

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Rush Springs Wind Energy, LLC

Docket No. EC17-5-000

ORDER AUTHORIZING ACQUISITION OF
JURISDICTIONAL FACILITIES

(Issued December 8, 2016)

On October 7, 2016, Rush Springs Wind Energy, LLC (Rush Springs) filed an application (Application) pursuant to section 203(a)(1) of the Federal Power Act (FPA)¹ seeking authorization for the acquisition by JPM Capital Corporation (JPMCC) or an affiliate thereof and EFS Renewables Holdings, LLC (EFS and, together with JPMCC or an affiliate thereof, Investors) of 100 percent of the passive Class B Membership Interests in Monarch Wind, LLC (Monarch), which will, at the time of the acquisition, own 100 percent of the membership interests in Rush Springs (Proposed Transaction). According to Rush Springs, the jurisdictional facilities affected by the Proposed Transaction consist of Rush Springs' market-based rate tariff,² limited interconnection facilities, and associated books and records.

Rush Springs states that, although the Proposed Transaction may not require authorization under section 203(a)(1) of the FPA, it nevertheless asks the Commission to authorize the Proposed Transaction. This order authorizes the Proposed Transaction without making any determination of jurisdiction.³

Rush Springs states that it is an exempt wholesale generator (EWG), with market-based rate authority. Rush Springs will own and operate an approximately 249.9 megawatt (MW) wind-powered generating facility (Facility) located in Grady and Stephens Counties, Oklahoma, within the Southwest Power Pool (SPP) market. Rush Springs expects the Facility to begin producing test energy in October 2016. Rush Springs is a party to a generator interconnection agreement with SPP and AEP Oklahoma Transmission Company (AEP). The Facility's power will be sold into the SPP market, which, according to Rush Springs, is the relevant market. The power will be sold under separate contracts-for-differences with Owens Corning and Equinix, both of which are

¹ 16 U.S.C. § 824b (2012).

² Market-based rate authorization was granted by order issued in Docket No. ER16-2240-000 on August 30, 2016.

³ *Ocean State Power*, 47 FERC ¶ 61,321 (1989).

non-affiliates, for 100 percent of the output of the Facility.

Rush Springs states 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. In addition, JPMorgan Chase does not control and is not affiliated with any entity that controls any essential inputs to generation within the SPP market, including any intrastate pipeline facilities.

Rush Springs states that JPMP Wind Energy (Noble), LLC (JPMP Noble), a wholly owned, indirect subsidiary of JPMorgan Chase and affiliate of JPMCC, owns an indirect interest in Noble Great Plains Windpark, LLC (Noble Great Plains), which owns a 114 MW wind generation facility located within the SPP market. Rush Springs explains that JPMP Noble has only limited consent rights in the management of the holding company that owns this wind project, and JPMP Noble does not exercise day-to-day control over the wind project's jurisdictional activities. Although JPMP Noble's rights with respect to Noble Great Plains are limited, JPMCC has not characterized the interests held by this affiliate as non-controlling. Except for the interests of Noble Great Plains within the SPP market, Rush Springs represents that neither JPMCC nor any subsidiary or upstream owner of JPMCC owns or controls (1) any operational electric generation, (2) any electric transmission or distribution facilities, or (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 within the SPP market, or (4) any franchised public utility in the United States. Rush Springs states that with the exception of Noble Great Plains, JPMCC owns only passive, non-managing membership interests in electric generation and limited and discrete transmission facilities associated with the energy projects in which JPMCC owns such passive, non-managing membership interests.

Rush Springs states that EFS is a wholly owned subsidiary of Aircraft Services Corporation (ASC). ASC is owned 26.89 percent by Retailer Credit Services, Inc., 12.67 percent by EFS-L INC., 12.67 percent by SFG XXVII Inc., 12.67 percent by FULL SERVICE LEASING CORP., and 35.10 percent by GE Capital US Holdings, Inc. (GECUS). Each of Retailer Credit Services, Inc., EFS-L, INC., SFGXXVII INC. and FULL SERVICE LEASING CORP. is owned 100 percent by GECUS. GECUS is owned 100 percent by GE Capital Global Holdings, LLC, which is itself owned 100 percent by General Electric Company (GE). Rush Springs states that GE, through its subsidiaries, is a passive owner and an investor in a number of generating facilities in the United States. While GE affiliates have non-passive interests in generating facilities in the United States, affiliates of GE do not control any generating facilities within the SPP market. Rush Springs affirms that EFS has no potential affiliation with electric facilities within

the SPP market.

Rush Springs states that it is a wholly owned, indirect subsidiary of ESI Energy, LLC. ESI Energy, LLC is a wholly owned, direct subsidiary of NextEra Energy Resources, LLC (NextEra Resources), which is a wholly owned, direct subsidiary of NextEra Energy Capital Holdings, Inc., which is a wholly owned direct subsidiary of NextEra Energy, Inc. (NextEra). NextEra Resources is the competitive power subsidiary of NextEra. Rush Springs states that its affiliates own and operate several facilities with a total of approximately 3,594.7 MW of wind-powered generation in the SPP market.

With respect to the Proposed Transaction, Monarch has two classes of membership interests, Class A Membership Interests, which are managing interests and Class B Membership Interests, which are non-managing interests. Under the Proposed Transaction, the Investors will acquire 100 percent of the Class B Membership Interests in Monarch in exchange for cash consideration, and NextEra Resources will indirectly retain 100 percent of the Class A Membership Interests in Monarch. Rush Springs states that the Proposed Transaction may be accomplished in multiple steps. Investors may acquire the Class B Membership Interests in Monarch on a serial basis that corresponds to the acquisition of Rush Springs and another non-jurisdictional facility, respectively, by Monarch.⁴

Rush Springs further states that a wholly owned, indirect subsidiary of NextEra Resources, Monarch Wind Holdings, LLC (Monarch Holdings) will be the Managing Member of Monarch. All of the day-to-day management of Monarch, and matters not constituting major decisions will be decided upon exclusively by Monarch Holdings as the Managing Member. Only in the case of a major decision will the Investors as the Class B Members have a vote. Major decisions will only include certain major matters that could affect the Investors' financial investment, such as the sale of Rush Springs' facilities, incurrence of indebtedness exceeding certain dollar thresholds, amending certain material contracts, filing of bankruptcy, or merging with another company. Otherwise, Rush Springs states that, in no circumstance, will the Investors have a vote with respect to day-to-day operation or maintenance of the facilities owned by Rush Springs, including power sales.

Rush Springs states that the Transaction is consistent with the public interest and will not adversely affect competition, rates or regulation, and will not raise any cross-subsidization issues. With respect to horizontal competition, Rush Springs states that Class B Membership Interests to be acquired in the Proposed Transaction are passive,

⁴ Rush Springs states that Monarch also owns a wind energy generating facility, Javelina Wind Energy II, LLC, located within the Electric Reliability Council of Texas. Rush Springs explains that Investors will acquire the same interests in that facility as in Rush Springs, but that transaction is not jurisdictional to the Commission.

non-managing interests that do not constitute voting securities. Accordingly, there would be zero change in market shares or concentration levels as the Proposed Transaction would not result in a change in control over the Rush Springs' generating facility. Also, none of the Investors or their affiliates owns or controls generation capacity located within the SPP market, except for the 114 MW wind generation facility owned by Noble Great Plains. Rush Springs explains that even if the Class B membership interests acquired by the Investors in the Proposed Transaction constituted voting securities, which they do not, Rush Springs' generation capacity falls under the *de minimis* standard. Rush Springs and its affiliates would have approximately 464 MW of uncommitted capacity within the SPP market, Rush Springs with 249.9 MW, Elk City Wind II, LLC with 100.8 MW, and Noble Great Plains with 114 MW as the majority of Rush Springs' and its affiliates' generation is already fully committed under long-term contracts. Consequently, the 464 MW of generation that remains under Rush Springs' affiliates control represents approximately 0.56 percent of the installed generation capacity of 83,000 within SPP, which, according to Rush Springs, is *de minimis*. Therefore, according to Rush Springs, the Proposed Transaction does not raise any horizontal market power concerns.

With respect to vertical market power, Rush Springs states that neither the Investors nor any of its affiliates own or control within the SPP geographic market: (i) any electric transmission facilities, except for Noble Great Plains interconnection facility; (ii) any intrastate natural gas transportation, storage, or distribution facilities; (iii) physical coal supply sources or access to transportation of coal supplies; or (iv) any generation capacity development sites that would constitute barriers to entry to the relevant SPP market. Therefore, according to Rush Springs, the Proposed Transaction does not raise any vertical market power concerns.

With respect to the effect on rates, Rush Springs states that the Proposed Transaction will have no adverse effect on rates charged to either wholesale or transmission customers. Following the Proposed Transaction, all of the sales of electric energy from Rush Springs' generation facilities will be made at market-based rates. Rush Springs states that, while certain affiliates of Rush Springs currently provide unbundled transmission services, the costs attributable to the Proposed Transaction will not be flowed through to transmission customers. Therefore, according to Rush Springs, the Proposed Transaction will have no adverse effect on rates.

With respect to regulation, Rush Springs states that, after the Proposed Transaction is consummated, the Commission will continue to have the same jurisdiction over wholesale sales of electric energy by Rush Springs as it had before. Further, the Proposed Transaction has no effect on state commission regulation and does not require any state commission approval. Therefore, according to Rush Springs, the Proposed Transaction will not impair either federal or state regulation.

Rush Springs states that the Proposed Transaction will not result in cross-

subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company. Rush Springs states that the Proposed Transaction qualifies for the safe harbor for transactions that do not involve a franchised public utility with captive customers. Additionally, Rush Springs represents that, based on facts and circumstances known to Rush Springs or that are reasonably foreseeable that the Proposed Transaction will not result in, at the time of the transaction or in the future: (1) any transfers 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 issuances 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 contracts 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 services agreements subject to review under sections 205 and 206 of the FPA.

This filing was noticed on October 7, 2016, with comments, protests or interventions due on or before October 28, 2016. None were filed.

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.

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 the 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, NERC 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.⁵ 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 hereby 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) Rush Springs 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 of 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 cost, 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 the upstream ownership of Rush Springs' affiliated qualifying facilities, if any, 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) Rush Springs shall make the appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transaction; and

⁵ *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) Rush Springs shall notify the Commission within 10 days of the date that the Proposed Transaction 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

