

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Macquarie Wind Farm LLC

Docket No. EC16-129-000

ORDER AUTHORIZING DISPOSITION OF
JURISDICTIONAL FACILITIES

(Issued July 6, 2016)

On June 3, 2016, Macquarie Wind Farm LLC (Seller) filed an application (Application) under section 203(a)(1)(A) of the Federal Power Act (FPA)¹ on behalf of Evergreen Wind Power, LLC (Evergreen) and Munnsville Wind Farm, LLC (Munnsville) (together, Project Companies) requesting authorization for the transfer by Seller of certain direct or indirect, non-managing passive equity interests in the Project Companies to Wind Energy SPV, LLC (Buyer), which is indirectly, wholly owned by investment funds (TSSP-Managed Funds) that are advised by TSSP Adjacent Opportunities Management, LLC (Investment Advisor) (Proposed Transaction).² The facilities affected by the Proposed Transaction consist of market-based rate tariffs, wholesale contracts, interconnection equipment, and related books and records.

Although Seller states that 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

¹ 16 U.S.C. § 824b (2012).

² Seller states that the Proposed Transaction also includes the disposition of passive ownership interests in four companies. Three of the companies own and operate wind-powered electric generating facilities located within the Electric Reliability Council of Texas (ERCOT), and one of the companies owns and operates electric generating facilities located near Maalaea, Hawaii. These companies are: Buffalo Gap Wind Farm, LLC, Buffalo Gap Wind Farm 2, LLC, Buffalo Gap Wind Farm 3, LLC (collectively, Buffalo Gap Projects), and Kaheawa Wind Power, LLC (KWP Maui). According to Seller the Buffalo Gap Projects and KWP Maui engage in the sale of electricity within ERCOT and Hawaii. Seller states that it is not seeking Commission authorization under section 203 of the FPA for these entities.

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

Seller is a co-managing member of Nationwide Wind Portfolio LLC (NWP), the direct owner of 56.13 percent of the non-managing, passive equity interests in Evergreen and the indirect owner of 100 percent of the Class A non-managing, passive membership interests in Munnsville. Pursuant to the Proposed Transaction, Seller will transfer all of its equity interests in NWP to Buyer. Following the Proposed Transaction, Buyer will become a co-managing member of NWP and Seller will no longer hold any interests in NWP, Evergreen, or Munnsville. Seller states that the Proposed Transaction will not affect the remaining equity interests in NWP.

The Project Companies are as follow:

Evergreen is an exempt wholesale generator (EWG) with market-based rate authorization. Evergreen owns and operates the 42 megawatt (MW) Mars Hill Wind Farm (Mars Hill Wind Farm), a wind-powered generating facility, located in Mars Hill, Maine. Evergreen is interconnected with the transmission system of Emera Maine in the Northern Maine Independent System Administrator, Inc. market, which is part of the New Brunswick Power Corporation Transmission and System Operator (NBPC) balancing authority area (BAA). The Mars Hill Wind Farm is a qualifying facility (QF), and Evergreen sells the output of the QF to New Brunswick Power Generation Corporation under a long-term power purchase agreement. The day-to-day operations of Evergreen are managed by Maine Wind Partners, LLC, an indirect, wholly owned subsidiary of TerraForm LLC (TerraForm), which is an indirect, wholly owned subsidiary of SunEdison, Inc. The passive, non-managing equity interests in Evergreen are 56.13 percent held by NWP and 43.87 percent held by WFC Holdings Corporation.

Munnsville is an EWG with market-based rate authorization. Munnsville owns and operates an approximately 34.5 MW wind farm (Munnsville Facility) near Munnsville, New York, in Madison and Oneida counties. The Munnsville Facility is interconnected with the transmission system operated by New York Independent System Operator, Inc. (NYISO). Munnsville sells the output of the Munnsville Facility to Consolidated Edison Energy, Inc. under a long-term power purchase agreement. Munnsville is a direct wholly owned subsidiary of Munnsville WF HOLDCO, LLC. The day-to-day operations of Munnsville are managed by E.ON AG, and all of the passive, non-managing equity interests in Munnsville are held by NWP.

Buyer is an indirect, wholly owned subsidiary of TSSP-Managed Funds, which are

Delaware limited partnerships that are advised by Investment Advisor. Investment Advisor is a wholly owned subsidiary of TPG Opportunities Advisers, LLC, which is a registered investment adviser with the United States Securities and Exchange Commission and is affiliated with TPG. TPG is a private investment firm, with offices in the United States and abroad, and its investments

cross a wide range of asset classes, including private equity, credit, growth venture, real estate, and public equity. According to Seller, Buyer is not affiliated with any generation capacity located within the NYISO market or the NBPC BAA, which according to Seller are the relevant markets.

Investment vehicles affiliated with TPG Global, LLC, which is affiliated with Buyer, own interests in Energy Future Holdings Corp. (EFH) and its affiliates. According to Seller, EFH has filed for Chapter 11 bankruptcy protection and, in late 2015, EFH obtained bankruptcy court approval of a restructuring plan that contemplated, among other things, that equity interests held by investment vehicles affiliated with TPG Global, LLC would be canceled. Seller adds that, pursuant to a settlement agreement approved by the bankruptcy court on December 7, 2015, investment vehicles affiliated with TPG Global, LLC assigned any recoveries on their EFH equity interests to certain creditors of EFH affiliates, and TPG Global, LLC and its affiliates received releases of all claims belonging to EFH and affiliated debtors. In May of 2016, EFH announced that the transactions contemplated by the approved plan would not be completed, and subsequently proposed a new restructuring plan that would likewise cancel the equity interests held by investment vehicles associated with TPG Global, LLC without any distribution on account of such interests, such that TPG Global, LLC will no longer be affiliated with EFH following the restructuring, subject to obtaining all necessary governmental approvals.

EFH is a holding company with energy assets located within the footprint of the Electric Reliability Council of Texas, Inc. (ERCOT), except as described below. Seller states that EFH's affiliates include Oncor Electric Delivery Company LLC (Oncor), which operates solely within ERCOT. Oncor owns a 100 MW undivided interest in the East high-voltage direct current (HVDC) interconnection between ERCOT and the Southwest Power Pool (SPP) and provides interconnection and transmission service under three authorized tariffs.⁴ Oncor provides transmission service to, from and over the North and East HVDC interconnections and the Valley Interconnection⁵ and holds other limited jurisdictional facilities. Aside from the East HVDC interconnection, Seller states that neither Buyer nor any of its affiliates own, control, or operate any other electric transmission facilities used for the transmission of electricity in interstate commerce in the United States, except for the limited and discrete interconnection facilities necessary to connect individual generating facilities to the transmission grid. Seller states that Buyer is not affiliated with any essential inputs to electricity products or electric power production in the United States.

NWP is a joint venture between JPM Capital Corporation (JPMCC) and Seller. JPMCC is an indirect, wholly owned subsidiary of JP Morgan Chase & Co. (JP Morgan Chase), a financial holding company. Seller is a wholly owned subsidiary of Macquarie Corporate and Asset Funding Inc., which is a wholly

⁴ *Oncor Electric Delivery Company LLC, et al.*, 153 FERC ¶¶62,163(2015).

⁵ *Kiowa Power Partners, LLC*, 99 FERC¶¶ 61,251 (2002).

owned subsidiary of Macquarie Bank Limited, which in turn is a wholly owned subsidiary of Macquarie Group Limited (MGL), a provider of banking, financial, advisory, investment and funds management services. Seller states that the Proposed Transaction is limited to the transfer of Seller's equity interests in NWP, and the remaining equity interests in NWP held by JPMCC will not be affected by the Proposed Transaction.

Pursuant to the Proposed Transaction, Buyer will own jointly with JPMCC the equity interests in NWP, which directly owns 56.13 percent of the passive, non-managing membership interests in Evergreen and indirectly owns 100 percent of the Class A passive, non-managing membership interests in Munnsville. Buyer will have no voting or equivalent rights to control Evergreen or Munnsville. TerraForm will continue to manage and control Evergreen and E.ON AG will continue to manage and control Munnsville. Seller states that there will be no transfer of control resulting from the Proposed Transaction.

Seller states that the Proposed Transaction is consistent with the public interest and will have no adverse effect on competition, rates, regulation, or raise cross-subsidization concerns. With respect to horizontal market power, Seller states that, as a result of the transfer of non-managing, passive membership interests currently held by Seller, Buyer will acquire only passive interests in the Project Companies and will not acquire any day-to-day control over the Project Companies. In addition, Seller adds that the Proposed Transaction does not involve any overlap in the Project Companies' relevant markets of NYISO and NBPC BAA, because Buyer and its affiliates do not own or control any electric generating facilities in the relevant markets. Further, Seller states that all of the generation capacity owned by the Project Companies is committed under long-term power agreements with unaffiliated parties. Therefore, according to Seller, the Proposed Transaction does not raise any horizontal market power concerns.

With respect to vertical market power, Seller states that the Proposed Transaction does not involve any transmission facilities, except for limited and discrete generation interconnection facilities necessary to connect each of the Project Companies to the transmission grid, and does not involve any essential inputs to electricity products or electric power production. Seller states that Buyer may be affiliated with Oncor, which owns and operates an undivided interest in the East HVDC interconnection between ERCOT and SPP. Seller adds that Buyer's affiliation with Oncor will not affect the Project Companies' vertical market power, because service on the East HVDC interconnection is subject to a tariff authorized by the Commission. Seller further states that Buyer is not affiliated with any other transmission facilities in the United States, except for the limited and discrete generation interconnection facilities necessary to connect individual generating facilities to the transmission grid. Additionally, neither Buyer nor any of its affiliates own or control any essential inputs to electricity products or electric power production in the United States. Therefore, according to Seller, the Proposed Transaction does not raise any vertical market power concerns.

With respect to rates, Seller states that the Project Companies will

continue to sell the entire output of their respective facilities pursuant to their market-based rate tariffs and their long-term wholesale power agreements with unaffiliated third parties. Additionally, the Proposed Transaction does not involve transmission rates or transmission customers. Therefore, according to Seller, the Proposed Transaction will have no adverse effect on wholesale rates or transmission rates.

With respect to regulation, Seller states that the Proposed Transaction will not affect the manner or extent to which the Commission or any state may regulate the Project Companies. Seller adds that, following consummation of the Proposed Transaction, the Commission will have the same jurisdiction over the Project Companies as it has now. Therefore, according to Seller, the Proposed Transaction will have no adverse effect on federal or state regulation.

Seller 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. Seller asserts that the Proposed Transaction qualifies for the “safe harbor” for transactions that do not involve a franchised public utility with captive customers. Additionally, Seller represents that, based on facts and circumstances known to Seller or that are reasonably foreseeable that the Proposed Transaction will not result in, at the time of the Proposed 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.

The filing was noticed on June 6, 2016, with comments, protests, or interventions due on or before June 24, 2016. None were filed.

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.

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.⁶ 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) Seller 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;

⁶ *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).

- (5) If the Proposed Transaction results in changes in the status or the upstream ownership of Seller's affiliated qualifying facilities, 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) Seller shall make the appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transaction; and
- (8) Seller 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 (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