

157 FERC ¶ 62,102

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Paulding Wind Farm III LLC

Docket No. EC16-195-000

ORDER AUTHORIZING DISPOSITION
OF JURISDICTIONAL FACILITIES

(Issued November 9, 2016)

On September 9, 2016, Paulding Wind Farm III LLC (Paulding III) filed an application under section 203(a)(1) of the Federal Power Act (FPA)¹ requesting authorization for the disposition of jurisdictional facilities. Specifically, Bankers Commercial Corporation (Bankers) and Antrim Corporation (Antrim) (collectively, Investors), or their respective affiliates, will acquire from EDPR Wind Ventures XVI, LLC (Ventures XVI) 100 percent of its passive, non-managing Class B membership interests in Paulding III's direct owner, 2016 Vento XVI, LLC (Vento XVI) (Proposed Transaction). The affected jurisdictional facilities consist of a market-based rate tariff and any related agreements, books and records, and interconnection facilities.

Paulding III states that the Proposed Transaction may not require Commission approval under section 203(a)(1); however, out of an abundance of caution, it nevertheless asks the Commission to authorize the Proposed Transaction. This order authorizes the Proposed Transaction without making any determination of jurisdiction.²

Paulding III is an exempt wholesale generator with market-based rate authority. Paulding III is constructing, and will own and operate, an approximately 100.8 megawatt (MW) wind-powered generation facility located in Paulding County, Ohio (Facility). Paulding III owns an undivided pro rata interest in certain interconnection facilities that are shared with an affiliate and are needed for the construction and operation of the Facility. The Facility is situated within the PJM Interconnection, L.L.C. market (PJM market). Thus, according to Paulding III, the relevant market for the Proposed Transaction is PJM. Further according to Paulding III, output from the Facility is committed to an unaffiliated entity under a long-term power purchase agreement.

¹ 16 U.S.C. § 824b (2012).

² *Ocean State Power*, 47 FERC ¶ 61,321 (1989).

Paulding III is a direct, wholly owned subsidiary of Vento XVI, which, in turn, is a direct wholly owned subsidiary of Ventures XVI, which, in turn, is a direct, wholly owned subsidiary of EDP Renewable North America LLC (EDPRNA). EDPRNA indirectly develops, owns, and operates renewable electric generation facilities throughout the United States. In addition to Paulding III, EDPRNA is affiliated with entities that own or control approximately 1,557 MWs of generation capacity within the PJM market.

Bankers is a wholly owned, non-bank subsidiary of MUFG Americas Holdings Corporation, which, in turn, is directly wholly owned by Mitsubishi UFJ Financial Group, Inc. (Mitsubishi), a publicly traded corporation organized under the laws of Japan. Paulding III states that Bankers' primary function is to invest in physical assets throughout the United States.

Atrium is an indirect wholly owned subsidiary of State Street Bank and Trust Company (SSBT), which, in turn, is directly wholly owned by State Street Corporation, a financial holding company regulated by the Federal Reserve. Paulding III states that Atrium and its affiliates hold only passive interests in electric generating facilities within the PJM market.

The Proposed Transaction involves a proposal letter between EDPRNA, Mitsubishi's subsidiary MUFG Union Bank, N.A., and SSBT. Paulding III explains that Vento XVI has two classes of membership interests: Class A, which is controlling and managing; and Class B, which is passive and non-managing. Ventures XVI currently holds 100 percent of the managing, controlling Class A interests in Vento XVI, and as such, is the managing member of Vento XVI. Under the Proposed Transaction, according to Paulding III, Investors will acquire from Ventures XVI 100 percent of its passive, non-managing Class B interests in Vento XVI, and indirectly, Paulding III. The Class B interests will give Investors only consent rights necessary to protect their economic interests, and not the ability to participate in the day-to-day management of Paulding III and the Paulding III Facility. Thus, EDPRNA, through Ventures XVI, will continue to control Paulding III and the Paulding III Facility.

Paulding III states that the Proposed Transaction is consistent with the public interest and will have no adverse effect on competition, rates, or regulation. With respect to horizontal market power, Paulding III states that the Proposed Transaction raises no concerns. Paulding III states that the acquisition of the passive, non-managing Class B interests will not result in Investors gaining control over the Facility. Paulding III thus asserts that the Proposed Transaction will have no effect on the market power of it or Investors. Paulding III also states that neither Investors nor any of their affiliates own non-passive voting interests in or controls any capacity within the PJM market. In addition, Paulding III states that output from the Facility is fully committed to a non-affiliated purchaser under a long-term agreement. Paulding III thus asserts that the

Proposed Transaction will not result in any new combination of electric generating assets that could have an impact on competition in the PJM market.

With regard to vertical market power, Paulding III states that the Proposed Transaction raises no concerns. Paulding III states that the Proposed Transaction does not involve any transmission facilities, other than limited interconnection facilities, or any essential inputs to electricity products or electric power production. Paulding III further states that none of it, Investors, or any of their affiliates own or control any transmission facilities in the United States, other than limited interconnection facilities. In addition, Paulding III states that none of it, Investors, or any of their affiliates own or control any essential inputs to electricity products or electric power production within the PJM market.

With regard to rates, Paulding III states that the Proposed Transaction raises no concerns. Paulding III states that it will sell its power at market-based rates. Paulding III also states that the Proposed Transaction does not involve transmission rates or transmission customers. With regard to regulation, Paulding III states that the Proposed Transaction raises no concern because it will not affect the manner or extent to which the Commission, any state, or any other federal agency regulates Paulding III, Investors, or any of their affiliates.

Paulding III states 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 for the benefit of an associate company. Specifically, Paulding III states 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 October 3, 2016, with comments, protests, or interventions due on or before October 21, 2016. None were received.

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.

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.³ 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 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) Paulding III must inform the Commission of any material change in circumstances that departs from the facts or representations that the

³ *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).

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 Paulding III's 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 section 203(b) and 309 of the FPA to issue supplemental orders as appropriate;
- (7) Paulding III shall make appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transaction; and
- (8) Paulding III 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

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