

157 FERC ¶ 62,184

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Kelly Creek Wind, LLC

Docket No. EC17-30-000

ORDER AUTHORIZING DISPOSITION
OF JURISDICTIONAL FACILITIES

(Issued December 12, 2016)

On November 9, 2016, Kelly Creek Wind, LLC (Kelly Creek, or Applicant) filed an application under section 203(a)(1) of the Federal Power Act (FPA)¹ requesting authorization for the disposition of jurisdictional facilities resulting from the upstream disposition of 100 percent of the Class A non-managing membership interests in Kelly Creek, which is indirectly wholly owned by EDF Renewable Energy, Inc. (EDF-Renewables) to Allianz Renewable Energy Partners of America LLC (Allianz) (Proposed Transaction). The affected jurisdictional facilities consist of Applicant's market-based rate tariffs and associated books, records, and accounts.

Applicant states that Kelly Creek is a limited liability company with its principal place of business in Kankakee and Ford Counties, Illinois. Kelly Creek is developing and will own and operate an approximately 184 megawatt wind-powered electric generation facility and related generation interconnection facilities to be located in Ford and Kankakee Counties in Illinois (Facility). The Facility will be interconnected to the transmission system operated by PJM Interconnection L.L.C. (PJM). Kelly Creek is an exempt wholesale generator to which the Commission has granted market-based rate authorization. Applicant represents that the output of the Facility will be sold into the PJM market. Therefore, according to Applicant, the PJM market is the relevant geographic area for the Proposed Transaction.

According to Applicant, EDF Renewable Asset Holdings, Inc. (EDF-RE Holdings) directly owns 52.86 percent of Kelly Creek, and EDF-RE US Development, LLC (EDF-RE US) directly owns 47.14 percent of Kelly Creek. In turn, EDF-RE Holdings directly owns five percent of EDF-RE US, while EDF Renewable Development, Inc. (EDF Renewable Development) owns 95 percent of EDF-RE US. EDF Renewables wholly owns both EDF-RE Holdings and EDF Renewable Development.

¹ 16 U.S.C. § 824b (2012).

According to Applicant, EDF-Renewables is a holding company that is wholly owned by EDF Energies Nouvelles S.A., a French société anonyme, a company organized under the laws of France, which, in turn, is wholly owned by Électricité de France, S.A., which is owned by the French government (84.44 percent), with a small percentage of shares held by the current and former employees (approx. 1.85 percent) and the remaining shares owned by the public.

Applicant states that Allianz is an indirect, wholly-owned subsidiary of Allianz SE, a *societas Europaea* (Allianz Parent), which is based in Germany. According to Applicant, Allianz and Allianz Parent are not primarily engaged in energy-related business activities. Applicant represents that Allianz owns passive, tax equity interests in certain entities that own renewable electric generation facilities in the United States, none of which are located in the Eastern Interconnection. Further, apart from these interests, neither Allianz Parent, Allianz, nor any of their affiliates own, operate, or control: (1) any generation assets in the United States; (2) any electric transmission or distribution facilities in the United States; (3) any intrastate natural gas or oil transportation or distribution facilities in the United States; or (4) a traditional franchised public utility with captive customers in the United States.

Applicant states that, as a result of the Proposed Transaction, Allianz will acquire 100 percent of the Class A (tax equity) non-managing membership interests in Kelly Creek, for an amount in excess of \$10 million. To effectuate the tax equity investment in Kelly Creek, the interests held by EDF-RE Holdings will be converted to Class A non-managing membership interests and the EDF-RE US membership interests will be converted to Class B membership interests. All of the Class A non-managing interests will be sold to Allianz.

According to Applicant, the Proposed Transaction is consistent with the public interest because it will not have an adverse effect 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.

Applicant states that the Proposed Transaction will not have an adverse impact on competition. According to Applicant, the Proposed Transaction will not have an adverse impact on horizontal competition. Applicant states that Allianz will acquire only passive, non-managing Class A membership interests in the Applicant and will not acquire any day-to-day control over the Applicant as a result of the Proposed Transaction – *i.e.*, the Proposed Transaction will not result in a new affiliation for the Applicant and Allianz. Applicant submits that the Proposed Transaction does not raise any concerns with regard to vertical market power because the Proposed Transaction does not involve any transmission facilities other than the limited interconnection equipment necessary to connect the facilities of the Applicant to the grid, or any inputs to electricity products or

electric power production. Therefore, Applicant maintains that the Proposed Transaction will not have an adverse effect on market power.

Applicant states that the Proposed Transaction raises no concerns with regard to rates. Applicant states that the Proposed Transaction raises no concerns with regard to wholesale rates because Applicant will make all sales of electric energy pursuant to its market-based rate authorization. Further, the Proposed Transaction will not involve any transmission rates or transmission customers. Accordingly, Applicant submits that the Proposed Transactions will not have an adverse effect on wholesale ratepayers or transmission customers.

According to Applicant, the Proposed Transaction will not deprive the Commission or any other federal or state agency of jurisdiction it had prior to consummation of the Proposed Transaction, and the Commission will be able to exercise the same regulatory authority over the sale of electricity at wholesale that it did prior to the Proposed Transaction. Applicant adds that no facilities will be removed from the Commission's jurisdiction. Therefore, Applicant submits that the Proposed Transaction will not have an adverse effect on regulation.

Applicant states that the Proposed Transaction falls within one of the "safe harbors" established by the Commission for which detailed explanation and evidentiary support to demonstrate a lack of cross-subsidization is not required. Specifically, Applicants state that the Proposed Transactions fall within the "safe harbor" for transactions that do not involve a franchised public utility with captive customers.

Applicant verifies that, based on facts and circumstances known to it or that are reasonably foreseeable, the Proposed Transaction will not result in, at the time of the Proposed Transaction or in the future, any cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets 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 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 November 10, 2016, with comments, protests, or interventions due on or before November 30, 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 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).

- (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;
- (5) If the Proposed Transaction results in changes in the status or upstream ownership of Applicant's affiliated qualifying facilities, an appropriate filing for recertification pursuant to 18 C.F.R. § 292.207 (2016) shall be made;
- (6) The Commission retains authority under section 203(b) and 309 of the FPA to issue supplemental orders as appropriate;
- (7) Applicant shall make 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 (2016). 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 (2016).

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

Document Content(s)

EC17-30-000.DOC.....1-5