

148 FERC ¶ 62,186  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Osage Wind, LLC

Docket No. EC14-121-000

ORDER AUTHORIZING DISPOSITION OF  
JURISDICTIONAL FACILITIES

(Issued September 9, 2014)

On July 31, 2014, Osage Wind, LLC (Osage Wind or Applicant) filed an application under section 203(a)(1) of the Federal Power Act (FPA)<sup>1</sup> requesting Commission authorization for the disposition of jurisdictional facilities. Specifically, Enel Kansas, LLC (Enel Kansas) will acquire from Trade Wind Energy, Inc. (Trade Wind) 100 percent of the membership interests in Osage Wind (Proposed Transaction). The affected jurisdictional facilities consist of a market-based rate tariff and a power purchase agreement.

Osage Wind, an exempt wholesale generator with market-based rate authority, is developing, and owns and operates, a 150.4 megawatt wind-powered project (Osage Project) located in Osage County, Oklahoma. The Osage Project is situated within the balancing authority area (BAA) controlled by Associated Electric Cooperative, Inc. (AECI) in the southwest region. Thus, according to Osage Wind, the AECI BAA is the relevant market for the Proposed Transaction. Output from the Osage Project is fully committed to AECI under a long-term power purchase agreement.

Osage Wind is directly wholly-owned by Trade Wind, a Kansas corporation that specializes in the development of wind and solar energy projects nationwide. Trade Wind is owned 19.9 percent by Enel Kansas, and the remaining 80.1 percent in equal parts by three individuals, Mr. Robert H. Freeman, Mr. Geoffrey A. Coventry, and Mr. Matthew F. Gilhousen (the Investors). Enel Kansas is a direct wholly-owned subsidiary of Enel Green Power North America, Inc. (Enel NA), owner or operator of electric generation facilities in various markets in the United States. Farthest upstream of Enel NA is majority-owner Enel S. p. A., an Italian joint-stock company.

According to Osage Wind, other than its ownership in the Osage Project, neither Enel NA nor any of its affiliates owns or controls any electric generation in the AECI BAA. In addition, neither Enel NA nor any of its affiliates owns or controls any

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<sup>1</sup> 16 U.S.C. § 824b (2006).

transmission facilities, except for limited interconnection facilities, or any other inputs to electric power production in any market.

Under the Proposed Transaction, pursuant to a purchase agreement between Enel Kansas and Trade Wind, Enel Kansas will purchase from Trade Wind 100 percent of the membership interests in Osage Wind. Osage Wind will then become a wholly-owned subsidiary of Enel Kansas. According to Osage Wind, it will continue to have operational control and full ownership of its jurisdictional assets.

Osage Wind 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, Osage Wind states that the Proposed Transaction raises no concerns. Osage Wind asserts that the Proposed Transaction will not result in any new affiliations that impact horizontal market power because it merely causes Osage Wind to become a wholly-owned subsidiary of one of its current, indirect, partial upstream owners. Furthermore, Osage Wind states that the output from the Osage Project is fully committed under a long-term contract.

With regard to vertical market power, Osage Wind states that the Proposed Transaction raises no concerns. Osage Wind states that, at this time, it owns or controls no transmission facilities as its jurisdictional assets are currently limited to its electric tariff and power purchase agreement. Osage Wind further states that, once the Osage Project is operational, it will own no transmission facilities other than limited interconnection facilities. In addition, Osage Wind states that none of Enel NA or any of its affiliates owns or controls any other inputs to electric power production in any market.

With regard to rates, Osage Wind states that the Proposed Transaction will not have an adverse effect. Osage Wind states that it will transact according to its market-based rate authority, and that the Proposed Transaction will not alter the terms of its long-term power purchase agreement. Osage Wind also states that it currently does not, and will not, own any transmission facilities, except for limited interconnection facilities.

With regard to regulation, Osage Wind states that the Proposed Transaction will not have an adverse effect. Osage Wind states that the Proposed Transaction will not affect the extent to which the Commission may regulate it. Osage Wind further states that the Proposed Transaction is not subject to regulation by any state entity.

Osage Wind 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 assets of a traditional public utility that has captive customers or that owns or provides transmission service over jurisdictional facilities for the benefit of an associate company. Specifically, Osage Wind 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 July 31, 2014, with comments, protests, or interventions due on or before August 21, 2014. None were 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 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.

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, Osage Wind is advised that it must comply with the requirements of Order No. 652. In addition, Osage Wind shall make any necessary 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) 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;
- (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 Proposed Transaction results in changes in the status or upstream ownership of Osage Wind's affiliated qualifying facilities, an appropriate filing for recertification pursuant to 18 C.F.R. § 292.207 (2013) shall be made;
- (6) Osage Wind must inform the Commission of any change in circumstances that would reflect a departure from the facts the Commission relied upon in authorizing the Proposed Transaction;
- (7) Osage Wind shall make appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transaction; and

- (8) Osage Wind shall notify the Commission within 10 days of the date that the disposition of jurisdictional facilities 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