

UNITED STATES OF AMERICA 151 FERC ¶ 62,096
FEDERAL ENERGY REGULATORY COMMISSION

Rising Tree Wind Farm LLC
Rising Tree Wind Farm II LLC

Docket No. EC15-118-000

ORDER AUTHORIZING DISPOSITION OF
JURISDICTIONAL FACILITIES

(Issued May 12, 2015)

On April 10, 2015, Rising Tree Wind Farm LLC (Rising Tree I) and Rising Tree Wind Farm II LLC (Rising Tree II) (jointly, Applicants) filed an application under section 203(a)(1)(A) of the Federal Power Act (FPA)¹ requesting Commission authorization for the disposition of jurisdictional facilities that may result from one or more transfers of indirect non-managing membership interests in Applicants from Bankers Commercial Corporation (BCC) to one or more unidentified investors (Unidentified Investors) (Proposed Transaction).² Pursuant to the Proposed Transaction, BCC and the Unidentified Investors will own 100 percent of the Class B non-managing membership interests in 2014 Vento XII, LLC (Vento XII) the direct owner of Applicants. Following the Proposed Transaction, BCC and the Unidentified Investors will collectively own 100 percent of the Class B membership interests in Vento XII. The Class A managing membership interests in Vento XII indirectly owned by EDP Renewables North America LLC (EDPRNA) will not be affected by the Proposed Transaction. The affected jurisdictional facilities consist of Applicants' market-based rate tariff and any related agreements, various books and records, and limited interconnection facilities.

Applicants state that Rising Tree I is a Delaware limited liability company that owns and operates a 79.2 megawatt (MW) wind-powered electric generation facility located in Kern County, California (Rising Tree I Facility). Rising Tree I shares ownership of certain common facilities necessary for the operation of the Rising Tree I Facility with its affiliates, Rising Tree II and Rising Tree Wind Farm III LLC, which own

¹ 16 U.S.C. § 824b (2012).

² Applicants state that, because the Proposed Transaction involves transfers of passive interests that do not confer the right to control Applicants, authorization under section 203(a)(1)(A) of the FPA may not be required. Nevertheless, out of an abundance of caution, Applicants ask the Commission to authorize the Proposed Transaction without making a determination as to jurisdiction. *See Ocean State Power*, 47 FERC ¶ 61,321 (1989).

co-located generation projects. The Rising Tree I Facility is interconnected to the transmission system owned by Southern California Edison Company (SCE) and operated by the California Independent System Operator Corporation (CAISO). Rising Tree I's shared facilities will include certain interconnection facilities necessary for Rising Tree I and its affiliates to interconnect the capacity of their generation projects to the integrated transmission grid.

Applicants state that Rising Tree I is an exempt wholesale generator (EWG) under the Public Utility Holding Company Act of 2005 (PUHCA). The Commission has authorized Rising Tree I to sell energy, capacity, and ancillary services at market-based rates.³ According to Applicants, the output of the Rising Tree I Facility will be sold exclusively at wholesale to third parties under one or more interim bilateral agreements or directly into the wholesale market until January 2019, at which point the entire output of the Rising Tree I Facility will be sold to an unaffiliated third party pursuant to a long-term power purchase agreement. Rising Tree I is a wholly-owned direct subsidiary of Vento XII.

Applicants state that Rising Tree II is a Delaware limited liability company that owns and operates a 19.8 MW wind-powered electric generation facility located in Kern County, California (Rising Tree II Facility) (together with the Rising Tree I Facility, the Facilities). Rising Tree II shares ownership of certain common facilities necessary for the operation of the Rising Tree Facility with its affiliates, Rising Tree I and Rising Tree Wind Farm III LLC, which are co-located generation projects. Rising Tree II's shared facilities include certain interconnection facilities necessary for Rising Tree II and its affiliates to interconnect the capacity of their generation projects to the integrated transmission grid. The Rising Tree II Facility is interconnected to the transmission system owned by SCE and operated by CAISO. Rising Tree II will share ownership of certain common facilities necessary for the development and operation of the Rising Tree II Facility with affiliates that intend to develop co-located generation projects.

Applicants state that Rising Tree II is an EWG under PUHCA. The Commission has authorized Rising Tree II to sell energy, capacity, and ancillary services at market-based rates.⁴ According to Applicants, the output of the Rising Tree II Facility is sold exclusively at wholesale to third parties under one or more interim bilateral agreements or directly into the wholesale market until approximately June 2015, at which point the entire output of the Rising Tree II Facility will be sold to an unaffiliated third party pursuant to a long-term power purchase agreement. Rising Tree II is a wholly-owned

³ See *Rising Tree Wind Farm LLC*, Docket No. ER14-1934-000, (July 2, 2015) (unpublished letter order).

⁴ *Id.*

subsidiary of Vento XII.

Applicants state that EDPRNA is a Delaware limited liability company that develops, owns, and operates, on behalf of or through wholly or partially-owned subsidiaries or affiliates, renewable electric generation facilities throughout the United States. EDPRNA is a wholly-owned direct subsidiary of EDP Renováveis, S.A. (EDP Renováveis). Approximately 22.5 percent of the issued share capital of EDP Renováveis is widely disbursed among investors, none of which have a 10 percent or greater voting interest in EDP Renováveis. The remaining share capital of EDP Renováveis is owned by: (i) EDP Energias de Portugal, S.A. (EDPSA), through EDPSA'S Spanish branch, EDP – Energias de Portugal, Sociedad Anónima, Sucursal en España (62 percent); and (ii) Hidroeléctrica del Cantábrico, S.A. (Hidrocantábrico) (15.5 percent).

Applicants state that the largest shareholder of EDP Energias is China Three Gorges International (CTG), which currently holds a 21.35 percent equity interest in EDPSA. CTG is a wholly State-owned enterprise of the People's Republic of China (PRC) and an independent power producer in China.

Applicants state that EDPSA is aware of only one other investor group that owns 10 percent or more of its ordinary shares. Capital Research and Management Company (CRMC) has reported to EDPSA that several mutual funds managed by CRMC collectively hold 10.13 percent of EDPSA's outstanding ordinary shares. According to Applicants, none of the remaining shareholders of EDPSA owns a 10 percent or greater equity interest in or control EDPSA.

Applicants state that EDPRNA is affiliated with a number of entities that own or control renewable generation facilities located throughout the United States. In addition to Applicants, EDPRNA is affiliated with the following entities that are developing or that own or control generation in the CAISO market:

- Rising Tree Wind Farm III LLC (Rising Tree III), which is developing and will construct, own, and operate an approximately 100 MW windpowered electric generation facility located in Kern County, California (Rising Tree III Facility). Applicants anticipate that the Rising Tree III Facility will achieve commercial operation on or about June 30, 2015. Applicants state that Rising Tree III intends to operate as an EWG with market-based rate authorization.
- Lone Valley Solar Park I LLC (Lone Valley I), an EWG that owns and operates a 10 MW solar-powered electric generation facility located in San Bernardino County, California. The Commission has authorized Lone Valley I to sell energy, capacity, and ancillary services at market-based rates.
- Lone Valley Solar Park II LLC (Lone Valley II), an EWG that owns and operates

a 20 MW solar-powered electric generation facility located in San Bernardino County, California. The Commission has authorized Lone Valley II to sell energy, capacity, and ancillary services at market-based rates.

According to Applicants, CTG is not affiliated with any generation located in the CAISO market, except through its affiliation with EDPRNA.

Applicants state that EDPRNA is affiliated with Sustaining Power Solutions LLC (Sustaining Power), which operates as a wholesale power marketer in the United States. The Commission has authorized Sustaining Power to sell energy, capacity, and ancillary services at market-based rates.⁵ Sustaining Power does not own or control any electric generation facilities.

Applicants state that none of EDPRNA, CTG, or any of their affiliates own or control any transmission facilities that are used for the transmission of electricity in interstate commerce in the United States, other than the limited interconnection facilities required to connect individual generating facilities to the transmission grid. According to Applicants, neither EDPRNA nor CTG is affiliated with any public utility with a franchised electric service territory in the United States.

Applicants state that affiliates of EPDRNA own or control sites for new generation capacity development located in various markets. None of EPDRNA, CTG, or any of their affiliates owns or controls any inputs to electricity products or electric power production in the United States, including 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.

Applicants state that BCC is a California corporation that is a wholly-owned non-bank subsidiary of MUFG Americas Holdings Corporation (MUAH), a Delaware corporation that is a bank holding company headquartered in San Francisco, California. MUAH also owns MUFG Union Bank, N.A. (MUB). According to Applicants, BCC's primary function is to invest in physical assets throughout the United States; however, it does take part in other transactions permissible for a non-bank subsidiary of a bank holding company. The ultimate parent of BCC, MUAN, and MMUB is Mitsubishi UFJ Financial Group, Inc. (MUFG), a publicly traded corporation organized under the laws of Japan.

⁵ See *Sustaining Power Solutions LLC*, Docket No. ER13-1816-000 (Aug. 8, 2013) (unpublished letter order).

Applicants state that with the exception of passive, non-controlling ownership of beneficial interests in assets under lease financing arrangements, passive “tax equity” investments, and other limited circumstances, neither BCC, MUAH, MUB, nor any of their affiliates, directly or indirectly owns or controls any electric generation facilities in the CAISO market or in the United States. Neither BCC, MUAH, nor MUB: (a) owns or controls any electric transmission facilities in the United States; (b) engages in wholesale sales of electric energy, or any other Commission jurisdictional transactions in the United States; (c) holds electric transmission rights or natural gas transportation rights in the United States; (d) directly or indirectly owns or controls a franchised utility; or (e) directly or indirectly owns any physical natural gas transportation facilities or owns or controls other physical inputs to electric generation or transmission in the United States.

According to Applicants, BCC is seeking one or more tax equity investors to acquire a portion of BCC’s Class B membership interests in Vento XII. Applicants state that the identity of such potential investors is currently unknown. Applicants represent that Unidentified Investors that participate in the Proposed Transaction will satisfy criteria, which the Commission has previously accepted, to ensure that the Proposed Transaction has no adverse effect on competition, rates, regulation, and does not raise any cross-subsidization concerns.⁶

Unidentified Investors and their affiliates may own or control electric generation facilities in the CAISO market. However, any overlap between the operations of Unidentified Investors and their affiliates in the CAISO market and the operations of Applicants, Bankers Corp, and their affiliates in the CAISO market will be *de minimis*. Specifically, the combined generation market share of Unidentified Investors and their affiliates together with Applicants, Bankers Corp, and their respective affiliates in the CAISO market will not exceed two percent of the total installed capacity in the market. According to Applicants, they, Bankers Corp, Unidentified Investors, and their respective affiliates will lack horizontal market power in the relevant market upon closing of the Proposed Transaction, consistent with the Commission’s standard in its Merger Policy Statement and Order No. 642.

⁶ Applicants cite *Rising Tree Wind Farm LLC, et al.*, 149 FERC ¶ 62,143 (2014); *Headwaters Wind Farm LLC*, 148 FERC ¶ 62,176 (2014); *Steele Flats Wind Project, LLC*, 145 FERC ¶ 62,200 (2013); and *Ashtabula Wind II, LLC, et al.*, 130 FERC ¶ 62,216 (2011). If any of the Unidentified Investors does not satisfy the criteria set forth in this Application, Applicants commit that the transfer to such investor will not occur until after separate authorization is obtained from the Commission pursuant to section 203 of the FPA, to the extent required.

In addition, Unidentified Investors and their affiliates will not own or control any electric transmission or distribution facilities in the United States, except for the limited interconnection facilities used solely to connect individual generating facilities to the transmission grid, facilities for which the Commission has granted a waiver of the requirement to file an open access transmission tariff (OATT), or transmission facilities that are subject to a Commission-accepted OATT. Unidentified Investors and their affiliates also will not own or control any essential inputs to electricity products or electric generation in the relevant market. In addition, none of Unidentified Investors or any of their affiliates will be a public utility with a franchised electric service territory in the United States.

Applicants state that BCC intends to sell a portion of its Class B membership interests in Vento XII to one or more Unidentified Investors pursuant to one or more closings that will occur within one year from the date on which the Commission issues an order authorizing the Proposed Transaction. As a result of the Proposed Transaction, Unidentified Investors will acquire a portion of the Class B non-managing membership interests in Vento XII. BCC will retain the remaining Class B non-managing membership interests in Vento XII. The Class A managing membership interests in Vento XII will not be affected by the Proposed Transaction.

Applicants will inform the Commission of the identities of the Unidentified Investors participating in each Proposed Transaction at the time Applicants notify the Commission of the consummation of the Proposed Transaction(s). Applicants will also confirm compliance by each Unidentified Investor with the criteria set forth above. Additionally, through the notice(s) of consummation, Applicants will inform the Commission of the percentage of Class B membership interest acquired by each Unidentified Investor.

According to Applicants, as the Class B members of Vento XII, Unidentified Investors will have consent rights prior to the Flip Date (as will be defined in the limited liability company agreement of Vento XII) only for certain major decisions that could affect Investors' return on their investment, including: the sale, lease, or disposition of any significant assets; the incurrence of significant indebtedness; participation by Vento XII or Applicants in any business or activity not within their purpose or a change in such purpose; mergers or sales involving Vento XII or Applicants; the settlement of significant litigation; the cancellation, suspension, or termination of any material contract; or the institution of proceedings in bankruptcy. Investors, as the Class B members of Vento XII, also will have consent rights after the Flip Date but for a more limited number of major decisions.

Applicants state that Ventures XII will be the managing member of Vento XII through its direct ownership of the Class A interests in Vento XII. Unless removed for cause, Ventures XII will retain day-to-day control of the Applicants. Unidentified

Investors are entitled only to certain cash and tax benefits as holders of the Class B interests in Vento XII and will not participate in the day-to-day management of Vento XII or Applicants.

Applicants state that the Proposed Transaction is consistent with the public interest because it will have no adverse effect on competition, rates, or regulation and will not result in cross-subsidization or the pledge or encumbrance of utility assets for the benefit of an associate company.

Applicants state that the Proposed Transaction will not have an adverse effect on competition in CAISO, the relevant market. Specifically, the Proposed Transaction does not raise any horizontal or vertical market power concerns because the Unidentified Investors will acquire only non-managing Class B interests in Vento XII and will not acquire any day-to-day control over Applicants. As a result, the Proposed Transaction will not result in any new affiliation between Applicants and Unidentified Investors. Therefore, Applicants conclude that the Proposed Transaction will have no effect on the market power of Applicants or Unidentified Investors.

However, to the extent that Unidentified Investors own or control any generation capacity in the CAISO market, Applicants commit that the combined market share of Applicants, BCC, Unidentified Investors, and their respective affiliates following the Proposed Transaction will not exceed two percent of the total installed capacity in the CAISO market, a *de minimis* amount. Therefore, the Proposed Transaction will not result in any new combination of electric generating assets that could have an impact on the competitive situation in the relevant market. Accordingly, Applicants state that the Proposed Transaction will have no adverse effect on horizontal market power.

Applicants state that the Proposed Transaction will not have an adverse impact on vertical market power. The Proposed Transaction does not involve any transmission facilities, other than the limited interconnection equipment necessary to connect the Facilities to the grid, or any inputs to electricity products or electric power production. Neither Unidentified Investors nor any of their affiliates own or control any electric transmission facilities, other than limited interconnection facilities necessary to connect individual generating facilities to the grid. In addition, neither Unidentified Investors nor any of their affiliates own or control any essential inputs to electricity products or electric power production in the CAISO market. Therefore, Applicants submit that the Proposed Transaction will have no adverse effect on vertical market power.

Applicants state that the Proposed Transaction will have no adverse effect on rates. Applicants will sell the entire output of the Facilities under their market-based rate authority. The terms and conditions of the Applicants' wholesale power sales will not change as a result of the Proposed Transaction. The Proposed Transaction does not involve transmission rates or transmission customers. Accordingly, Applicants maintain

that the Proposed Transaction will have no adverse effect on wholesale ratepayers or transmission customers.

Applicants state that the Proposed Transaction will not affect the manner or extent to which the Commission, any state, or any other federal agency regulates Applicants, Unidentified Investors, or any of their affiliates. The extent to which Applicants, Unidentified Investors, or any of their affiliates are subject to the jurisdiction of the Commission (or any other regulatory agency or office) will not change as a result of the Proposed Transaction.

Applicants state that, because none of the parties to the Proposed Transaction is a traditional public utility that has captive ratepayers in the United States, the Proposed Transaction is within the scope of the “safe harbor” for transactions in which no franchised public utility with captive customers is involved in the transaction and does not raise any issues with respect to cross-subsidization.

Nevertheless, Applicants state that, based on facts and circumstances known to them 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 assets of a traditional public utility that has captive customers or that owns or provides transmission service over jurisdictional facilities 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 April 10, 2015, with comments, protests, or interventions due on or before May 1, 2015. None were received. Notices of intervention and unopposed timely filed motions to intervene are granted pursuant to the

operation of Rule 214 of the Commission's Rules of Practice and Procedure.⁷ Any opposed or untimely filed motion to intervene is governed by the provisions of Rule 214.

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.

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.⁸ The foregoing authorization may result in a change in status. Accordingly, Applicants are advised that they must comply with the requirements of Order No. 652. In addition, Applicants shall make any necessary 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 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) 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;

⁷ 18 C.F.R. § 385.214 (2014).

⁸ *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).

- (3) 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;
- (4) The Commission retains authority under sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate;
- (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 (2014) shall be made;
- (6) Applicants must inform the Commission of any change in circumstances that would reflect a departure from the facts the Commission relied upon in authorizing the Proposed Transaction;
- (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 (2014). 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 (2014).

Steve P. Rodgers
Director
Division of Electric Power Regulation - West

