

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Docket No. EC17-24-000

ORDER AUTHORIZING DISPOSITION OF JURISDICTIONAL FACILITIES

(Issued December 20, 2016)

On November 2, 2016, as amended on December 2, 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)<sup>1</sup> requesting authorization for a transaction in which EGPNA REP Wind Holdings, LLC (REP Wind) will cause its subsidiary, SubCo, to acquire one hundred percent of the membership interests in Cimarron Bend Wind Holdings, LLC (CB Holdings) from Enel Kansas (Proposed Transaction). The affected jurisdictional facilities consist of a market-based rate tariff, rate schedules, a long-term 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 they intend to engage in a multi-step transaction comprised of three steps. Specifically, Applicants state that REP Wind will: (1) form a newly-owned subsidiary (SubCo) controlled by REP Wind through its ownership of 100 percent of the controlling Class C of membership interests in SubCo; (2) cause SubCo to issue passive classes of membership interests to Enel Green Power North America, Inc. (Enel NA) or an affiliate thereof, which indirectly controls REP Wind, and to an affiliate of GE Energy Financial Services, Inc. (GE Energy),<sup>2</sup> which also holds a passive interest in REP Wind through an affiliate; and (3) cause SubCo to acquire 100 percent of the Class A membership interests in CB Holdings and, as a result, indirectly acquire control over Cimarron Wind Project and CB Assets.<sup>3</sup>

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<sup>1</sup> 16 U.S.C. § 824b (2012).

<sup>2</sup> GE Energy is a subsidiary of General Electric Company (GE).

<sup>3</sup> Applicants do not request authorization under section 203 for steps (1) or (2) nor do Applicants support the proposition that either of steps (1) or (2) is consistent with the public interest. Therefore, this order does not grant authorization for either step (1) or step (2) under section 203 of the FPA.

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 and will begin testing by late November 2016 and will enter commercial operation in late December 2016. CBI is an exempt wholesale generator (EWG) and is authorized to sell energy, capacity, and ancillary services at market-based rates. Applicants state that CBI has committed to sell the entire output of the Cimarron Wind Project under a 15 year power purchase agreement with an unaffiliated third-party.

Applicants state that 100 percent of CBI's membership interests are owned by Cimarron Bend Wind Holdings I, LLC (CB Holdings I). According to Applicants all of the Class A 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 exempt wholesale generator (EWG) that has its principal place of business in Andover, Massachusetts. CBimarron 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 CB Assets. Applicants state that 49 percent of CB Assets membership interests are owned by CBI and 49 percent 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 EGPNA Renewable Energy Partners, LLC (REP) is a limited liability company under the laws of Delaware. REP's membership interests are divided

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into two classes: (1) controlling Class A membership interests, and (2) passive Class B membership interests. EBPNA REP Holdings, LLC (REP Holdings), a direct subsidiary of Enel NA, owns 100 percent of the controlling Class A membership interests in REP. EFS Green Power Holdings, LLC (EFS GPH) owns 100 percent of the passive Class B membership interests in REP. REP's sole business is the ownership and operation of renewable energy generation facilities in the United States and Canada.

Applicants state that REP Wind is a limited liability company under the laws of Delaware. It is a wholly owned subsidiary of REP. REP Wind's sole business is the ownership and operation of renewable energy generation facilities in the United States and Canada.

Applicants state that SubCo will be a limited liability company under the laws of Delaware. The manager of SubCo with the right to control its day to day decisions will be Enel NA, or a wholly owned and controlled subsidiary thereof.

Applicants state that EFS GPH is a wholly owned subsidiary of EFS Renewable Holdings, LLC (EFS Holdings). EFS Holdings is a wholly owned subsidiary of Aircraft Services Corporation, which, in turn, is indirectly, wholly owned by GE.

Applicants state that, through its subsidiaries, GE is a passive owner and investor in a number of generating facilities in the United States. GE's interest in each of these facilities is pursuant to a lease or similar passive ownership arrangement whereby a subsidiary of GE or a financing institutional either (a) holds title to the facility for the benefit of GE and leases the facility to another entity, or (b) holds some other non-jurisdictional interest in the facility, but does not directly or indirectly make or manage any sale of power or transmission service associated with the facility. Applicants state that neither GE nor any of its affiliates is a public utility with a franchised electric service territory in the United States.

Applicants state that EFS Holdings is affiliated with Linden VFT, LLC (Linden VFT), which owns a merchant transmission facility (the VFT Facility) in Linden, New Jersey and New York, New York. According to Applicants, the VFT Facility connects the PJM Interconnection, L.L.C. (PJM) and New York Independent System Operator, Inc. (NYISO) service territories. PJM has operational control of the VFT Facility, and transmission service over the VFT Facility is provided under the merchant transmission provisions of PJM's Open Access Transmission Tariff (OATT). Applicants state that all of the transmission capacity of the VFT Facility is fully committed to non-affiliated customers, except as purchased on the PJM Open Access Same-Time Information System (OASIS) pursuant to protocols established by PJM and NYISO. Applicants state that, aside from GE's interest in Linden VFT, neither GE nor any of its affiliates own or control any transmission facilities in the United States, other than limited interconnection facilities necessary to connect individual generating facilities to the transmission grid.

Applicants state several affiliates of GE have non-passive interests in generating facilities in various regions in the United States. These include eleven entities within the geographic markets in which there is an overlap with generation facilities owned by REP. Specifically, GE affiliates own and control a total of 2,405.3 MW of generation in PJM; 30.7 MW of generation in ISO New England Inc. (ISO-NE); and 1,699.5 MW of generation in California Independent System Operator Corporation (CAISO).

Applicants state that under the Proposed Transaction Enel Kansas will transfer indirect controlling membership interests in CBI and in CB Assets to SubCo, which is controlled by REP. REP, which is indirectly controlled by Enel NA, has also issued passive interests to EFS GPH. Through its interest in REP, EFS GPH will acquire an indirect, passive interest in Applicants. Applicant states that EFS GPH will maintain its passive interests and have no day-to-day control over REP or any of its subsidiaries. The day-to-day control and management of CBI and CB Assets will continue to be performed by an entity wholly owned by Enel NA as the managing member of REP.

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 CBI is fully committed to a non-affiliated purchaser under a long-term agreement.

Applicants state that the Proposed Transaction presents no horizontal market power concerns in the SPP market, the relevant geographic market, because the entire output of CBI is committed to a non-affiliated purchaser under a long-term agreement, and the Proposed Transaction will have no effect on this arrangement. Applicants also state that the Proposed Transaction will not have an adverse effect on competition because the Proposed Transaction will not result in higher prices or reduced output in electricity markets. 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 or GE 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 or GE, nor their affiliates own or control sites to develop new generating capacity that raise vertical market power concerns. Therefore, Applicants assert that the Proposed Transactions raises no vertical market power issues.

With regard to rates, Applicants state that all sales of electric energy by CBI will continue to be made at market-based rates authorized by the Commission, 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.

Additionally, 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 filings were noticed on November 2, 2016 and December 6, 2016, with comments, protests, or interventions due on or before November 23, 2016 and December 12, 2016, respectively. 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.

When a controlling interest in a public utility is acquired by another company, whether a domestic company of 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 transaction is based on such examination authority.

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.<sup>4</sup> 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

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<sup>4</sup> *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 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