

145 FERC ¶ 62,039
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Wheat Field Wind Power Project LLC

Docket No. EC13-149-000

ORDER AUTHORIZING DISPOSITION
OF JURISDICTIONAL FACILITIES

(Issued October 17, 2013)

On September 17, 2013, Wheat Field Wind Power Project LLC (Wheat Field) filed an application requesting authorization pursuant to section 203(a)(1)(A) of the Federal Power Act (FPA)¹ for the disposition of jurisdictional facilities resulting from the transfer of 49.0 percent of the indirect membership interests in Wheat Field from EDP Renewables North America LLC (EDPRNA) to Fiera Axium Wheat Field Inc. (Purchaser)(Transaction). The jurisdictional facilities involved in the Transaction consist of Wheat Field's market-based rate tariff and related agreements, interconnection transmission equipment, and various books and records.

Wheat Field, a Delaware limited liability company, is an exempt wholesale generator (EWG) with market-based rates authority. Wheat Field is a wholly owned direct subsidiary of EDPRNA. Wheat Field owns and operates a 97 megawatt (MW) wind-powered electric generation facility located in Gilliam County, Oregon (Wheat Field Facility). The Wheat Field Facility is interconnected with the transmission system owned and operated by Bonneville Power Administration Transmission (BPAT BAA). Wheat Field states that all of the output from the Wheat Field Facility is committed to Snohomish County Public Utility District No. 1 under a long-term power purchase agreement.

Purchaser is a wholly owned direct subsidiary of Fiera Axium Infrastructure US L.P. (Fiera Axium US Fund),² which is an investment fund managed by Fiera Axium US Inc. Fiera Axium US Fund is an investment vehicle of Fiera Axium Infrastructure North America L.P. (Fiera Axium North America). Fiera Axium North America is an

¹ 16 U.S.C. § 824b (2006).

² Wheat Field states that neither Purchaser nor Fiera Axium US Fund is a holding company within the meaning of FPA section 203(a)(2) since they do not directly or indirectly own or control 10 percent or more of the outstanding voting securities of a public utility company as defined under the Public Utility Holding Company Act of 2005.

investment fund managed by Fiera Axiom Infrastructure Inc. (Fiera Axiom Infrastructure). Fiera Axiom Infrastructure is an independent portfolio management firm dedicated to generating long-term investment returns through investing in infrastructure assets. Wheat Field states that Fiera Axiom Infrastructure is jointly controlled by Fiera Capital Corporation (Fiera Capital) and Axiom Infrastructure Management.

Fiera Capital is an investment manager that is based in Canada and provides asset management services, including Canadian and foreign equity, fixed income securities, structured products, structured global asset allocation, and pooled investment funds. Axiom Infrastructure Management is a holding vehicle established and owned by Fiera Axiom Infrastructure's President and Chief Executive Officer, Pierre Anctil.

Fiera Axiom Infrastructure Canada L.P. and Fiera Axiom Infrastructure Canada II L.P. are two investment funds managed by Fiera Axiom Infrastructure, which hold interests in certain electric generation facilities located in Canada. Wheat Field states that neither Fiera Axiom US Fund nor any of its affiliates own or control any electric generation facilities in the United States. Neither Fiera Axiom US Fund nor any of its affiliates own or control transmission facilities used for the interstate transmission of electric energy in the United States. Neither Fiera Axiom US Fund nor any of its affiliates own or control any inputs to electric power production in the United States, including intrastate natural gas transportation and storage, distribution facilities, sites for generation capacity development, or sources and transportation of coal supplies. Lastly, Fiera Axiom US Fund is not affiliated with any jurisdictional public utility with a franchised electric service territory in the United States.

EDPRNA is a Delaware limited liability company that develops, owns, and operates, through wholly or partially owned subsidiaries, renewable electric generation facilities throughout the United States. EDPRNA is a wholly owned direct subsidiary of EDP Renovaveis, S.A. (EDP Renovaveis). Approximately 22.5 percent of the issued share capital of EDP Renovaveis is disbursed among investors, none of which has a 10 percent or greater voting interest in EDP Renovaveis. The remaining share capital of EDP Renovaveis is owned by: (i) EDP-Energias de Portugal, S.A. (EDPSA) (62 percent); and (ii) Hidroelectrica del Cantabrico, S.A. (Hidrocantabrico) (15.5 percent). Wheat Field adds that EDPSA is the holder of approximately 97 percent of the issued share capital of Hidrocantabrico.

EDPSA is a diversified energy and utility company, headquartered in Portugal, whose principal subsidiaries own and operate assets in other countries in Europe, as well as in Brazil, the United States, and Canada. EDPSA is structured as a company whose subsidiaries hold interests in electric generation and distribution companies, gas supply, and a number of other energy-related business ventures.

Wheat Field states that the largest shareholder of EDPSA is China Three Gorges

International (Europe), S.A. (CTGI Europe), which currently holds a 21.35 percent equity interest in EDPSA.

CTGI Europe is a wholly owned indirect subsidiary of China Three Gorges Corporation (CTG). Wheat Field states that CTG is a wholly state-owned enterprise of the People's Republic of China (PRC).

Wheat Field states that the following affiliates of EDPRNA also own or control generation in Wheat Field's relevant market: Arlington Wind Power Project LLC (Arlington) and Sagebrush Power Partners, LLC (Sagebrush). Arlington is an EWG with market-based rate authority that owns and operates a 103 MW wind-powered generation facility in Gilliam County, Oregon. The output from the Arlington facility is sold to Pacific Gas and Electric Company under a long-term power purchase agreement. Sagebrush is also an EWG with market-based rate authority that owns and operates a 100.8 MW wind-powered generation facility in Kittitas County, Washington. The output from the Sagebrush facility is sold to Exelon Generation Company, LLC pursuant to a long-term power purchase agreement.

Wheat Field states that aside from itself, Arlington and Sagebrush, none of EDPRNA, CTG, or any of their affiliates own or control other generation located in the BPAT BAA. None of EDPRNA, CTG, or any of their affiliates own or control any transmission facilities that are used for the interstate transmission of electric power, other than the limited interconnection facilities required to connect individual generation facilities to the transmission grid. Neither EDPRNA nor CTG is affiliated with any public utility with a franchised electric service territory in the United States. Furthermore, affiliates of EDPRNA own or control sites for new generation capacity development in various markets, including the BPAT BAA, but none of EDPRNA, CTG, or any of their affiliates own or control any other inputs to electric power production in the relevant market.

Wheat Field states that before the closing of the Transaction, the upstream ownership of Wheat Field will be reorganized. According to the reorganization, EDPRNA will contribute 100 percent of the direct membership interests in Wheat Field to Wheat Field Holding LLC (WF Holding). WF Holding will be a wholly owned direct subsidiary of EDPRNA. Wheat Field states that as a result of the internal corporate reorganization, Wheat Field will be a wholly owned direct subsidiary of WF Holding at the time of the Transaction.

Pursuant to the Transaction, Fiera Axium US Fund will indirectly acquire 49 percent of the direct membership interests in WF Holding. After the Transaction, Wheat Field will be indirectly owned 51 percent by EDPRNA and 49 percent by Fiera Axium US Fund. EDPRNA will be the managing member of WF Holding and EDPRNA will retain day-to-day control over Wheat Field and its jurisdictional facilities.

Wheat Field states that the Transaction is consistent with the public interest and will not adversely affect competition, rates, or regulation and will not raise any cross-subsidization concerns. With respect to horizontal competition, Wheat Field states that in the relevant market of BPAT BAA, Wheat Field and its EDPRNA affiliates own or control 300.8 MW, which represents less than 1.5 percent of the BPAT BAA available capacity of 21,037 MW. Wheat Field adds that Fiera Axiom US Fund and its affiliates currently do not own or control any electric generation facilities in the BPAT BAA; thus, there is no overlap. Wheat Field thus states that the Transaction will not result in any new combination of electric generation assets that could have a competitive impact in the relevant market. Additionally, Wheat Field states that all of the generation capacity owned or controlled by Wheat Field and its EDPRNA affiliates in the BPAT BAA is fully committed under long-term power purchase agreements. According to Wheat Field, the Transaction will have no adverse effect on horizontal market power.

With respect to vertical competition, Wheat Field states that none of Wheat Field, Fiera Axiom US Fund, or any of their affiliates own or control any transmission facilities used for the interstate transmission of electric energy, except for the limited interconnection facilities required to connect individual generating facilities to the transmission grid. In addition, Wheat Field states that Fiera Axiom US Fund and its affiliates do not own or control any inputs to electric power production in the United States. According to Wheat Field, the Transaction will have no adverse effect on vertical market power.

With regard to the effect on rates, Wheat Field states that Wheat Field's rates for wholesale power sales of electric energy will continue to be made pursuant to its market-based rates tariff. Wheat Field sells all of the output from the Wheat Field Facility under a long-term power purchase agreement, the terms of which will not be affected by the Transaction. The Transaction does not involve transmission rates or transmission service customers. Thus, Wheat Field states that the Transaction will have no adverse effect on wholesale ratepayers or transmission customers.

With respect to the effect of the Transaction on regulation, Wheat Field states that the Transaction will not affect the manner or the extent to which the Commission, any state, or any other federal agency may regulate Wheat Field and its affiliates. The extent to which Wheat Field and its affiliates are subject to the Commission's jurisdiction or the jurisdiction of any other regulatory agency or office will not change as a result of the Transaction. Thus, according to Wheat Field, the Transaction will not impair either federal or state jurisdiction.

Wheat Field states that the 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. Wheat Field states that none of the parties to the Transaction is

a traditional public utility that has captive ratepayers reducing the possibility for cross-subsidization.

In addition, Wheat Field provides assurance and verifies that based on known or reasonably foreseeable information, the Transaction will not result in, at the time of the 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.

The filing was noticed on September 17, 2013, with Comments, protests or interventions were due on or before October 8, 2013. None was 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 (18 C.F.R. § 385.214) (2013). Any opposed or untimely filed motion to intervene is governed by the provisions of Rule 214.

Information and/or systems connected to the bulk power system involved in this transaction may be subject to reliability and cyber security standards approved by the Commission pursuant to FPA section 215 of the FPA. 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 cyber security standards. The Commission, North American Electric Reliability Corporation or the relevant regional entity may audit compliance with reliability and cyber security 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.³ The foregoing authorization may result in a change in status. Accordingly, Wheat Field is advised that it must comply with the requirements of Order No. 652. In addition, Wheat Field shall make appropriate filings under section 205 of the FPA, as necessary, to implement the Transaction.

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 this Transaction is based on such examination ability.

After consideration, it is concluded that the Transaction is consistent with the public interest and is authorized, subject to the following conditions:

- (1) The 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 cost, or any other matter whatsoever now pending or which may become before the Commission;
- (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 Transaction results in changes in the status or the upstream ownership of Wheat Field's affiliated qualifying facilities, if any, an appropriate filing for recertification pursuant to 18 C.F.R. § 292.207 (2013) shall be made;

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).

- (6) Wheat Field shall make appropriate filings under section 205 of the FPA, as necessary, to implement the Transaction;
- (7) Wheat Field must inform the Commission within 30 days of any change in circumstances that would reflect a departure from the facts the Commission relied upon in authorizing the Transaction; and
- (8) Wheat Field shall notify the Commission within 10 days of the date that the 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 (2013). 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 (2013).

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

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