

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Vantage Wind Energy LLC

Docket No. EC17-21-000

ORDER AUTHORIZING ACQUISITION
OF JURISDICTIONAL FACILITIES

(Issued November 23, 2016)

On October 20, 2016, Vantage Wind Energy LLC (Vantage) filed an application (Application) under section 203(a)(1)(A) of the Federal Power Act (FPA)¹ requesting authorization for a transaction that will result in a change in Vantage's ownership whereby Vantage Class B Holdings LLC (VCB Holdings) will acquire from Macquarie Washington Wind LLC (Class A Investor) all the passive, non-controlling Class A membership interests that the Class A Investor holds in Vantage Wind Holdings LLC (Vantage Holdings), which will result in the Class A Investor no longer owning any indirect ownership interests in Vantage (Proposed Transaction). According to Vantage, the jurisdictional facilities involved in the Proposed Transaction consist of Vantage's market-based rate tariff, wholesale power sale agreements, interconnection facilities, and related books and records.

Vantage states that it is an exempt wholesale generator (EWG), with market-based rate authority. Vantage owns and operates a 90 megawatt (MW) wind-powered generation project (Vantage Project), located in Kittitas County, Washington, together with limited interconnection facilities that are necessary to connect its generation facilities to the transmission system owned by Puget Sound Energy, Inc. (Puget). Vantage uses its interconnection facilities to deliver the Vantage Project's power to the interconnection point with the Puget's transmission system. Vantage has entered into a long-term power sales agreement pursuant to which it sells the entire output produced by the Vantage Project to Pacific Gas & Electric Company. Vantage states that the Puget balancing authority area (Puget BAA) is the relevant market for the Proposed Transaction. Vantage states that it does not own or control any facilities for the transportation or distribution of natural gas, and states that it is not a franchised utility with captive customers.

Vantage states that it is a direct, wholly owned subsidiary of Vantage Holdings.

¹ 16 U.S.C. § 824b (2012).

Currently, VCB Holdings directly owns the controlling interests in Vantage Holdings as the owner of 100 percent of the Class B membership interests in, and managing member of, Vantage Holdings. The Class A Investor owns all the passive, non-controlling Class A ownership interests in Vantage Holdings. Consummation of the Proposed Transaction will result in the Class A Investor no longer owning any interests in Vantage Holdings, or indirectly, in Vantage, and VCB Holdings owning all of the membership interests in Vantage Holdings and continuing to indirectly own the controlling interests in Vantage.

VCB Holdings is an indirect, wholly owned subsidiary of Invenergy Wind LLC (Invenergy Wind), which is an indirect, partially owned subsidiary of Invenergy Investment Company LLC (Invenergy Investment). Vantage states that Invenergy Investment is a wholly owned subsidiary of Polsky Energy Investments LLC (Polsky Energy). Polsky Energy is approximately 96.5 percent indirectly majority owned and controlled by Michael Polsky. Invenergy Investment indirectly owns the majority and controlling membership interests in Invenergy Wind. Vantage states that, through subsidiaries, Invenergy Investment and/or Invenergy Wind are in the business of acquiring or developing, and owning and operating, electric generation facilities and associated interconnection transmission facilities in the United States and abroad that are EWGs or foreign companies under Public Utility Holding Company Act, or qualifying facilities under the Public Utility Regulatory Policies Act.

Other than Vantage, none of Invenergy Investment, Invenergy Wind, Polsky Energy, VCB Holdings or their respective subsidiaries or affiliates own or control generation or transmission facilities that are located in the Puget BAA. In addition, none of Polsky Energy, Invenergy Investment, Invenergy Wind, VCB Holdings or their respective subsidiaries or affiliates, (i) own or control facilities for the transportation or distribution of natural gas, or (ii) is a franchise utility with captive customers.

Vantage states that, once conditions to closing on the Proposed Transaction are met, VCB Holdings will make a cash payment to the Class A Investor in an amount agreed to by the parties to acquire all the passive, non-controlling Class A Investor's ownership interests in Vantage Holdings. Once consummation of the Proposed Transaction occurs, Vantage Holdings will be a wholly owned subsidiary, rather than partially owned subsidiary, of VCB Holdings because the Class A Investor will no longer own any interest in Vantage Holdings. Therefore, at the time the Proposed Transaction closes, VCB Holdings will continue to directly, and Invenergy Investment will continue to indirectly, own the controlling interests in Vantage Holdings, and the indirect controlling interests in Vantage. Vantage notes that, while consummation of the Proposed Transaction will result in an indirect change in the upstream ownership of Vantage, Vantage will continue to be the direct owner of its wholesale power sale agreements, interconnection facilities, and books and records.

Vantage states that the Proposed Transaction is consistent with the public interest

and will have no adverse effect on competition, rates, or regulation and will not raise cross-subsidization concerns. With respect to horizontal competition, Vantage states that VCB Holdings is the company that already directly owns the ownership interests in Vantage Holdings and indirectly in Vantage. The Proposed Transaction will not increase the amount of generation that Invenergy Investment, Invenergy Wind, VCB Holdings or Vantage will directly or indirectly own or control in the Puget BAA because they will not be acquiring ownership or control of any new generation as a result of the Proposed Transaction. Moreover, Vantage states that the entire output of the Vantage Project is fully committed under a long-term agreement with an unaffiliated third party. Therefore, according to Vantage, the Proposed Transaction will have no adverse effect on horizontal market power.

With respect to vertical competition, Vantage states that the Proposed Transaction does not involve any new combination of transmission or gas facilities. Vantage explains that, other than limited electric interconnection facilities that Vantage owns to effectuate its wholesale power sales, none of VCB Holdings, Vantage Holdings or Vantage own or control any transmission facilities or transmission companies in the Puget BAA nor do they own or control natural gas transmission facilities or distribution facilities. Additionally, the Proposed Transaction will not result in Vantage or its affiliates acquiring ownership or control over any new electrical transmission facilities or natural gas transmission, storage or distribution facilities. Therefore, according to Vantage, the Proposed Transaction will have no adverse effect on vertical market power.

With regard to the effect of the Proposed Transaction on rates, Vantage states that it will sell power to its customers at wholesale pursuant to negotiated rates in power sale arrangements, under its market-based rate tariff on file with the Commission. In addition, the Proposed Transaction does not involve transmission rates or transmission service customers. Therefore, Vantage states that the Proposed Transaction will have no adverse effect on wholesale ratepayers or transmission customers.

With respect to the effect of the Proposed Transaction on regulation, Vantage states that the Proposed Transaction will not affect the extent to which the Commission regulates Vantage. Vantage's status as a public utility will not change as a result of closing on the Proposed Transaction. Vantage states that the Proposed Transaction will have no adverse effect on state regulation because Vantage does not have retail customers and it is not subject to rate regulation by any state public utility commission. Therefore, according to Vantage, the Proposed Transaction will not impair either federal or state jurisdiction.

Vantage states that the Proposed Transaction will not result in any cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company. Vantage states that the Proposed Transaction qualifies for the safe harbor for transactions that do not involve a franchised

public utility with captive customers. In addition, Vantage provides assurance and verifies that, based on known or reasonably foreseeable information, the Proposed Transaction will not result in, at the time of the Proposed Transaction or 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 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.

This filing was noticed on October 20, 2016, with comments, protests or interventions due on or before November 10, 2016. None were filed.

Information and/or systems connected to the bulk power 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 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 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 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) Vantage 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 cost, 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 Vantage's affiliated qualifying facilities, if any, 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) Vantage shall make the appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transaction; and

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'g*, 111 FERC ¶ 61,413 (2005).

- (8) Vantage 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 (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