

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Bluestem Wind Energy, LLC

Docket No. EC17-22-000

ORDER AUTHORIZING DISPOSITION OF
JURISDICTIONAL FACILITIES

(Issued December 9, 2016)

On October 24, 2016, Bluestem Wind Energy, LLC (Applicant) filed an application pursuant to section 203(a)(1)(A) of the Federal Power Act (FPA)¹ requesting authorization for a transaction whereby BAL Investment & Advisory, Inc. or an affiliate thereof (BALIA) and Antrim Corporation or an affiliate thereof (Antrim, and together with BALIA, Equity Investors) will acquire certain indirect, non-controlling, passive equity interests in Applicant (Proposed Transaction). The jurisdictional facilities affected by the Proposed Transaction consist of Applicant's interconnection facilities, market-based rate tariff and related contracts, books, and records.

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

Applicant states that it is constructing and will own and operate an approximately 198 megawatt (MW) wind-powered generation facility (Facility). The Facility is located in Beaver County, Oklahoma and interconnected to the transmission system owned by Oklahoma Gas and Electric Company and operated by the Southwest Power Pool, Inc. (SPP). Applicant is an exempt wholesale generator and has market-based rate authority.³ Applicant asserts that all of the output of the Facility is committed to Google Energy LLC under a long-term power purchase agreement.

Applicant states that it is a direct, wholly owned subsidiary of Exelon Wind, LLC (Exelon Wind). Exelon Wind is owned by Exelon Generation Acquisitions, LLC, which

¹ 16 U.S.C. § 824b (2012).

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

³ *Bluestem Wind Energy, LLC*, Letter Order, Docket No. ER16-2363-000 (Sept. 15, 2016).

is owned by Exelon Generation Company, LLC (Exelon Generation). Exelon Generation is a wholly owned subsidiary of Exelon Corporation (Exelon), a holding company within the meaning of the Public Utility Holding Company Act of 2005.

Applicant states that BALIA is a wholly owned subsidiary of Bank of America Corporation, a bank holding company and financial holding company primarily regulated by the Federal Reserve. According to Applicant, neither BALIA nor Bank of America Corporation are primarily engaged in energy-related business activities and do not directly own or control any electric generation or transmission assets or generation output.⁴ Applicant notes that, within the SPP market, BALIA or its affiliates hold passive, non-managing, direct or indirect tax equity interests in approximately 20 entities engaged in electricity generation, with a combined capacity of approximately 3,370 MW. Applicant states that none of BALIA or any of its affiliates has indirect ownership interests in any electric transmission facilities, other than limited interconnection facilities. Furthermore, none of BALIA or any of its affiliates own or control inputs to electric generation located in the SPP market or is affiliated with a franchised public utility.

Applicant states that Antrim is an indirect, wholly owned subsidiary of State Street Bank and Trust Company (SSBT), which is a direct, wholly owned subsidiary of State Street Corporation (State Street). State Street is a financial holding company regulated by the Federal Reserve. Applicant represents that, other than passive investment interests, none of Antrim, SSBT, State Street or any of their affiliates directly or indirectly own, operate, or control any operational electric generation in the SPP market. Additionally, none of Antrim SSBT, State Street, or any of their affiliates, own electric transmission facilities, other than limited and discrete interconnection facilities, or natural gas pipeline or storage facilities.

Applicant states that, in connection with the Proposed Transaction, there will be an internal corporate reorganization such that Applicant will become a direct, wholly owned subsidiary of Bluestem Holdings, a newly formed entity, which will become an indirect subsidiary of Exelon Wind. According to Applicant, Bluestem Holdings will have two classes of membership interests: Class A managing Membership Interests and Class B non-managing Membership Interests. Pursuant to the Proposed Transaction, each Equity Investor will make a capital contribution to Bluestem Holdings at the time of Applicant's commercial operation date and, in exchange, receive non-controlling, passive, Class B Membership Interests in Bluestem Holdings in proportion to its respective capital contribution. Applicant represents that the Equity Investors will have only limited

⁴ Applicant states that BALIA is affiliated with entities that own interests in electric generation facilities in various markets across the United States, but none of these energy affiliates own or control 10 percent or more of the voting securities in any generating facilities located in the SPP market.

consent rights necessary to protect their economic investment interests.

Applicant states that the Proposed Transaction does not raise any horizontal market power concerns. Applicant states that the entire output of the Facility is committed to a non-affiliated purchaser under a long-term agreement, and the Proposed Transaction will have no effect on that arrangement. Furthermore, Applicant states that the acquisition of non-controlling, passive equity interests in Applicant will not result in any of the Equity Investors gaining control over Applicant.

With respect to vertical market power, Applicant states that the Proposed Transaction does not raise any concerns. Applicant states that the Proposed Transaction does not involve any transmission facilities, other than the limited interconnection facilities necessary to connect the Facility to the grid, or any essential inputs to electricity products or electric power production. In addition, none of Applicant, Equity Investors, or any of their respective affiliates own or control any transmission facilities in the United States, other than limited and discrete interconnection facilities necessary to connect electric generating facilities to the transmission grid or transmission facilities that are subject to a Commission-approved open access transmission tariff. Likewise, Applicant asserts that none of Applicant, Equity Investors, or any of their respective affiliates own or control any essential inputs to electricity products or electric power production.

Applicant states that the Proposed Transaction will not adversely affect wholesale ratepayers or transmission customers. Applicant states that it will continue to make sales pursuant to its market-based rate tariff and its existing long-term wholesale contract, which will not change as a result of the Proposed Transaction. With respect to transmission rates, Applicant states that the Proposed Transaction does not involve transmission rates or transmission customers and neither Applicant nor the Equity Investors have any captive customers that could be affected by the Proposed Transaction.

Applicant states that the Proposed Transaction will not have an adverse effect on federal or state regulation. Applicant asserts that, after consummation of the Proposed Transaction, the Commission will continue to exercise the same jurisdiction over Applicant and its jurisdictional activities as it exercises currently. Applicant also asserts that Proposed Transaction will have no effect on state-commission regulation and is not subject to approval by any state commission.

According to Applicant, 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, Applicant verifies 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 October 25, 2016 with comments, protests, or interventions due on or before November 14, 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.⁵ 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) Applicant 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 Applicant's 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) Applicant shall make any 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, FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005).

- (8) Applicant 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