

157 FERC ¶ 62,111

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSIONNoble Altona Windpark, LLC
Noble Bliss Windpark, LLC
Noble Chateaugay Windpark, LLC
Noble Clinton Windpark I, LLC
Noble Ellenburg Windpark, LLC
Noble Great Plains Windpark, LLC
Noble Wethersfield Windpark, LLC

Docket No. EC16-183-000

ORDER AUTHORIZING DISPOSITION OF JURISDICTIONAL FACILITIES

(Issued November 14, 2016)

On September 16, 2016, Noble Altona Windpark, LLC (Noble Altona), Noble Bliss Windpark, LLC (Noble Bliss), Noble Chateaugay Windpark, LLC (Noble Chateaugay), Noble Clinton Windpark I, LLC (Noble Clinton), Noble Ellenburg Windpark, LLC (Noble Ellenburg), Noble Great Plains Windpark, LLC (Noble Great Plains), and Noble Wethersfield Windpark, LLC (Noble Wethersfield) (collectively, Applicants) filed an application pursuant to section 203(a)(1) of the Federal Power Act (FPA)¹ requesting Commission authorization for Applicants' upstream owner, Noble Environmental Power, LLC (Noble Power) to transfer 100 percent of its ownership interests to Paragon Noble LLC (Paragon Noble) (Proposed Transaction). The jurisdictional facilities involved in the Proposed Transaction consist of market-based rate tariffs, other rate schedules, wholesale power sales agreements, interconnection facilities, and related books and records.

According to Applicants, Noble Power is a renewable energy holding company. The upstream ownership of Noble Power is divided into several classes of interests. The voting interests in Noble Power are owned 54 percent by Paragon Noble, 28 percent by JPMP Wind Energy (Noble), LLC (JPMP Noble), 14 percent by CPP Investment Board (USRE II), Inc. (USRE II), and 4 percent by individuals, trusts and limited liability companies (Management Investors).

Applicants state that Paragon Noble currently has the right to appoint five of the voting members of Noble Power's Board of Managers. MSD Capital, L.P. (MSD Capital) is an investment firm that owns more than 90 percent of Paragon Noble.

¹ 16 U.S.C. § 824b (2012).

Applicants state that MSD Capital Management, LLC is the sole general partner of MSD Capital which was formed to manage the capital of Michael S. Dell and his family.

Applicants state that none of JPMP Noble, USRE II, or the Management Investors exercise day-to-day control over Applicants' jurisdictional activities, nor do they currently have any representatives on Noble Power's Board of Managers. Further, following the consummation of the Proposed Transaction, none of those owners will have an ownership interest in Noble Power or an indirect interest in the Applicants.

Each of the Applicants is an exempt wholesale generator with market-based rate authority and an indirect subsidiary of Noble Power. , Except for the wind energy project owned by Noble Great Plains, which is located within the SPP market, each of the wind energy projects owned by Applicants is located in the New York Independent System Operator, Inc. (NYISO) market. Noble Altona owns and operates a 97.5 megawatt (MW) generating facility in Altona, New York (Altona Project). Noble Bliss owns and operates a 100.5 MW generating facility in Wyoming County, New York (Bliss Project). Noble Clinton owns and operates a 100.5 MW generating facility in the Town of Clinton, New York (Clinton Project). Noble Ellenburg owns and operates an 81 MW generating facility in the Town of Ellenburg, New York (Ellenburg Project). Noble Chateaugay owns and operates a 106.5 MW generating facility near the Town of Chateaugay, New York (Chateaugay Project). Noble Great Plains owns and operates the Great Plains Project, a 114 MW generating facility in Hansford County, Texas. Finally, Noble Wethersfield owns and operates a 126 MW generating facility near the Town of Wethersfield, New York (Wethersfield Project).

Applicants represent that Paragon Noble currently has no energy related assets other than through its interest in Noble Power. Further, apart from Applicants, MSD Capital does not own or control any electric generation capacity within the Southwest Power Pool, Inc. (SPP) or New York Independent System Operator, Inc. (NYISO) markets. Applicants state that, in any case, the Applicants' and MSD Energy's energy affiliations will not change as a result of the Proposed Transaction.

According to Applicants, the Proposed Transaction shall consist of a Chapter 11 bankruptcy proceeding in order to cancel the existing ownership interests in Noble Power and issue 100 percent of the new ownership interests in Noble Power to the existing majority owner and secured lender, Paragon Noble, in exchange for various beneficial modifications of the existing loan, including the reduction of a portion of the principal amount of the debt, a reduction of interest rate, and extension of maturity date. Applicants represent that because Paragon Noble is the existing majority owner of Noble Power, control of Noble Power will not change.

According to Applicants, the Proposed Transaction is consistent with the public interest and will have no adverse effect on competition, rates, or regulation.

Applicants state that the relevant geographic markets for the Proposed Transaction are the NYISO and SPP markets in which the Applicants' facilities are located. However, Applicants assert that the Proposed Transaction does not raise any concerns with respect to horizontal market power because the Proposed Transaction does not result in a single corporate entity obtaining ownership or control over the generating facilities of previously unaffiliated entities.

Applicants also state that the Proposed Transaction will not have an adverse effect with respect to vertical market power. According to Applicants, the Proposed Transaction does not involve transmission facilities, other than limited interconnection facilities. Further, the Proposed Transaction does not result in a combination of generation facilities with transmission facilities or other upstream relevant products.

According to Applicants, the Proposed Transaction will not have an adverse effect on rates. Applicants state that, both before and after they consummate the Proposed Transaction, they will make all wholesale sales of electric energy, capacity and ancillary service pursuant to their respective market-based rate authority. Moreover, Applicants add that none of them has captive wholesale customers.

Applicants state that the Proposed Transaction will have no adverse impact on regulation. Applicants state that, after the Proposed Transaction is consummated, the Commission will continue to regulate each of the Applicants under the FPA to the same degree as before the Proposed Transaction. Applicants add that the Proposed Transaction will not impair the ability of any state authorities to regulate retail sales because none of the Applicants makes any retail sales subject to the ratemaking jurisdiction of a state commission. Accordingly, Applicants state that the Proposed Transaction will not have an adverse impact on regulation.

According to Applicants, 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. According to Applicants, the Proposed Transaction falls within a "safe harbor" established by the Commission and thus does not present any issue with respect to cross-subsidization. Specifically, Applicants state that the Proposed Transaction does not involve a franchised utility with captive customers.

Applicants verify 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 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 September 16, 2016, with comments, protests or interventions due on or before October 7, 2016. None was received.

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.² To

² *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'*, 111

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) 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 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 Applicants' 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) Applicants shall make any 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 Proposed Transaction has been consummated.

Docket No. EC16-183-000

- 6 -

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

Document Content(s)

EC16-183-000.DOC.....1-6