

**156 FERC ¶ 62,030**

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Odell Wind Farm, LLC  
Algonquin Power (Odell Holdings) Inc.  
Odell SponsorCo, LLC  
Odell Holdings, LLC

Docket No. EC16-126-000

ORDER AUTHORIZING DISPOSITION  
OF JURISDICTIONAL FACILITIES

(Issued July 12, 2016)

On June 1, 2016, Odell Wind Farm, LLC (Odell), Algonquin Power (Odell Holdings) Inc. (Algonquin Power), Odell SponsorCo, LLC (SponsorCo), and Odell Holdings, LLC (Holdings) (collectively, Applicants) filed an application pursuant to section 203(a)(1) of the Federal Power Act (FPA)<sup>1</sup> requesting authorization for the disposition of jurisdictional facilities resulting from the transfer of 100 percent of the passive Class A membership interests in Holdings, to JPM Capital Corporation (JPM Capital) and Metropolitan Life Insurance Company (MetLife) (JPM Capital and MetLife jointly referred to as “Tax Equity Investors) (Proposed Transaction). The jurisdictional facilities involved in the Proposed Transaction consist of Odell’s market-based rate tariff, interconnection facilities, and related books and records.

Applicants state that the Proposed Transaction may not require authorization under FPA section 203 (a)(1); they nevertheless ask the Commission to authorize the Proposed Transaction. This order authorizes the Proposed Transaction without making any determination of jurisdiction.<sup>2</sup>

Applicants state that Odell is a limited liability company under the laws of Minnesota. Odell is constructing and will own and operate a 200 megawatt (MW) wind-powered electric generating facility (Facility) to be located in Cottonwood, Jackson, Martin and Watonwan Counties, Minnesota within the Midcontinent Independent System Operator, Inc. (MISO). According to Applicants, Odell

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<sup>1</sup> 16 U.S.C. § 824b (2012).

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

expects to begin testing the Facility in May 2016 and achieve commercial operation in July 2016. Odell has executed a long-term power purchase agreement (PPA) with Xcel Energy's Northern States Power Company (Xcel) for the entire capacity of the Facility. Applicants note that Odell will own no transmission facilities other than limited interconnection facilities needed to connect its facility with the MISO-controlled transmission system. Applicants state that Odell, through its affiliates, holds interests in several entities that are engaged in the electric utility, electric generation, natural gas distribution, and pipeline businesses in Canada and the United States. Odell is an exempt wholesale generator and is authorized to sell power at market-based rates.

Applicants state that Odell's sole and managing member is Holdings. Applicants state that Holdings' sole and managing member is SponsorCo. Applicants note that SponsorCo has two members with an equal fifty percent interest: Enel Kansas, LLC (Enel Kansas) and Algonquin Power. Odell has no subsidiaries.

Applicants state that Algonquin Power is a corporation under the laws of Delaware. It is a wholly owned subsidiary of Algonquin Power Fund (America) Inc., which is a wholly owned, indirect subsidiary of Algonquin Power Co., a trust formed under the laws of the Province of Ontario, Canada. Algonquin Power Co.'s ultimate parent is Algonquin Power & Utilities Corp. (Algonquin), an electric power generation and utility infrastructure company with a principal place of business in Oakville, Ontario. Algonquin is a publicly traded company on the Toronto Stock Exchange. Through Algonquin Power's operating subsidiaries, Algonquin owns and operates a diversified portfolio of renewable electric generation, electric transmission and utility businesses throughout North America. Applicants state no single investor or affiliated group of investors owns directly or indirectly more than ten percent of Algonquin.

Applicants state that Enel Kansas is a wholly owned subsidiary of Enel Green Power North America, Inc., which is a wholly owned subsidiary of Enel Green Power International BV which is a wholly owned subsidiary of Enel SpA. Enel S.P.A. is an Italian joint stock company and a publicly traded company on the Milan Stock Exchange.

According to Applicants, JPM Capital is an indirect, wholly owned subsidiary of JPMorgan Chase & Co. (JPMorgan Chase), an international financial services company. JPM Capital and JPMorgan Chase are not primarily engaged in energy-related business activities and do not directly own or control any electric transmission (other than limited interconnection facilities) or interstate natural gas pipeline facilities. Applicants further state that JPMorgan Chase does not control and is not affiliated with any entity that controls any essential inputs to generation

in the MISO market, including any intrastate pipeline facilities. Applicants state that, through direct or indirect subsidiaries, JPMorgan Chase has a number of energy affiliates that engage in wholesale sales of electricity in the United States and that own various interests in electric generating facilities.

Applicants also state that subsidiaries of JPMorgan Chase may be engaged in the management of mutual funds and/or other collective investment vehicles and separate accounts as a fiduciary on behalf of persons who hold interests in such funds or other investment vehicles, or separate accounts, and such funds, investment vehicles, or other accounts may buy and sell securities of public utilities and other companies engaged in energy-related activities without exercising control over such public utilities or other companies.

Applicants state that MetLife is an insurance company organized under the laws of the state of New York and a wholly owned subsidiary of MetLife, Inc. MetLife, Inc. is primarily engaged in the insurance business and has subsidiaries involved in other financial activities. None of MetLife or its affiliates is a franchised utility in North America. Applicants state that, except as set forth below, neither MetLife nor its affiliates are engaged in energy-related business activities or own or control any electric generating facilities, electric transmission or distribution facilities, or any inputs to electric power production in the United States.

Applicants state that MetLife Capital Limited Partnership, a wholly owned subsidiary of MetLife, Inc. is the beneficiary of, and exercises control over, a trust which owns an approximately 90 percent ownership interest in Long Island Solar Farm, LLC (Long Island Solar), a 32 MW solar-powered electric generation facility in Long Island, New York, with MetLife Renewables Holding, LLC, an affiliate of MetLife, owning the remaining beneficial interests in the trust. Additionally, Applicants state that Greater Sandhill I, LLC (Greater Sandhill), an affiliate of MetLife, owns an approximately 19 MW solar generating facility in Alamosa County, Colorado, within the balancing authority area of the Public Service Company of Colorado. Applicants state that all of the electricity generated by Long Island Solar and Greater Sandhill is fully committed under long-term PPAs.

Applicants state that MetLife, through the ownership of interests in special-purpose trusts, limited partnerships or limited liability companies, has direct, passive investments in some non-traditional public utilities. Within the MISO market, MetLife holds a passive membership interest in Benson Power, LLC, which will own a 64 MW biomass facility in Benson, Minnesota. MetLife Capital Credit L.P. (MetLife Capital Credit) holds a passive 33 percent membership interest in Prairie Rose Wind, LLC, which owns and operates an approximately

220 MW electric generation facility located in Rock and Pipestone Counties, Minnesota, and owns a generation interconnection line located in Rock County, Minnesota, and Minnehaha, County, South Dakota. Applicants also note that MetLife Capital Credit holds 50 percent of the beneficial interests in Lakefield Wind Project OP Trust, which holds 100 percent of the interests in Lakefield Wind Project, LLC, which owns an approximately 205 MW generating facility located in Jackson County, Minnesota. Applicants state that MetLife and its affiliates do not directly or indirectly manage, operate, or control such public utilities; the owner-manager of each such public utility has control over its management and operations.

Applicants state that MetLife and its affiliates may, from time to time own debt securities and loans issued by entities that may own or control facilities used for the generation, sale, distribution or transmission of electric energy, or for the production, gathering, storage, liquefaction, sale, transmission or distribution of natural gas or other inputs to electric generation. Applicants state that the ownership of such debt securities and loans does not confer on MetLife or its affiliates any ownership or control over any underlying energy facilities.

Applicants state that MetLife and its affiliates also may, from time to time own passive limited partnership interests or similar passive interests in private investment funds, such as private equity funds and hedge funds. Applicants explain that some of those passive limited partnership interests may have direct or indirect ownership interests in entities that own or control facilities used for the generation, sale, distribution, or transmission of energy, or for the production, gathering, storage, liquefaction, sale, transmission, or distribution of natural gas and other inputs to electric generation. Applicants state that management control of such private investment funds resides solely with the relevant general partner/managing member. Applicants state that in no case is any such controlling general partner/managing member affiliated with MetLife or any of its affiliates.

Applicants state that MetLife and its affiliates also own passive, owner-lesser interests in sale-leaseback and other lease transactions involving entities that may own or control facilities used for the generation, sale, distribution, or transmission of electric energy, or for the production, gathering, storage, liquefaction, sale, transmission, or distribution of natural gas and other inputs to electric generation. Applicants contend that, in sale-leaseback transactions, the Commission has recognized that owner-lesser interests (like those owned by MetLife and its affiliates) are passive and do not equate to operation or control of any underlying energy facilities.

According to Applicants, pursuant to an Equity Capital Contribution Agreement (ECCA) dated October 6, 2015, and subject to and upon fulfillment or

waiver of the funding conditions under the ECCA, each of the Tax Equity Investors will make a capital contribution to Holdings and will enter into an amended and restated limited liability company agreement of Holdings. In exchange thereof, Holdings will issue Class A interests to the Tax Equity Investors, and will issue Class B interests to SponsorCo in exchange for its existing membership interests in Holdings. Applicants state that, after the Proposed Transaction, the Tax Equity Investors will own 100 percent of the passive Class A membership interests in Holdings, and SponsorCo will own 100 percent of the Class B interests in Holdings. Sponsor Co will serve as the managing member of Holdings. The Tax Equity Investors will not have general voting rights, but will have voting rights on certain specified decisions that are material to their investment in Holdings.

Applicants state that the Proposed Transaction is consistent with the public interest and will not adversely affect competition, rates or regulations. With respect to competition, Applicants state that Proposed Transaction raises no horizontal market power concerns in the MISO market, the relevant market. Applicants state that all of the output from the Facility is committed to a non-affiliated purchaser under a long-term PPA. Applicants further explain that the Class A membership interests to be acquired in the Proposed Transaction are passive interests that do not constitute voting securities. Thus, there will be no change in market shares or concentration levels because the Proposed Transaction does not result in change in control over the Facility. Therefore, according to Applicants, the Proposed Transaction presents no horizontal market power concerns.

Applicants state that the Proposed Transaction presents no vertical market power concerns. Applicants state that the Proposed Transaction does not involve the combination of control over generation with the control over transmission or other vertical inputs to generation. Applicants state that neither JPM Capital nor MetLife own or control within the MISO BAA: (1) any electric transmission facilities (other than interconnection facilities associated with electric generation); (2) intrastate natural gas transportation, storage, or distribution facilities; (3) physical coal supply sources or access to transportation of coal supplies; or (4) any generation capacity development sites that would constitute barriers to entry to the generation market. Therefore, according to Applicants, the Proposed Transaction does not raise any vertical market power concerns.

With respect to rates, Applicants state that the Proposed Transaction will have no adverse effect on rates. According to Applicants, the Proposed Transaction will not subject wholesale customers to increased rates. Applicants state that all sales from the Facility will be made at market-based rates, and pursuant to a long-term PPA. Applicants state that the Proposed Transaction will not involve transmission rates or transmission

customers. Accordingly, the Proposed Transaction will have no effect on rates.

With respect to regulation, Applicants state that the Proposed Transaction will not have an adverse effect on federal or state regulation. Applicants state that the Proposed Transaction will not affect the extent to which the Commission may regulate Odell. Applicants state that the Proposed Transaction is not subject to regulation by any state commission. Therefore, Applicants assert that the Proposed Transaction will not create a regulatory gap at the federal or state level or shift regulatory authority between the Commission and any state commission.

Applicants state 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. Applicants assert that the Proposed Transaction falls within one of the “safe harbors” adopted by the Commission for which detailed explanation and evidentiary support to demonstrate a lack of cross-subsidization is not required. Applicants more specifically state that the Proposed Transaction does not involve a franchised public utility with captive customers.

Additionally, Applicants verify that, based on the facts and circumstances known to them or that are reasonably foreseeable, the Proposed Transaction will not result in, at the time of the Proposed Transaction nor in the future: (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 services agreements subject to review under Sections 205 and 206 of the FPA.

This filing was noticed on June 2, 2016 with comments, protests or interventions due on or before June 22, 2016. None were filed.

Information and/or systems connected to the bulk power system involved in this Proposed 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 databases, 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, NERC 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 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.<sup>3</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 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) 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 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 determination of cost or any other matter whatsoever now pending or which may come before the Commission;

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<sup>3</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).

- (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 Applicants' affiliated Qualifying Facilities, if any, an appropriate filing for recertification pursuant to 18 C.F.R. § 292.207 (2015) 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
- (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 (2015). 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 (2015).

Steve P. Rodgers, Director  
Division of Electric Power  
Regulation – West



Document Content(s)

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