnection facilities necessary to connect generation facilities to the transmission grid. Applicant states that Buyer is affiliated with entities that own electric transmission facilities in the United States, however, those facilities are not located in the ISO-NE market. In addition, Applicant states that Passadumkeag, Buyer, and their respective affiliates do not own, operate, or control any inputs to electric generation, such as fuel supplies or fuel delivery systems in the relevant market. Therefore, according to Applicant, the Proposed Transaction does not raise any vertical market power concerns.

With respect to rates, Applicant states that it will continue to sell power pursuant to either its long-term power purchase agreement with WMECO or pursuant to its market-based rate authority. Additionally, Applicant states that it does not provide transmission service. Thus, according to Applicant, the Proposed Transaction will have no adverse effect on wholesale sales customers or transmission customers.

With respect to regulation, Applicant states that the Proposed Transaction will not impair the ability of the Commission or any state regulatory authority to regulate Applicant. Applicant adds that the Commission will continue to exercise the same jurisdiction over wholesale power sales by Applicant as it did prior to the Proposed Transaction. Applicant states that no facilities will be removed from the Commission's jurisdiction. Thus, according to Applicant, the Proposed Transaction will have no adverse effect on either federal or state regulation.

Applicant states that the Proposed Transaction will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company. Applicant states that the Proposed Transaction qualifies for the safe harbor for transactions that do not involve a franchised public utility with captive customers. Furthermore, Applicant represents that, based on facts and circumstances known to Applicant or that are reasonably foreseeable that the Proposed Transaction will not result in, at the time of the transaction or in the future: (1) any transfers 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 issuances 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 services agreements subject to review under sections 205 and 206 of the FPA.

This filing was noticed on March 16, 2016, with comments, protests or interventions due on or before April 1, 2016. None was filed.

Information and/or systems connected to the bulk system involved in these transactions 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) Applicant 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;

² *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).

- (5) If the Proposed Transaction results in changes in the status or upstream 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 sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate;
- (7) Applicant shall make any appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transaction; and
- (8) Applicant 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