

157 FERC ¶ 62,176

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSIONOsborn Wind Energy, LLC
Oliver Wind III, LLC

Docket No. EC17-10-000

ORDER AUTHORIZING ACQUISITION
OF JURISDICTIONAL FACILITIES

(Issued December 8, 2016)

On October 12, 2016, Osborn Wind Energy, LLC (Osborn) and Oliver Wind III, LLC (Oliver III) (collectively, Applicants) filed an application under section 203(a)(1) of the Federal Power Act (FPA)¹ requesting authorization for the acquisition of jurisdictional facilities. Specifically, JPM Capital Corporation (JPM Capital) and Wells Fargo Wind Holdings LLC (Wells Fargo) (collectively, Investors) or their respective affiliates, will acquire 100 percent of the passive Class B membership interests in Applicants' direct parent, Dogwood Wind, LLC (Dogwood) (Proposed Transaction). The affected jurisdictional facilities consist of a market-based rate tariff, power purchase agreements, interconnection facilities, and associated books and records.

Applicants state that the Proposed Transaction may not require authorization under section 203(a)(1); however, out of an abundance of caution, they nevertheless ask the Commission to authorize the Proposed Transaction. This order authorizes the Proposed Transaction without making any determination of jurisdiction.²

Applicants are exempt wholesale generators with market-based rate authority.³ Osborn will own and operate an approximately 200.9 megawatt (MW) wind generating facility located in DeKalb County, Missouri (Osborn Facility). Oliver III will own and operate an approximately 99.3 MW wind generation facility located in Oliver County, North Dakota (Oliver III Facility). The Osborn Facility is situated within the Southwest Power Pool, Inc. (SPP) market, and the Oliver III Facility is situated within the Midcontinent Independent System Operator, Inc. (MISO) market. Thus, according to

¹ 16 U.S.C. § 824b (2012).

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

³ Market-Based Rate Authorization was granted in *Oliver Wind III, LLC*, Docket No. ER16-2506-000 (October 17, 2016) (delegated letter order).

Applicants, the relevant markets for the Proposed Transaction are SPP and MISO. Output from each of the Osborn and Oliver III Facilities is sold to unaffiliated entities under long-term agreements.

Applicants are direct subsidiaries of Dogwood whose corporate parent is NextEra Energy, Inc. (NextEra), a corporation organized under the laws of Florida. Within the SPP market, affiliates of Applicants own approximately 3,644 MWs of generation capacity. Within the MISO market, affiliates of Applicants own approximately 2,475 MWs of generation capacity.

JPM Capital is an indirect subsidiary of financial service company JPMorgan Chase & Co. (JPMorgan Chase). Applicants assert that JPM Capital 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. Furthermore, JPMorgan Chase does not control and is not affiliated with any entity that controls inputs to generation within the SPP and MISO markets.

Wells Fargo is an indirect, wholly owned subsidiary of Wells Fargo & Company (WF&C), a publicly-traded financial holding company regulated the Federal Reserve under the Bank Holding Company Act of 1956. According to Applicants, WF&C and its subsidiaries (WF Affiliates) hold passive, non-managing interests in a number of entities engaged in electric generation and other energy-related business activities, including entities that own generating facilities within the SPP and MISO markets. WF Affiliates also may, from time to time, own passive, non-managing interests in oil and gas exploration and production companies, including several gas gathering and processing companies. In addition, WF Affiliates hold passive owner-lessor interests in multiple roof-mounted and ground-mounted solar PV and solar thermal system installations. Lastly, WF Affiliates also may, from time to time, hold passive owner-lessor interests in sale leaseback transactions involving entities that are engaged in electric generation and other energy-related businesses.

Applicants represent that WF&C is not primarily engaged in energy-related business activities and does not directly own or control any electric generating, transmission, or distribution assets, or otherwise have contractual rights to control the electrical output of any generating facilities.

Under the Proposed Transaction, according to Applicants, Investors will acquire 100 percent of the passive Class B membership interests in Dogwood, and, indirectly, Applicants. Applicants assert that the passive Class B interests will not allow Investors to have a vote with respect to the day-to-day operation of the Osborn and Oliver III Facilities, except for veto and consent rights necessary to protect their investments. NextEra Energy Resources, LLC (NextEra Resources), an indirect subsidiary of NextEra, will indirectly hold 100 percent of the Class A membership interests in Dogwood, and

indirectly, Applicants, which, according to Applicants, are controlling and managing. Dogwood Wind Holdings, LLC (Dogwood Holdings), a subsidiary of NextEra Resources, will be the Managing Member of Dogwood. Applicants thus assert that Dogwood Holdings will have full control of the day-to-day management of Dogwood, and, indirectly, Applicants and the Osborn and Oliver Facilities.

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. Applicants state that the acquired passive Class B membership interests will not result in a change in control over the generation owned by them. Applicants also state that none of Investors or their affiliates own or control generation capacity located within the SPP or MISO markets. In addition, Applicants state that all of the generation that they will own is committed to unaffiliated purchasers under long-term contracts.

With regard to vertical market power, Applicants state that the Proposed Transaction raises no concern. Applicants state that neither Investors nor any of their affiliates own or control within the SPP and MISO markets any 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 will not have an adverse effect. Applicants state that all sales of electric energy from the Osborn and Oliver III Facilities will be made pursuant to market-based rates. Applicants also state that, while certain of their affiliates currently provide unbundled transmission services, such affiliates are not involved in the Proposed Transaction.

With regard to regulation, Applicants state that the Proposed Transaction will not have an adverse effect. Applicants state the Commission will continue to have the same jurisdiction over Applicants' wholesale sales of electric energy as before. Applicants also state that the Proposed Transaction has no effect on state commission regulation and does not require any state commission approval.

Applicants state 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 closing or in the future, cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company. Specifically, Applicants state 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 filing was noticed on October 13, 2016, with comments, protests, or interventions due on or before November 2, 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.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 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 (2016) 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 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, 70 Fed. Reg. 8,253 (Feb. 18, 2005), 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 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 (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)

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