

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Cimarron Bend Wind Project I, LLC
Cimarron Bend Assets, LLC

Docket No. EC17-15-000

ORDER AUTHORIZING DISPOSITION OF JURISDICTIONAL FACILITIES

(Issued December 15, 2016)

On October 17, 2016, Cimarron Bend Wind Project I, LLC (CBI) and Cimarron Bend Assets, LLC (CB Assets) (collectively Applicants) filed an application under section 203(a)(1) of the Federal Power Act (FPA)¹ requesting authorization for a transaction in which Cimarron Bend Wind Holdings I, LLC (CB Holdings I) will dispose of and JPM Capital Corporation (JPMCC), BAL Investment & Advisory, Inc. (BALIA) or an affiliate, MetLife Capital, Limited Partnership (MetLife Capital) and Wells Fargo Wind Holdings LLC (Wells Fargo) (collectively, the Class B Equity Investors) will acquire 100 percent of the non-controlling, passive equity interests in CB Holdings I and, indirectly, in Applicants, each the owner of certain jurisdictional assets (Proposed Transaction). According to Applicants, the affected jurisdictional facilities consist of its own interconnection facilities, market-based rate tariff, a power purchase agreement, a generation tie line and certain other equipment used to transmit power to the integrated transmission grid, and associated books and records.

Applicants state that the Proposed Transaction may not require authorization under FPA section 203 (a)(1) but nevertheless seek prior authorization out of an abundance of caution. This order authorizes the Proposed Transaction without making any determination of jurisdiction.²

CBI owns a 200 megawatt (MW) wind power project currently under development in Clark County, Kansas (the Cimarron Wind Project). The Cimarron Wind Project is located within the Sunflower Electric Power Corporation service territory within the Southwest Power Pool (SPP) market, is expected to begin testing by late November 2016, and is expected to be completed by December 2016. According to Applicants, the SPP market is the relevant market area. According to Applicants, CBI is an exempt wholesale generator (EWG) and has been authorized by the Commission to sell energy, capacity, and ancillary services at market-based rates. CBI has committed to sell the entire output

¹ 16 U.S.C. § 824b (2012).

² *Ocean State Power*, 47 FERC ¶ 61,321 (1989).

of the Cimarron Wind Project under a 15 year power purchase agreement.

Applicants state that 100 percent of CBI's membership interests are owned by CB Holdings I. According to Applicants all membership interests in CB Holdings I are owned by Cimarron Bend Wind Holdings, LLC (CB Holdings). CB Holdings is currently designated as the Managing Member that has the right to control CB Holdings I on a day-to-day basis. CB Holdings is indirectly owned by Enel Green Power North America, Inc. (Enel NA) which, in turn, owns Enel Kansas, LLC (Enel Kansas), and is indirectly owned by Enel S.p.A, a joint-stock company under the laws of Italy. Enel NA's principal business is owning, operating, and developing hydroelectric and renewable energy generation facilities throughout the United States and Canada.

CB Assets is an EWG that has its principal place of business in Andover, Massachusetts. CB Assets owns a generation tie line and certain other equipment (Interconnection Line) currently under development that it will use solely to transmit power from the project substations associated with the Cimarron Wind Project and at least one, but not more than two other affiliated wind projects under development, for delivery to the point of interconnection with the integrated transmission grid. According to Applicants, CB Assets will deliver the Cimarron Wind Project's output to the integrated transmission system pursuant to the Shared Facilities Agreement among CBI, Cimarron Bend Wind Project II, LLC (Cimarron Wind Project II), Cimarron Bend Wind Project III, LLC (Cimarron Wind Project III), Enel Kansas and Cimarron Assets. Applicants state that 49 percent of CB Assets membership interests are owned by CBI, and 49 percent of CB Assets are owned by Cimarron Wind Project II. One percent of CB Assets membership interests are owned by Cimarron Wind Project III, which is wholly owned by Enel Kansas, and one percent is owned directly by Enel Kansas.

Applicants state that JPMCC is an indirect, wholly owned subsidiary of JPMorgan Chase & Co (JPMorgan Chase), a financial holding company. JPMCC and JPMorgan Chase are not primarily engaged in energy-related business activities and do not directly own or control any electric generating or transmission assets or generation output. None of JPMorgan Chase's affiliates own any electric transmission facilities or interstate natural gas pipeline facilities (other than the limited interconnection facilities). JPMorgan Chase does not control and is not affiliated with any company that controls any essential inputs to generation in the relevant market, including any intrastate pipeline facilities. JPMCC holds direct or indirect, passive, non-controlling interests in various companies that own and operate wind and solar powered electric generation facilities in the SPP market, but these companies are not affiliates of JPMCC.

Applicants state that neither JPMCC nor any subsidiary or affiliate or upstream owner of JPMCC directly or indirectly owns or controls (1) any operational electric generation in the SPP market, (2) any electric transmission or

distribution facilities in the SPP market, (3) any intrastate natural gas transportation, intrastate natural gas storage or distribution facilities; sites for generation capacity development, physical coal supply sources and ownership of or control over who may access transportation of coal supplies in the SPP market or (4) any franchised public utility in the United States.

Applicants state that BALIA is an indirect, wholly-owned subsidiary of Bank of America Corporation (Bank of America). Bank of America, is a bank holding company and a financial holding company. BALIA and Bank of America are not primarily engaged in energy-related business activities and do not directly own or control any electric generating or transmission assets or generation output. None of BALIA's affiliates own any electric generating or transmission (other than limited interconnection facilities) facilities. BALIA is affiliated with entities that own interests in electric generation in various markets across the United States, but none of these affiliates own or control 10 percent or more of the voting securities in any generating facilities located within the SPP market. None of BALIA or its affiliates own or control inputs to electric generation located in the SPP market, or is affiliated with a traditional franchised public utility with captive customers.

Applicants state that BALIA or its affiliates own direct and/or indirect passive, tax-equity interests in certain entities that own wind and solar-powered electric generation facilities. Applicants state that these non-managing, passive interests held by BALIA or its affiliates do not provide BALIA or its affiliates with any day-to-day control over these facilities.

Applicants state that within the SPP market, BALIA or its affiliates hold passive, non-managing, direct or indirect tax equity interests in various entities and that such entities are not affiliates of BALIA or its affiliates nor do BALIA or its affiliates control such entities.

Applicants state that an affiliate of BALIA, Merrill Lynch Commodities, Inc. (Merrill Lynch) is authorized by the Commission to engage in sales of energy, capacity and ancillary services at market-based rates, but it does not own or control electric generation or transmission facilities in any market.

Applicants state that BALIA is also affiliated with several entities that hold passive or non-controlling interests in entities that have been authorized to make sales of energy and capacity at market-based rates and/or own electric generation and transmission facilities, none of which are located in the SPP market. These affiliates hold interests in these entities in the ordinary course of business for investment purposes. Applicant states that these interests have been acquired by virtue of trading distressed debt and other similar financial instruments, making proprietary equity investments, or providing other financial services. Applicant asserts that these affiliates do not direct or

control the jurisdictional activities, including decisions about selling electric energy, associated with these facilities.

Applicant states that BALIA and its affiliates may hold other debt and equity positions from time to time in energy companies in connection with their broker/dealer, financing trading, banking or market-making activities. According to Applicants, these are transitory non-controlling interests that change frequently and are passive, and do not give BALIA any discretion as to how and when power may be sold.

Applicants state that MetLife is an insurance company organized under the laws of the state of New York and a wholly owned subsidiary of Metropolitan Life Insurance Company Life, Inc. (MetLife, Inc.). MetLife Inc. is primarily engaged in the insurance business and has subsidiaries involved in other financial activities. None of MetLife or its affiliates is a franchised utility in North America. Except as set forth below, neither MetLife nor its affiliates are engaged in energy-related business activities or own or control any electric generating facilities, electric transmission or distribution facilities, or any inputs to electric power production in the United States. MetLife and its affiliates currently own, directly or indirectly, passive equity interests in generating or transmission facilities located in the SPP market. These passive equity interests total approximately 18,335 MW are owned MetLife Capital Credit, LP, and all are fully committed under long-term power purchase agreements

Applicants state that MetLife, through the ownership of interests in special-purpose trusts, limited partnerships or limited liability companies, has direct, passive investments in some non-traditional public utilities, but none of these are located in the relevant market area. Applicants state that MetLife and its affiliates do not directly or indirectly manage, operate, or control such public utilities and that the owner-manager of each such public utility has control over its management and operations.

Applicants state that MetLife and its affiliates may, from time to time own debt securities and loans issued by entities that may own or control facilities used for the generation, sale, distribution or transmission of electric energy, or for the production, gathering, storage, liquefaction, sale, transmission or distribution of natural gas or other inputs to electric generation. Applicants state that the ownership of such debt securities and loans does not confer on MetLife or its affiliates any ownership or control over any underlying energy facilities.

Applicants state that MetLife and its affiliates also may, from time to time own passive, limited partnership interests or similar passive interests in private investment funds, such as private equity funds and hedge funds. Applicants explain that some of those passive limited partnership interests may have direct or

indirect ownership interests in entities that own or control facilities used for the generation, sale, distribution, or transmission of energy, or for the production, gathering, storage, liquefaction, sale, transmission, or distribution of natural gas and other inputs to electric generation. Applicants state that management control of such private investment funds resides solely with the relevant general partner/managing member. Applicants state that in no case is any such controlling general partner/managing member affiliated with MetLife or any of its affiliates.

Applicants state that MetLife and its affiliates also own passive, owner-lesser interests in sale-leaseback and other lease transactions involving entities that may own or control facilities used for the generation, sale, distribution, or transmission of electric energy, or for the production, gathering, storage, liquefaction, sale, transmission, or distribution of natural gas and other inputs to electric generation. Applicants represent that the owner-lesser interests are passive and do not enable MetLife or its affiliates to operate or control of any underlying energy facilities.

Applicants state that Wells Fargo is a wholly owned, indirect subsidiary of Wells Fargo & Company (Wells Fargo & Co). According to Applicants, Wells Fargo & Co. is not primarily engaged in energy-related business activities and does not directly own or control any electric generating, transmission, or distribution assets, or have contractual rights to control the electrical output of any generating facilities. Applicants state that Wells Fargo & Co. and its subsidiaries (Wells Fargo Affiliates) may hold other debt and equity positions from time to time in energy companies in connection with their broker/dealer, financial trading, or banking activities. Applicants state that Wells Fargo Affiliates may also engage in the management of mutual funds and/or other collective investment vehicles as a fiduciary on behalf of persons who hold interests in such funds or other investment vehicles, and that such funds or other investment vehicles may buy and sell securities of public utilities and other companies engaged in energy-related activities without exercising control over such public utilities or other companies.

According to Applicants, Wells Fargo Affiliates directly or indirectly hold passive, non-managing interests in a number of entities engaged in electric generation and other energy-related business activities, including entities that own generation facilities located in the SPP market. However, none of these entities is a traditional franchised utility. Wells Fargo Affiliates may from time to time, own passive, non-managing, limited partnership or limited liability company interests in oil and gas exploration and production companies, including several gas gathering and processing companies. Wells Fargo Affiliates hold interests in photovoltaic and solar thermal system installations in various states. Applicants state the Wells Fargo Affiliates may from time to time, own passive owner-lesser interests in sale-leaseback transactions involving entities that are engaged in

electric generation and other energy related businesses.

Applicants note that, other than described above, neither Wells Fargo nor any subsidiary or affiliate or upstream owner of Wells Fargo directly or indirectly owns, operates, or controls (1) any operational electric generation in the SPP market, (2) any electric transmission or distribution facilities in the SPP market, (3) any intrastate natural gas transportation, intrastate natural gas storage, or distribution facilities; sites for generation capacity development; physical coal supply sources and ownership of or control over who may access transportation of coal supplies in the SPP market, or (4) any franchised public utility in the United States.

Applicants state that, pursuant to the Proposed Transaction, each Class B Equity Investor will make a capital contribution to CB Holdings I, in exchange for a percentage of the non-controlling, passive Class B membership interests in CB Holdings I that is equal to its capital contribution to CB Holdings I. CB Holdings I will retain 100 percent of its non-passive, controlling Class A membership interests in CB Holdings I. According to Applicants, none of the Class B Equity Investors will have the ability to manage or control Applicants, the Cimarron Wind Project, or Interconnection Line. Instead, subject to the provisions of the Second Amended and Restated Operating Agreement of CB Holdings I, the Class B membership interest that will be held by the Class B Equity Investors will entitle them to receive certain tax benefits and a percentage of profit allocations. Applicants state that the Class B membership interest that will be held by the Class B Equity Investors will provide only limited consent rights with respect to the actions of CBI and CB Assets necessary to protect their economic interests.

Applicants state the Proposed Transaction will be implemented pursuant to, an Equity Capital Contribution Agreement (ECCA), among CB Holdings I and the Class B Equity Investors. After consummation of the Proposed Transaction, (1) CBI and CB Assets will each continue to have operational control and full ownership of their respective jurisdictional assets in SPP, (2) CB Holdings I will continue to hold 100 percent of the non-passive, controlling Class A membership interest in CB Holdings I, (3) CB Holdings I will continue to be the managing member of CB Holdings I, with the right to control Applicants on a day-to-day basis, and (4) the Class B Equity Investors will own the non-controlling, passive, Class B membership interest in CB Holdings I.

Applicants state that the Proposed Transaction is consistent with the public interest and will have no adverse effect on competition, rates, or regulation. With regard to competition, Applicants state that the full output of the Cimarron Wind Project is fully committed to a non-affiliated purchaser under a long-term agreement.

With regard to horizontal market power, Applicants state that the Class B Equity Investor's acquisition of the Class B Membership Interests in CB Holdings I will not result in a change in the market share of any of the Class B Equity Investors or their affiliates because none of the Class B Equity Investors will acquire control of Applicants or their jurisdictional facilities as a result of the Proposed Transaction. Therefore, Applicants assert that the Proposed Transaction raises no horizontal market power issues.

With regard to vertical market power, the Applicants state that the Proposed Transaction does not raise any vertical market power issues. Applicants state that none of the Applicants nor their affiliates own or control transmission facilities in the same market as the Cimarron Wind Project, except for the limited equipment necessary to connect individual generating facilities to the transmission grid. In addition, Applicants assert that none of the Class B Equity Investors nor their affiliates own or control transmission facilities in the same market. None of Applicants nor the Class B Equity Investors or their affiliates, own or control intrastate natural gas transportation, storage or distribution facilities or physical coal supply sources or has ownership control over who may access transportation of coal supplies to the relevant market. Additionally, none of Applicants of Class B Equity Investors nor their affiliates, own or control sites to develop new generating capacity that raise vertical market power concerns. Therefore, Applicants assert that the Proposed Transaction raises no vertical market power issues.

With regard to rates, Applicants state that all sales resulting from the Cimarron Wind Project will be made at market-based rates, and all transmission services over the Interconnection Line will be subject to a Commission accepted shared facilities agreement. Therefore Applicants assert that the Proposed Transaction will have no effect on rates.

According to Applicants, 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, Applicant states that the Proposed Transaction falls within the "safe harbor" for transactions that do not involve a franchised public utility with captive customers.

Applicants verify 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 October 18, 2016, with comments, protests, or interventions due on or before November 7, 2016. None were 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.

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.³ 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

³ *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).

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 Applicants' affiliated qualifying facilities, an appropriate filing for recertification pursuant to 18 C.F.R. § 292.207 shall be made;
- (6) The Commission retains authority under sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate;
- (7) Applicants shall make any 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 disposition of jurisdictional facilities 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. 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.

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