

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Slate Creek Wind Project, LLC

Docket No. EC16-31-000

ORDER AUTHORIZING ACQUISITION OF
JURISDICTIONAL FACILITIES

(Issued December 17, 2015)

On November 9, 2015, as supplemented on December 4, 2015, Slate Creek Wind Project, LLC (Slate Creek or Applicant) filed an application under section 203(a)(1)(A) of the Federal Power Act (FPA)¹ requesting Commission authorization for the disposition and acquisition of jurisdictional facilities. Specifically, to effectuate a tax equity investment, MUFG Union Bank, N.A. (Investor) and one or more currently unknown additional investors (Additional Investors) will acquire from EDF Renewable Energy, Inc. (EDF-RE) 100 percent of passive, non-managing Class A membership interests in Slate Creek Wind Holdings, LLC (Slate Creek Wind Holdings) (Proposed Transaction). Slate Creek Wind Holdings, according to Slate Creek, will be created prior to closing of the Proposed Transaction, and, as a result, will be the immediate upstream owner of Slate Creek. The affected jurisdictional facilities consist of a market-based rate tariff, and associated books, records, and accounts.

Slate Creek states that the Proposed Transaction may not require Commission approval under section 203(a)(1); however, out of an abundance of caution, it nevertheless asks the Commission to authorize the Proposed Transaction. This order authorizes the Proposed Transaction without making any determination of jurisdiction.²

Slate Creek, an exempt wholesale generator with market-based rate authority, is constructing, and will own and operate, an approximately 150 megawatt (MW) wind-powered electric generation facility (Facility) to be located in Sumner County, Kansas. Output from the Facility will be sold under a long-term power purchase agreement. The Facility will be situated within the Southwest Power Pool (SPP) market. Thus, according to Slate Creek, the relevant market for the Proposed Transaction is the SPP market.

¹ 16 U.S.C. § 824b (2012).

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

Slate Creek will be directly wholly owned by Slate Creek Wind Holdings, which, in turn, will be indirectly owned by EDF-RE, a company that develops, builds, operates and manages renewable energy projects throughout North America. Farthest upstream of EDF-RE is Electricite de France, S.A., which is owned 84.44 percent by the French government and 1.84 percent by the current and former employees; the remaining shares are publicly owned. In addition to Slate Creek, within the SPP market, EDF-RE indirectly holds ownership interests in other entities that own and operate, or will own and operate, wind generation facilities with market-based rate authority. Once all of these facilities are operational, including Slate Creek, EDF-RE will indirectly own or control approximately 712 MW of generation within the SPP market.

Investor is an international financial service provider that is owned by MUFG American Holdings Corporation (MUFG Holdings), a bank holding company. MUFG Holdings also owns Bankers Commercial Corporation (Bankers Commercial) whose primary function is to invest in physical assets throughout the United States. Farthest upstream of Investor, MUFG Holdings, and Bankers Commercial is corporate parent Mitsubishi UFJ Financial Group, Inc., a publicly traded corporation organized under the laws of Japan. Slate Creek states that, as of the date of the instant filing, no Additional Investors have been identified.

Slate Creek represents that, with the exception of passive, non-controlling ownership of beneficial interests in assets under lease financing arrangements, passive tax equity investments, and other limited circumstances, neither Investor, MUFG Holdings, Bankers Commercial, nor any of their affiliates own or control any electric generation facilities in the SPP market or in the United States. Slate Creek also represents that neither Investor, MUFG Holdings, nor Bankers Commercial owns or controls any electric transmission facilities in the United States; holds electric transmission rights or natural gas transportation rights in the United States; or owns any physical natural gas transportation facilities or owns or controls other physical inputs to electric generation or transmission in the United States.

With respect to Additional Investors, Investor represents that:

1. To the extent that Additional Investors and their affiliates own or control electric generation facilities in the SPP market, the overlap with Slate Creek and its affiliates and Investor and its affiliates in the SPP market will be *de minimis*. Specifically, Slate Creek states that the overlap will be no more than 2 percent of the installed capacity in the SPP market.
2. Upon closing of the Proposed Transaction, the managing Class B membership interests in Slate Creek Wind Holdings will continue to be indirectly held by EDF-RE. Thus, according to Slate Creek, there will be no change in the day-to-day

operational control of Slate Creek. Slate Creek and its affiliates, Investor and its affiliates, and Additional Investors and their affiliates, together, will lack horizontal market power in the SPP market consistent with the Commission's standards in the Merger Policy Statement and Order No. 642.

3. Additional Investors and their affiliates will not own or control any electric transmission or distribution facilities in the United States, except for limited interconnection facilities used to connect generating facility to the transmission grid, or transmission facilities that are not subject to the Commission's open access requirements.
4. Additional Investors and their affiliates will not own or control any essential inputs to electric generation in the SPP market.
5. Additional Investors and their affiliates will not be a franchised public utility in the United States.

Slate Creek further commits that it will inform the Commission of the identities of any Additional Investor when such investor acquires the Class A membership interests. Slate Creek also commits that it will confirm compliance by each Additional Investor with the criteria set forth above. In addition, Slate Creek states that it will inform the Commission of the percentage of Class A membership interests acquired by each Additional Investor and notes that the remaining interests will continue to be held by Investor.

Under the Proposed Transaction, according to Slate Creek, and to effectuate Investor's tax equity investment in Slate Creek, Investor and Additional Investors together will acquire from EDF-RE 100 percent of the passive, non-managing Class A membership interests in Slate Creek Wind Holdings, and, consequently, Slate Creek. Further according to Slate Creek, Investor is considering dividing the membership interests it proposes to acquire with Additional Investors. The managing Class B membership interests in Slate Creek Wind Holdings will continue to be indirectly held by EDF-RE. Thus, according to Slate Creek, there will be no change in the day-to-day operational control of Slate Creek.

Slate Creek states 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, Slate Creek states that the Proposed Transaction raises no concerns because Investors' and Additional Investors' acquisition of the passive, non-managing Class A interests will not result in Investor and Additional Investors gaining control over Slate Creek. With respect to vertical market power, Slate Creek states that the Proposed Transaction raises no concern because it does not involve any transmission

facilities, other than limited interconnection facilities, or any inputs to electricity products or electric power production in the SPP market.

With respect to rates, Slate Creek states that the Proposed Transaction raises no concerns. Slate Creek states that it will continue to sell at power at market-based rates. Slate Creek further states that, as mentioned above, the Proposed Transaction does not involve transmission facilities, other than limited interconnection facilities. With respect to regulation, Slate Creek states that the Proposed Transaction raises no concern because it will not deprive the Commission or any other federal or state agency of jurisdiction as before.

Slate Creek states 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 of a traditional public utility that has captive customers or that owns or provides transmission service over jurisdictional facilities for the benefit of an associate company. Specifically, Slate Creek states 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 filings were noticed on November 10, 2015, and December 4, 2015, with comments, protests, or interventions due on or before December 14, 2015. 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.³ The foregoing authorization may result in a change in status. Accordingly, applicants that have market-based rates are advised that they must comply with the requirements of Order No. 652. In addition, applicants shall make appropriate filings under section 205 of the FPA to implement the Proposed Transaction.

After consideration, it is concluded that the Proposed Transaction is consistent with the public interest and is authorized, subject to Slate Creek's representations as discussed on pages 2 and 3 of this order, as well as the following:

- (1) The Proposed Transaction, is authorized upon the terms and conditions and for the purposes set forth in the application;
- (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 costs, or any other matter whatsoever now pending or which may come before the Commission;

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).

- (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 Proposed Transaction results in changes in the status or upstream ownership of Slate Creek's affiliated qualifying facilities, an appropriate filing for recertification pursuant to 18 C.F.R. § 292.207 (2015) shall be made;
- (6) Slate Creek 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 material change in circumstances;
- (7) Slate Creek shall make appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transaction; and
- (8) Slate Creek shall notify the Commission within 10 days of the date that the disposition and acquisition 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 (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