

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Deerfield Wind Energy, LLC
Deerfield HoldCo, LLC
Deerfield Wind SponsorCo, LLC
Algonquin Power (Deerfield Holdings) Inc.
Deerfield Holdings 1, LLC

Docket No. EC17-31-000

ORDER AUTHORIZING DISPOSITION OF
JURISDICTIONAL FACILITIES

(Issued December 21, 2016)

On November 14, 2016, Deerfield Wind Energy, LLC (Deerfield), Deerfield HoldCo, LLC (HoldCo), Deerfield Wind SponsorCo, LLC (SponsorCo), Algonquin Power (Deerfield Holdings) Inc. (APDH), and Deerfield Holdings 1, LLC (DHI) (collectively, Applicants) filed an application under section 203(a)(1) of the Federal Power Act (FPA)¹ requesting authorization for the disposition of jurisdictional facilities. Specifically, APDH will acquire the remaining 50 percent of the membership interests in SponsorCo currently owned by DHI (Purchase Transaction), and then BAL Investment & Advisory, Inc. (BALIA) and Citizens Asset Finance, Inc. (Citizens) (collectively, Passive Investors) will acquire 100 percent of the passive Class A tax equity interests in HoldCo (Tax Equity Transaction) (together, Proposed Transaction). The affected jurisdictional facilities consist of a market-based rate tariff, a power purchase agreement, a generator interconnection agreement, interconnection facilities, and related books and records.

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

Deerfield is an exempt wholesale generator with market-based rate authority.³ Deerfield will construct, own, and operate a 149 megawatt (MW) wind-powered electric

¹ 16 U.S.C. § 824b (2012).

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

³ Market-Based Rate Authorization was granted in *Deerfield Wind Energy, LLC*, Docket No. ER16-2703-000, December 21, 2016 (delegated letter order).

generating facility located in Huron County, Michigan (Facility). The Facility is situated within the Midcontinental Independent System Operator, Inc. (MISO) market. Thus, according to Applicants, the relevant market for the Proposed Transaction is MISO. Output from the Facility will be sold under a long-term power purchase agreement to an unaffiliated purchaser.

Deerfield is directly wholly owned by HoldCo, which, in turn, is directly wholly owned by SponsorCo. SponsorCo is owned 50 percent by DHI and 50 percent by APDH. DHI is indirectly wholly owned by Renewable Energy Systems Holdings Ltd., a corporation formed under the laws of England and Wales. APDH is indirectly owned by Algonquin Power & Utilities Corp., an energy company that, through its subsidiaries, owns and operates renewable electric generation, electric transmission, and utility businesses throughout North America.

BALIA is an indirect, wholly owned subsidiary of Bank of America Corporation (Bank of America), a financial holding company. Applicants assert that 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. Applicants further assert that BALIA or its affiliates hold only passive, non-managing interests in entities that own generating facilities within the MISO market.

Citizens is an indirect, wholly owned subsidiary of Citizens Financial Group, Inc., a publicly traded entity that offers retail and commercial banking products and services to individuals, small businesses, middle-market companies, large corporations and institutions. Applicants assert that, other than passive interests, neither Citizens nor any of its subsidiaries or affiliates own, operate, or control within the MISO market any electric generation; transmission or distribution facilities; or intrastate natural gas transportation, intrastate natural gas storage, or distribution sites; sites for generation capacity development; physical coal supply sources and ownership of or control over who may access transportation of coal supplies.

The Proposed Transaction involves, as stated above, the Purchase Transaction and the Tax Equity Transaction. Under the Purchase Transaction, according to Applicants, APDH will acquire from DHI its 50 percent membership interest in SponsorCo. As a result, APDH will indirectly own 100 percent of the equity interests in SponsorCo, and, indirectly, Deerfield. Through SponsorCo, APDH will also own 100 percent of HoldCo's Class B membership interests, which, according to Applicants, are controlling and managing. SponsorCo will serve as the Managing Member of HoldCo. Then, under the Tax Equity Transaction, BALIA will acquire 100 percent of the passive Class A membership interests in Holdco, and Citizens will acquire a portion of those interests. Applicants state that the passive Class A interests will not give the Passive Investors a voice in the day-to-day activities of Deerfield, except for voting rights needed to protect their economic interests.

Applicants state 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, Applicants state that the Proposed Transaction raises no concern for both the Purchase Transaction and the Tax Equity Transaction.

As for the Purchase Transaction, Applicants state that output from the Facility is fully committed to a non-affiliated purchaser under a long-term contract, that APDH already indirectly owns 50 percent of the equity interests in the Facility, and that there will be no change to uncommitted capacity in the MISO market. Applicants thus assert that the Purchase Transaction, including the Tax Equity Transaction, will not result in any new affiliation or combination of electric generating assets that would have an impact on competitive markets.

As for the Tax Equity Transaction, Applicants state that the Passive Investors' acquisition of the passive Class A membership interests do not constitute voting securities and do not convey control over Deerfield's wholesale power sales or its day-to-day operations. Applicants further state that the passive Class A interests will give the Passive Investors only limited rights necessary to protect their investment.

With regard to vertical market power, Applicants state that the Proposed Transaction raises no concern. Applicants state that neither the Purchase Transaction nor the Tax Equity Transaction involves the combination of control over generation with control over transmission or other vertical inputs to generation. Applicants further state that neither they nor the Passive Investors own or control within the MISO market any electric transmission facilities, other than limited interconnection facilities; any intrastate natural gas transportation, storage, or distribution facilities; physical coal supply sources or access to transportation of coal supplies; or any generation capacity development sites that would constitute barriers to entry to the generation market.

With regard to rates, Applicants state that the Proposed Transaction raises no concern. Applicants state that all sales of power from the Facility will be made at market-based rates and pursuant to the long-term contract. Applicants further state that the Proposed Transaction does not involve transmission rates or transmission customers. With regard to regulation, Applicants state that the Proposed Transaction raises no concern because it will not create a regulatory gap at the federal or state level or shift regulatory authority between the Commission and any state commission.

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 November 15, 2016, with comments, protests, or interventions due on or before December 5, 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.

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.⁴ 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 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

⁴ *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).

- (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 (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