

153 FERC ¶ 62,038

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSIONMontana-Dakota Utilities Co.  
ACE Wind LLC  
Thunder Spirit Wind, LLC

Docket No. EC15-169-000

ORDER AUTHORIZING ACQUISITION AND  
DISPOSITION OF JURISDICTIONAL FACILITIES

(Issued October 21, 2015)

On July 14, 2015, as amended on October 6, 2015, Montana-Dakota Utilities Co. (Montana-Dakota), ACE Wind LLC (ACE Wind), and Thunder Spirit Wind, LLC (TSW) (collectively, Applicants) filed an application pursuant to sections 203(a)(1)(A) and 203(a)(1)(D) of the Federal Power Act (FPA)<sup>1</sup> requesting Commission authorization for a transaction by which Montana-Dakota will purchase ACE Wind and TSW's interests in the hard assets, books and records associated with the Thunder Spirit Wind Project (Project) (Proposed Transaction). According to Applicants, the jurisdictional facilities affected by the Proposed Transaction consist of the Project's generation assets (if operational at the time of the closing) and the associated interconnection facilities and contracts, books, permits, and records.

Applicants state that Montana-Dakota is a public utility that provides natural gas service to approximately 265,000 customers and electric service to approximately 140,000 customers in the states of Montana, North Dakota, South Dakota, and Wyoming. Montana-Dakota is a transmission-owning member of the Midcontinent Independent System Operator, Inc. (MISO). Montana-Dakota is a Division of MDU Resources Group, Inc. (MDU Resources).

According to Applicants, ACE Wind is a wholly owned subsidiary of ALLETE Clean Energy, Inc., (ALLETE Clean Energy) which itself is a wholly owned subsidiary of ALLETE, Inc. (ALLETE). Applicants state that ALLETE Clean Energy was formed for the purpose of owning and developing renewable generation projects throughout North America. ALLETE Clean Energy has market-based rate authority.

Applicants state that ALLETE is an energy services company headquartered in Duluth, Minnesota. Applicants assert that ALLETE, through its operating division

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<sup>1</sup> 16 U.S.C. § 824b (2012).

Minnesota Power, generates, transmits, and distributes electricity in a 26,000-square-mile region of northern Minnesota, serving 143,000 retail customers and providing wholesale electric service to 16 municipalities. Applicants further state that ALLETE, through its affiliate Superior Water, Light & Power (SWL&P), also provides service to 14,000 electric customers, 12,000 natural gas customers, and 10,000 water customers in western Wisconsin. Applicants maintain that SWL&P operates under the jurisdiction of the Public Service Commission of Wisconsin. SWL&P does not own or control any electric generation facilities and makes no wholesale electric sales. Applicants state that functional control of Minnesota Power's and SWL&P's transmission facilities has been transferred to MISO.

Applicants state that TSW is a Delaware limited liability company and is directly, wholly owned by ACE Wind. Applicants state that TSW was formed to develop and own the 107.5 megawatt (MW) Project, which is currently under construction and will be located in Adams County, North Dakota. Applicants assert that TSW does not own any other electric generating or transmission assets or have any other ownership interests in electric facilities.

Applicants state that, under the Proposed Transaction, pursuant to a purchase agreement, Montana-Dakota will purchase the Project from ACE Wind and TSW. Applicants assert that Montana-Dakota will take ownership of the Project either shortly before or after the facilities have been placed into commercial operation. According to Applicants, the purchase was conditioned upon approval by the North Dakota Public Service Commission (North Dakota Commission) of a Certificate of Public Convenience and Necessity and an Advance Determination of Prudence for the purchase and operation of the Project.

Applicants state that the Proposed Transaction is consistent with the public interest because it will not have an adverse effect on competition, rates, or regulation and will not result in cross-subsidization or the pledge or encumbrance of utility assets for the benefit of an associate company.

Applicants state that the Proposed Transaction does not raise any horizontal market power concerns. Applicants state that the geographic market relevant to the Proposed Transaction is the MISO market where the Project is located. Applicants state that Montana-Dakota's uncommitted capacity is 318 MW, representing less than 1 percent of the net uncommitted capacity of 36,066 MW in the MISO market. Applicants assert that the addition of approximately 108 MW of generation capacity of the Project will result in Montana-Dakota controlling approximately 426 MW of uncommitted capacity, representing 1.18 percent of the uncommitted installed capacity in MISO. Applicants argue that this percentage meets the *de minimis* standard. Applicants further state that Montana-Dakota is not affiliated with any entities that own or control generation or transmission facilities in any other markets.

With respect to vertical market power, Applicants state that the Proposed Transaction raises no concerns. Applicants state that the Proposed Transaction involves no transmission facilities other than discrete and limited facilities necessary to interconnect the Project to the transmission grid. Applicants note that Montana-Dakota owns transmission, but in January of 2002 the Commission authorized Montana-Dakota to transfer functional control of its transmission facilities that operate at 100 kilovolts or above in the states of Montana, North Dakota, and South Dakota to MISO. Accordingly, Applicants state that the rates, terms, and conditions of transmission service being provided by MISO are prescribed in the MISO OATT. While Montana-Dakota is affiliated with natural gas pipelines and local distribution companies, Applicants state the Commission has established a presumption that such affiliation does not create barriers to entry. Additionally, Applicants assert that neither Montana-Dakota nor MDU Resources' subsidiaries own or control physical sources of coal supplies or have control over who may access transportation of coal. Thus Applicants conclude that the Proposed Transaction satisfies the Commission's standards with regard to vertical market power.

Applicants state that the Proposed Transaction will have no adverse effect on rates. Applicants state that they do not have any cost-based wholesale power sales customers. Additionally, Applicants represent that Montana-Dakota will make sales of the output of the Project pursuant to its market-based rate tariff. Therefore Applicants conclude that the Proposed Transaction will not have an adverse effect on rates.

Applicants state that the Proposed Transaction will not impair the ability of the Commission or any state regulatory authority to regulate Applicants or any of their affiliates. Applicants further state that the Commission will continue to have the same jurisdiction over Applicants and their FPA-jurisdictional facilities after the Proposed Transaction is consummated as it exercises currently. Applicants also note that the Proposed Transaction was subject to the approval of the North Dakota Commission.

Applicants assert that the Proposed Transaction falls within one of the "safe harbors" established by the Commission for transactions where a franchised public utility transacts only with nonaffiliated entities. Specifically, Applicants explain that Montana-Dakota is a public utility and that TSW and ACE Wind are non-affiliated entities

Additionally, 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: (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 filings were noticed on July 15, 2015 and October 6, 2015, with comments, protests, or interventions due on or before August 4, 2015 and October 16, 2015, respectively. 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.<sup>2</sup> The

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<sup>2</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).

foregoing authorization may result in a change in status. Accordingly, applicants that have market-based rates are advised that they must comply with the requirements of Order No. 652. In addition, applicants shall make appropriate filings under section 205 of the FPA, to implement the Proposed Transaction.

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 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;
- (8) Applicants shall notify the Commission within 10 days of the date that the Proposed Transaction has been consummated; and
- (9) Montana-Dakota shall account for the Proposed Transaction in accordance with Electric Plant Instruction No. 5 and Account 102, Electric Plant Purchased or Sold, of the Uniform System of Accounts. Montana-Dakota

shall submit their final accounting entries within six months of the date that the Proposed Transaction is consummated, and the accounting submissions shall provide all the accounting entries and amounts related to the transfer along with narrative explanations describing the basis for the entries.

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. 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.

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

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