

157 FERC ¶ 62,141

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Enel Cove Fort, LLC  
Enel Stillwater, LLC  
EGP Stillwater Solar, LLC  
Origin Wind Energy, LLC  
Chisholm View Wind Project, LLC  
Prairie Rose Wind, LLC  
Prairie Rose Transmission, LLC  
Goodwell Wind Project, LLC  
EFS Green Power Holdings, LLC

Docket No. EC17-9-000

ORDER AUTHORIZING DISPOSITION  
OF JURISDICTIONAL FACILITIES

(Issued November 21, 2016)

On October 12, 2016, Enel Cove Fort, LLC (Enel Fort), Enel Stillwater, LLC (Stillwater Geothermal), EGP Stillwater Solar, LLC (Stillwater Solar), Origin Wind Energy, LLC (Origin), Chisholm View Wind Project, LLC (Chisholm), Prairie Rose Wind, LLC (Prairie Rose), Prairie Rose Transmission, LLC (Prairie Transmission), Goodwell Wind Project, LLC (Goodwell), and EFS Green Power Holdings, LLC (EFS) (collectively, Applicants) filed an application pursuant to sections 203(a)(1) and 203 (a)(2) of the Federal Power Act (FPA)<sup>1</sup> requesting authorization for the disposition of jurisdictional facilities in which EFS will acquire a 1 percent interest in EGPNA Renewable Energy Partners, LLC (REP) from a subsidiary of Enel Green Power North America, Inc. (EGPNA) and the limited liability company agreement of REP will be amended (Proposed Transaction).<sup>2</sup> The jurisdictional facilities consist of REP Public Utilities' market-based rate tariffs, service agreements and associated books, records, and accounts, and limited interconnection facilities.

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<sup>1</sup> 16 U.S.C. § 824b (2012).

<sup>2</sup> Enel Fort, Stillwater Geothermal, Stillwater Solar, Origin, Chisholm, Prairie Rose, Prairie Transmission, and Goodwell are referred to collectively as "REP Public Utilities."

Applicants state that the Proposed Transaction may not require authorization under FPA section 203(a)(1) and 203 (a)(2); however out of an abundance of caution, it nonetheless requests the Commission to authorize the Proposed Transaction. This order authorizes the Proposed Transaction without making any determination of jurisdiction.<sup>3</sup>

Applicants state that Enel Cove owns a 25 megawatt (MW) geothermal generation facility (Cove Fort Facility) located in the PacifiCorp-East (PACE) balancing authority area (BAA). The Cove Fort Facility is a qualifying small power production facility under the Public Utility Regulatory Policies Act of 1978 (PURPA). The output from the Cove Fort Facility is committed under a long-term contract to the Salt River Project. Cove Fort is authorized to sell power at market-based rates.

Applicants state that Stillwater Geothermal owns a 47.2 MW geothermal generation facility (Stillwater Geothermal Facility) located in the Nevada Power BAA. The Stillwater Geothermal Facility is a QF. The output from the Stillwater Facility is committed under a long-term contract to NV Energy, Inc. Stillwater Geothermal is an exempt wholesale generator (EWG) and is authorized to sell power at market-based rates.

Applicants state that Stillwater Solar owns a 22 MW solar generation facility (Stillwater Solar Facility) located in the Nevada Power BAA. The Stillwater Solar Facility is a QF. The output from the Stillwater Geothermal Facility is committed under a long-term contract to NV Energy, Inc. Stillwater Solar is authorized to sell power at market-based rates.

Applicants state that Origin owns a 150 MW wind generation facility (Origin Facility) located in the service territory of Oklahoma Gas and Electric Company (Oklahoma Gas) within the Southwest Power Pool (SPP) market. The output from the Origin Facility is committed under a long-term contract to Arkansas Electric Cooperative Corporation. Origin is an EWG and is authorized to sell power at market-based rates.

Applicants state that Chisholm owns a 235 MW wind generation facility (Chisholm Facility) located in the service territory of Oklahoma Gas within the SPP market. The output from the Chisholm Facility is committed under a long-term contract to Alabama Power Company. Chisholm is an EWG and is authorize to sell power at market-based rates.

Applicants state that Prairie Rose owns a 200 MW wind generation facility

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<sup>3</sup> See *Ocean State Power*, 47 FERC ¶ 61,321 (1989).

(Prairie Rose Facility) located within the Midcontinent Independent System Operator, Inc. (MISO) market. The output from the Prairie Rose Facility is committed under a long-term contract to Northern States Power Company. Prairie Rose is an EWG and is authorized to sell power at market-based rates.

Applicants state that Prairie Transmission is a wholly owned subsidiary of Prairie Rose. Prairie Transmission provides interconnection service between the Prairie Rose Facility and the transmission grid pursuant to a service agreement filed with the Commission and a waiver of the requirement to file an open access transmission tariff and other transmission related waivers.<sup>4</sup>

Applicants state that Goodwell owns a 200 MW wind generation facility (Goodwell Facility) located in the service territory of Southwestern Public Service Company within the SPP market. The output from the Goodwell Facility is committed under a long-term contract to Public Service Company of Oklahoma. Goodwell is an EWG and is authorized to sell power at market-based rates.

Applicants state that EGPNA is a wholly owned subsidiary of Enel Green Power International, B.V. (Enel Green Power International). Enel Green Power International is a wholly owned subsidiary of Enel S.p.A., a traditional utility company owned in part by the government of Italy. EGPNA through its wholly owned subsidiary EGPNA REP Holdings, LLC (REP Holdings) owns a 51 percent ownership interest in REP, consisting of 100 percent of the Class A membership interests in REP. The Class A membership interests are active voting securities. Applicants state that EGPNA controls REP through its indirect ownership of Class A membership interests in REP and its appointment as the manager of REP. Applicants state that REP controls the REP Public Utilities and certain non-utility generation projects companies (Non-Utility Projects Companies).

Applicants state that the Non-Utility Project Companies own certain non-utility generation projects (Non-Utility Projects). The Non-Utility Projects consist of hydroelectric, geothermal, and solar generation facilities having a total installed capacity of approximately 335 MW. Applicants state that each of the Non-Utility Projects (other than one project in Canada) is a QF under PURPA.

Applicants state that EFS currently owns a 49 percent ownership interest in REP, consisting of 100 percent of the Class B membership interests in REP. The Class B membership interests in REP are passive non-voting securities.

Applicants state that EFS is a wholly owned subsidiary of EFS Renewable Holdings, LLC (EFS Holdings). EFS Holdings is a wholly owned subsidiary of

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<sup>4</sup> *Prairie Rose Transmission, LLC*, 140 FERC 61,245 (2012).

Aircraft Services Corporation (ASC). ASC is owned 26.89 percent by Retailer Credit Services, Inc., 12.67 percent by EFS-L INC., 12.67 percent by SFG XXVII Inc., 12.67 percent by FULL SERVICE LEASING CORP., and 35.10 percent by GE Capital US Holdings, Inc. (GECUS). Each of Retailer Credit Services, Inc., EFS-L, INC., SFG XXVII INC. and FULL SERVICE LEASING CORP. is owned 100 percent by GECUS. GECUS is owned 100 percent by GE Capital Global Holdings, LLC, which is owned 100 percent by General Electric Company (General Electric).

Applicants state that through its subsidiaries, General Electric is a passive owner and investor in a number of generating facilities in the United States. General Electric's interest in each of these facilities is pursuant to a lease or similar passive ownership arrangement whereby a subsidiary of General Electric or a financing institutional either (a) holds title to the facility for the benefit of General Electric and leases the facility to another entity, or (b) holds some non-jurisdictional interest in the facility, but does not directly or indirectly make or manage any sale of power or transmission service associated with the facility. Applicants state that neither General Electric nor any of its affiliates is a public utility with a franchised electric service territory in the United States.

Applicants state that EFS Holdings is affiliated with Linden VFT, LLC (Linden VFT), which owns a merchant transmission facility (VFT Facility) in Linden, New Jersey and New York, New York. The VFT Facility connects the PJM Interconnection, L.L.C. (PJM) and New York Independent System Operator, Inc. (NYISO) service territories. PJM has operational control of the VFT Facility, and transmission service over the VFT Facility is provided under the merchant transmission provisions of PJM's Open Access Transmission Tariff (OATT). Applicants state that all of the transmission capacity on the VFT Facility is committed to non-affiliated customers, except as purchased on the PJM Open Access Same-Time Information System (OASIS) pursuant to protocols established by PJM and NYISO. Applicants state that, aside from General Electric's interest in Linden VFT, neither General Electric nor any of its affiliates owns or controls any transmission facilities in the United States, other than the limited interconnection facilities required to connect individual generating facilities to the transmission grid.

Applicants state that several affiliates of General Electric have non-passive interests in generating facilities in various regions of the United States. These include eleven entities within the geographic market which there is an overlap with generation facilities owned by the REP Public Utilities and the Non-Utility Project Companies. Specifically, General Electric affiliates own and control a total of 2,405.3 MW of generation in PJM; 30.7 MW of generation in ISO-NE and; 1,699.5 MW in CAISO.

According to Applicants, REP Holdings will sell a 1 percent interest in REP to EFS. As a result of the Proposed Transaction, the indirect 51 percent Class A membership interest in REP held by EGPNA through REP Holdings will decrease from 51 percent to 50 percent, and EFS' 49 percent Class B membership interest in REP will increase from 49 percent to 50 percent. Applicants state that EGPNA will remain as manager of REP. In addition, as part of the Proposed Transaction, the limited liability company agreement of REP will be modified as follows: (i) certain dollar thresholds for the exercise of consent rights by the Class B member (i.e. EFS) with respect to major decisions (e.g. incurrence of indebtedness) will be lowered, (ii) a provision for the automatic approval of prospective budgets within 110 percent of prevailing budgets in the absence of agreement between the Class A and Class B member will be deleted, (iii) the appointment of officers of REP will require the approval of the Class A and Class B members, (iv) certain other provisions will be changed, and (v) certain ancillary agreements will be modified.

Applicants state that after the consummation of the Proposed Transaction, the Class B membership interests will remain as passive interests that do not give EFS a voice in the day-to-day operations of REP or its subsidiaries and will not constitute voting securities. EGPNA will retain an indirect 50 percent Class A membership interest in REP, will be the manager of REP, and will have all day-to-day control over the operation and management of REP and its subsidiaries.

Applicants state that the Proposed Transaction is consistent with the public interest and will not adversely affect competition, rates or regulation. With respect to competition, Applicants state that the Proposed Transaction presents no horizontal market power concerns in the ISO-NE, PJM, and CAISO markets, the relevant geographic markets. First, Applicants state that the Proposed Transaction will not result in an overlap of generation having any competitive effects because EFS will only acquire passive membership interest in REP. Applicants state that the Class B membership interests in REP to be acquired by EFS will not constitute voting securities and therefore, their acquisition cannot result in any change in control of jurisdictional assets. Second, Applicants state that all the generation indirectly owned or controlled by REP through REP Public Utilities and the Non-Utility Project Companies is committed pursuant to long-term contracts. Third, Applicants state that, even if the above facts are ignored, the extent of overlap of installed capacity in each of the relevant markets from the Proposed Transaction is *de minimis*. Specifically, Applicants state that the combined generation shares of REP, together with EFS and its affiliates, in the three relevant markets range from 0.3 to 2.8 percent. Applicants state that these small shares of total installed capacity in the ISO-NE, PJM, and CAISO markets are well within the range of ownership shares that satisfies the *de minimis* standard. Therefore, Applicants assert that the Proposed Transaction does not present 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 control over transmission or other vertical inputs to generation. With one exception that would not allow the exercise of vertical market power<sup>5</sup>, neither REP, EFS, nor their affiliates own or control in any of the relevant geographic markets: (i) any electric transmission facilities other than limited interconnection facilities; (ii) any intrastate natural gas transportation, storage, or distribution facilities; (iii) physical coal supply sources or access to transportation of coal supplies; or (iv) 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 not have any effect on the rates charged to either wholesale sales or transmission service customers. Applicants state that following the Proposed Transaction, all jurisdictional wholesale sales of electric energy by the REP Public Utilities and their affiliates and EFS and its affiliates will continue to be made at market-based rates. Applicants state that while certain affiliates of the Applicants currently provide unbundled transmission services, costs attributable to the Proposed Transaction will not be flowed through to transmission customers, and therefore their rates will not be affected by the Proposed Transaction.

With respect to regulation, Applicants state that the Proposed Transaction will have no effect on the Commission's regulation of the jurisdictional activities of the Applicants or their affiliates. Applicants state that all jurisdictional wholesale power sales and transmission service by Applicants and their affiliates will remain subject to the jurisdiction of the Commission. In addition, Applicants state that the Proposed Transaction will have no effect on state commission regulation and does not require approval from any state regulatory agency.

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

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<sup>5</sup> Applicants note that Linden VFT owns a 345 kilovolt frequency transformer used as a component of a transmission line interconnecting PJM and NYISO. Applicants state that the operation of this facility is subject to an Open Access Transmission Tariff, and cannot be used to exercise transmission market power.

is not required. Applicants more specifically state that the Proposed Transaction does not involve a franchise 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 October 6, 2016 with comments, protests or interventions due on or before October 26, 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>6</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 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 the 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

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<sup>6</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).



- (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 (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)

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