

156 FERC ¶ 62,233

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Black Oak Wind, LLC

Docket No. EC16-170-000

ORDER AUTHORIZING ACQUISITION
OF JURISDICTIONAL FACILITIES

(Issued September 29, 2016)

On August 19, 2016, Black Oak Wind, LLC (Black Oak) filed an application under section 203(a)(1) of the Federal Power Act (FPA)¹ requesting authorization for the acquisition of jurisdictional facilities. Specifically, Bankers Commercial Corporation (Bankers) will acquire 100 percent of the Class A membership interests in Black Oak's direct parent, Black Oak Getty Holdings (Black Oak Holdings), and subsequently will transfer 36.5 percent of those interests to Citizens Asset Finance, Inc. (Citizens) (Proposed Transaction). The affected jurisdictional facilities consist of a market-based rate tariff, interconnection facilities, and related books, records, and contracts.

Black Oak states that the Proposed Transaction may not require authorization 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

Black Oak is an exempt wholesale generator with market-based rate authority. Black Oak is constructing, and will own and operate, a 78 megawatt (MW) wind generation facility and associated interconnection facilities to be located in Stearns County, Minnesota (Black Oak Facility). Output from the Black Oak Facility will be sold to an unaffiliated purchaser under a long-term power purchase agreement. The Black Oak Facility will be situated within the Midcontinent Independent System Operator, Inc. (MISO) market. Thus, according to Black Oak, the relevant market for the Proposed Transaction is MISO. Further, according to Black Oak, Black Oak is affiliated with the Fowler Ridge II Facility (Fowler Facility), a 199.5 MW wind generation facility in which 49.5 MWs are electrically tied into the MISO market.³

¹ 16 U.S.C. § 824b (2012).

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

³ Black Oak states that the remaining 150 MWs of the Fowler Facility is located

Black Oak is a direct, wholly owned subsidiary of Black Oak Holdings. Black Oak represents that, prior to the Proposed Transaction, Black Oak Holdings will be 95 percent directly owned by Black Oak Class B Holdings, LLC (Black Oak Class B) and 5 percent directly owned by Sempra BOGW Holdings, LLC (BOGW Holdings). Black Oak Class B and BOGW Holdings are directly, wholly owned by Sempra Wind Holdings, LLC (Wind Holdings) whose corporate parent is Sempra Energy, a public utility holding company that provides electric, natural gas, and energy-related products and services.

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., a publicly traded corporation organized under the laws of Japan. According to Black Oak, Bankers' primary function is to invest in physical assets throughout the United States.

Citizens is a direct, wholly owned subsidiary of Citizens Bank, N.A., which, in turn, is indirectly, wholly owned by Citizens Financial Group, Inc. (Citizens Financial). Citizens Financial is a publicly traded entity that offers retail and commercial banking products and services to individuals, small businesses, middle-market companies, large corporations and institutions.

The Proposed Transaction involves a membership interest purchase agreement between Wind Holdings, Black Oak Holdings, and Bankers. Under the Proposed Transaction, according to Black Oak, Bankers will first, in connection with a tax equity financing, acquire 100 percent of the passive, non-managing Class A membership interests in Black Oak Holdings. After closing of the tax equity financing, Bankers will then transfer to Citizens approximately 36.5 percent of such Class A interests in Black Oak Holdings. The Class A interests will give Bankers and Citizens only limited consent and veto rights regarding economic and financial matters of Black Oak Holdings, and not the ability to manage Black Oak Holdings, or Black Oak. BOGW Holdings will hold 100 percent of the Class B membership interests, which, according to Black Oak, are controlling. As holder of the Class B interests, BOGW Holdings will be the managing member of Black Oak Holdings and will have control over the day-to-day operations of Black Oak Holdings and, indirectly, Black Oak.

Black Oak 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, Black Oak states that the Proposed Transaction raises no concern. Black Oak states that output from both the Black Oak and Fowler Facilities is

in the PJM Interconnection, L.L.C. market.

fully committed under long-term contracts to unaffiliated entities. Black Oak also states that, other than passive investment interests, none of Bankers, Citizens or their respective affiliates owns, operates, or controls any electric generation capacity within the MISO market. Black Oak thus asserts that the Proposed Transaction will not result in any new combination of electric generating assets that could have an impact on the competitive situation within the MISO market.

With regard to vertical market power, Black Oak states that the Proposed Transaction raises no concern. Black Oak states that the Proposed Transaction involves only the indirect transfer of limited interconnection facilities. Black Oak also states that, other than passive investment interests, neither Bankers nor Citizens own intrastate natural gas transportation, intrastate natural gas storage or distribution facilities, sites for generation capacity development, or sources of coal supplies or other inputs to power generation that could be used to prevent competitors from entering the MISO market in competition with the Black Oak Facility.

With regard to rates, Black Oak states that the Proposed Transaction raises no concern. Black Oak states that it will continue to sell power under its market-based rate tariff and that it does not serve transmission customers.

With regard to regulation, Black Oak states that the Proposed Transaction raises no concern. Black Oak states that the Proposed Transaction will not affect the ability of the Commission to regulate it. Black Oak also states that it does not have retail customers.

Black Oak states that, based on facts and circumstances known to it 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 utility assets for the benefit of an associate company. Specifically, Black Oak states that the Proposed Transaction 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 August 19, 2016, with comments, protests, or interventions due on or before September 9, 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.⁴ 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;

⁴ *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).

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

Document Content(s)

EC16-170-000.DOC.....1-5