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APPLICATION OF MARIAH DEL
NORTE LLC PURSUANT TO SECTION
39.158 OF THE PUBLIC UTILITY
REGULATORY ACT

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BEFORE THE
PUBLIC UTILITY COMMISSION
OF TEXAS

APPLICATION OF MARIAH DEL NORTE LLC PURSUANT TO SECTION 39.158 OF
THE PUBLIC UTILITY REGULATORY ACT

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PUC DOCKET NO. **46006**

APPLICATION OF MARIAH DEL NORTE LLC PURSUANT TO SECTION 39.158 OF THE PUBLIC UTILITY REGULATORY ACT § BEFORE THE PUBLIC UTILITY COMMISSION OF TEXAS

APPLICATION OF MARIAH DEL NORTE LLC PURSUANT TO SECTION 39.158 OF THE PUBLIC UTILITY REGULATORY ACT

TO THE HONORABLE PUBLIC UTILITY COMMISSION OF TEXAS:

Pursuant to Sections 39.158 and 39.154 of the Public Utility Regulatory Act (“PURA”),¹ Mariah del Norte LLC (“Mariah” or “Applicant”) submits this application for approval of the issuance of passive equity interests (also referred to as “Class A interests”), with rights and obligations as described more fully herein, in Mariah to the following entities: MidAmerican Wind Tax Equity Holdings, LLC (“MidAmerican”), Citicorp North America, Inc. (“Citicorp”), and HSBC USA Inc. (“HSBC”) (collectively, “Investors”) (the sale hereinafter referred to as the “Transaction”).

I. Introduction

Mariah is developing an approximately 230 MW wind powered electric generation project in Parmer, Castro and Deaf Smith Counties, Texas (“the Project”). The Project will be interconnected into the Electricity Reliability Council of Texas (“ERCOT”) with Sharyland Utilities, LP, as its transmission service provider. The Project is projected to commence commercial operation on or about October 31, 2016. FR Mariah Holdings LLC (“Mariah Holdings”) through its subsidiary, FR Mariah Holdings II LLC (“the Company”), indirectly owns 100% of the equity interests in Mariah. Pursuant to the terms of an Equity Capital Contribution Agreement (“ECCA” or “Tax Equity Agreement”), Mariah Holdings intends to cause the Company to issue passive Class A interests in Mariah to Investors² while the equity interests indirectly held by Mariah Holdings will be converted into Class B managing interests.

¹ Tex. Util. Code §§ 11.001-66.017 (“PURA”).

² Investors and their affiliates and Mariah and its affiliates are hereinafter collectively referred to as the “Parties.”

The Investors are passive equity interest holders. As such, it is unclear that approval of the Transaction is necessary in this instance because the issuance of passive equity interests in Mariah to passive investors does not cause Mariah or the Company to “become affiliated with” the Investors. However, because the Commission has declined in previous cases to consider whether approval is necessary, Mariah is requesting approval out of an abundance of caution.³

Mariah respectfully requests the Commission consider and approve this Application on an expedited basis since the proposed Transaction clearly fulfills the requirements of PURA §§ 39.158 and 39.154. As demonstrated on Attachment 1, after the Transaction, the combined direct and indirect generation ownership of Mariah together with its affiliates and Investors and their affiliates will equal approximately 1,198.4 MW, or approximately 1.3% of the installed capacity in ERCOT or capable of delivery into ERCOT, which is far below the 20% statutory limitation in PURA § 39.154.

Applicant therefore respectfully requests that the Commission approve the Transaction in accordance with the proposed procedural schedule set forth herein consistent with the limited inquiry mandated by PURA §§ 39.158 and 39.154.

II. Statement of Jurisdiction

The Commission’s jurisdiction over sales, mergers, consolidations and affiliations is defined in PURA §§ 39.158 and 39.154. Section 39.158 requires that owners of electric generation facilities that offer electricity for sale in this state obtain the approval of the Commission before closing any proposed merger, consolidation or affiliation with another owner of electric generation facilities if the electricity offered in Texas by the merged, consolidated or affiliated company will exceed one percent of the total electricity offered for sale in the applicable power region. That section further provides that the Commission *shall* approve the transaction unless the Commission finds that the transaction results in a violation of PURA § 39.154. Section 39.154 prohibits a power generation company (“PGC”) and any affiliate of the PGC within the power region, beginning on the date of the introduction of customer choice, from owning and controlling more than 20% of the installed capacity located in, or capable of

³ *Application of Rattlesnake Wind I LLC Pursuant to Sec. 39.158 of the Public Utility Regulatory Act*, Docket No. 44586, Order No. 3 (May 12, 2015); *Application of Panhandle Wind Holdings 2 LLC Pursuant to Sec. 39.158 of the Public Utility Regulatory Act*, Docket No. 42597, Order No. 2 (June 25, 2014).

delivering electricity to, the power region. Thus, if the generation ownership of the merged, consolidated or affiliated entity is at or below 20% of the installed capacity located in, or capable of delivery electricity to, ERCOT, the Commission must approve the transaction.

III. Statement of Facts

Mariah is developing a new, approximately 230 MW wind-powered electricity generation facility in Parmer, Castro and Deaf Smith Counties, Texas. The Project will be interconnected into the ERCOT electric transmission system and will sell its output into the ERCOT market. Sharyland Utilities, LP will be the transmission service provider for the Project.

Mariah Holdings indirectly owns 100% of the equity interests in the Project. Mariah is proposing to convert interests indirectly held by Mariah Holdings into Class B managing interests and issue Class A interests in Mariah to the Investors. The Investors are passive investors. Authority to manage, direct or control the day-to-day operations of Mariah will be retained by the holders of the Class B interests. The Investors will hold only those limited rights necessary to protect their investments.

Mariah does not own other generation assets in ERCOT or capacity that is capable of delivery into ERCOT. It is not affiliated with other entities that have generation assets located in ERCOT. Mariah's affiliates indirectly own equity interests in the Southwest Power Pool ("SPP"), including: (1) a 12% interest in Kingfisher Wind, a wind generation facility near Oklahoma City, Oklahoma with a nameplate capacity of 298 MW; (2) a 100% interest in Hobbs Generating Station, a natural gas-fired plant near Hobbs, New Mexico with a summer net dependable capacity of 549 MW; and (3) a 100 % interest in Black Hawk Station, a natural gas-fired plant in Borger (or Hutchison County), Texas with a summer net dependable capacity of 219 MW.

The Investors and their affiliates also own active and passive equity interests in generation facilities in ERCOT, and some of the Investors own interests in generation facilities in adjacent power regions to ERCOT that theoretically could be delivered over the DC ties to ERCOT. As shown on Attachment 1 and based on the assumptions described in Attachment 1, MidAmerican, either directly or indirectly through affiliates or subsidiaries, owns interests in generation assets in ERCOT totaling 323.5 MW and assets in SPP and the Midwest ISO ("MISO") exceeding 820 MW, which is the maximum import capacity of the DC tie; Citicorp,

either directly or indirectly through affiliates or subsidiaries, owns interests in generation assets in ERCOT totaling 23.6 MW and assets in SPP and MISO totaling 4.6 MW; and HSBC, together with its affiliates or subsidiaries, owns interests in generation assets in ERCOT totaling 3.7 MW and assets in SPP and MISO totaling 0 MW.⁴

Attachment 1 shows the generation calculations for the Parties. The capacity numbers shown on Attachment 1 were calculated using the methodology used by the Commission Staff in its calculation of the installed generation capacity in ERCOT filed in Project No. 39870 to be used for purposes of calculating capacity ownership for purposes of PURA § 39.158. The reported capacity numbers attributed to Mariah and its affiliates reflect their percentage of total controlling equity ownership interests in each generation project, and thus overstates their total equity ownership since the passive equity interests are not included in those calculations.

Total installed generation capacity in ERCOT is 90,765 MW.⁵ Taken together, the combined generation capacity ownership of Mariah and Investors and their respective affiliates located in or capable of delivery into ERCOT totals 1,198.4 MW or 1.3% of the total generation capacity in ERCOT. This percentage is far below the 20% limitation in PURA § 39.154.

IV. Parties and Procedures

A. The Parties

Applicant's representative in this proceeding is:

Meghan E. Griffiths
Andrews Kurth LLP
111 Congress Ave., Suite 1700
Austin, Texas 78701
Telephone: (512) 320-9214
Facsimile: (512) 320-9292
Email: mgriffiths@andrewskurth.com

The Applicant's principal executive offices are located at:

FR Mariah Holdings LLC
c/o First Reserve Advisors, LLC
One Lafayette Place
Greenwich, CT 06830

⁴ The reported capacity numbers for the Investors do not include the Project because its capacity is included in Mariah's reported capacity numbers.

⁵ *Estimate of Installed Generation Capacity in ERCOT*, Project No. 39870 (Feb. 17, 2016).

Attention: Matthew S. Raben
Telephone: (203) 625-2553
Facsimile: (203) 661-6729
Email: mraben@firstreserve.com

B. Notice

The only other persons affected by this application are Investors. Mariah is providing a copy of this application to Investors contemporaneously with the filing of this application. A copy of the proposed public notice regarding this application for publication in the *Texas Register* is attached as Attachment 2.

C. Procedural Schedule

Applicants and Investors anticipate closing the Transaction on or about the date the Project achieves commercial operation, which is currently anticipated to be the latter part of October, 2016. Given this and due to the limited scope of review, Mariah respectfully requests that this application be processed under the following expedited schedule.

June 30, 2016	Deadline for motions to intervene, intervenor comments and intervenors' requests for a hearing.
July 7, 2016	Deadline for Staff recommendation and Staff request for a hearing
July 18, 2016	Deadline for Applicant response to intervenors and Staff recommendation
July 25, 2016	Joint Proposed Order, including findings of facts, conclusions of law, and ordering paragraphs
August 2, 2016	Proposed Order to be issued

This schedule allows sufficient time for notice, intervention (if any), and Staff review of the calculations. Based upon the fact that the Project is fast approaching readiness for commercial operation, and the fact that there are no intervenors in most, if not all, applications for approval pursuant to PURA § 39.158, Mariah respectfully requests that the intervention time

be shortened to 30 days as shown in the proposed schedule above. The Commission has adopted this intervention period for other PURA Sec. 39.158 applications.⁶

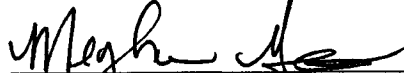
V. Requested Relief

Applicant seeks prompt approval of the Transaction. As shown in Attachment 1, Applicant has demonstrated that, after the Transaction, the generation capacity located in and capable of delivery to ERCOT owned by Mariah and its affiliates and the ownership of Investors and their affiliates will not exceed the 20% limitation in PURA § 39.154. Attachment 1 is supported by the attached Affidavit and Certifications from the Applicants and Investors. Attachment 1 incorporates all of the criteria prescribed in PURA § 39.154 and PUC Substantive Rules 25.91 and 25.401 for calculating the percentage of installed capacity located in, or capable of delivering electricity to, ERCOT. Attachment 1 demonstrates that, under even the most generous assumptions, the amount of installed generation capacity that will be owned and controlled in, or capable of delivery to, ERCOT by the affiliated companies is far below the 20% limitation required by § 39.154. Under §§ 39.158 and 39.154, no other factual inquiry is required.

WHEREFORE, PREMISES CONSIDERED, Mariah respectfully requests that the Commission to approve the Transaction pursuant to PURA § 39.158.

Respectfully submitted,

ANDREWS KURTH LLP



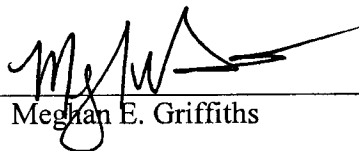
Meghan Griffiths
State Bar No. 24045983
111 Congress Avenue, Suite 1700
Austin, Texas 78701
(512) 320-9214
(512) 320-9292 FAX

ATTORNEY FOR MARIAH DEL NORTE LLC

⁶ See, e.g., *Application of Koch Power Solutions, LLC Pursuant to Section 39.158 of the Public Utility Regulatory Act*, Docket No. 41955, Order No. 2 (Nov. 6, 2013).

CERTIFICATE OF SERVICE

I, Meghan Griffiths, Attorney for Mariah del Norte LLC, hereby certify that a copy of this document was served on all parties of interest on this 31st day of May, 2016 by hand-delivery, facsimile, electronic mail and/or First Class, U.S. Mail, Postage Prepaid.



Meghan E. Griffiths

ATTACHMENT 1

**PERCENTAGE OF INSTALLED CAPACITY IN AND CAPABLE OF DELIVERY TO
ERCOT OF MARIAH AND INVESTORS⁷**

Total Installed Generation Capacity Located in, or Capable of Delivering Electricity to, ERCOT of Mariah and its affiliates:

<u>Facility - ERCOT</u>	<u>Nameplate Capacity (MW)</u>	<u>Capacity (MW)</u>
Mariah del Norte (Wind)	230.4	27.64
<u>Facility- SPP</u>		<u>Capacity (MW)</u>
Kingfisher Wind (Wind)	298	4.3
Hobbs Generating Station (Gas)	604	549
Black Hawk Station (Gas)	230	219

⁷ Capacity calculations for Applicant and the Investors are from the Commission's Staff Estimate of Installed Generation Capacity in ERCOT filed in Project No. 39870 dated February 17, 2016 and reflect changes adopted by ERCOT in NPRR 611. As noted in the Staff's spreadsheet, wind generation capacity is calculated by applying an 12% capacity factor to the nameplate capacity of non-coastal wind generation and a 56% capacity factor to coastal wind generation. Thermal generation capacity is listed at the summer net dependable capacity. The reported capacity numbers attributed to Mariah and its affiliates reflect the percentage of controlling equity interests in each project (which overstates the total equity percentage ownership in these projects since these percentages do not take into account the passive equity interests). The reported capacity numbers attributed to the Investors and their affiliates either reflect their percentage of total equity ownership in each generation project or overstates their percentage ownership.

ATTACHMENT 1

Total⁸ Capacity Located in, or Capable of Delivery To, ERCOT of MidAmerican Wind Tax Equity, LLC and its affiliates:

<u>Facility - ERCOT</u>	<u>Capacity (MW)</u>
Power Resources (Gas)	227
Jumbo Road (Wind)	36
Shannon Wind (Wind)	24.5 ⁹
South Plains II (Wind)	36 ¹⁰
<u>Facility - SPP and MISO</u>	Exceeds 820 MW

Total¹¹ Capacity Located in, or Capable of Delivery To, ERCOT of Citicorp North America, Inc. ("Citicorp") and its affiliates:

<u>Facility - ERCOT</u>	<u>Capacity (MW)</u>
Stephens Ranch II (Wind)	5.3
Panhandle II (Wind)	3.9
Green Pastures (Wind)	2.7
Logan's Gap (Wind)	4.0
Shannon (Wind)	3.6
South Plains II (Wind)	4.1
<u>Facility - SPP and MISO</u>	<u>Capacity (MW)</u>
Balko (Wind)	4.6

⁸ The total ownership interests in Mariah del Norte have already been included in Mariah's calculations above and therefore are not counted again here.

⁹ This is a tax equity investment. Ownership of 100% is used as a simplifying assumption; use of the actual percentage would reduce capacity in ERCOT.

¹⁰ This is a tax equity investment. Ownership of 100% is used as a simplifying assumption; use of the actual percentage would reduce capacity in ERCOT.

¹¹ The total ownership interests in Mariah del Norte have already been included in in Mariah's calculations above and therefore are not counted again here.

ATTACHMENT 1

Total¹² Capacity Located in, or Capable of Delivery to, ERCOT of HSBC USA Inc. and its affiliates:

<u>Facility - ERCOT</u>	<u>Capacity (MW)</u>
Horse Creek (Wind)	3.7
<u>Facility - SPP and MISO</u>	0

Combined Total of Mariah and Investors
Generation Capacity in ERCOT: 378.4 MW

Combined Total of Mariah and Investors
Generation Capacity Over DC ties 820 MW

ERCOT Generation Capacity owned by Mariah and
Investors in ERCOT and Generation Capacity
Over DC Ties: 1,198.4 MW

Total Installed Generation Capacity Located in,
or Capable of Delivering Electricity to, ERCOT: 90,765 MW

Combined Percentage Share of Installed Generation
Capacity in, or Capable of Delivering Electricity to, ERCOT: 1.3 %

¹² The total ownership interests in Mariah del Norte have already been included in Mariah's calculations above and therefore are not counted again here.

STATE OF CONNECTICUT §


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COUNTY OF FAIRFIELD §

AFFIDAVIT OF MATTHEW S. RABEN

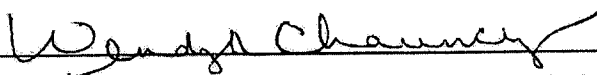
BEFORE ME, the undersigned authority, on this day personally appeared the undersigned, who, after being duly sworn, stated on his oath that he is entitled to make his affidavit, and that the statements contained below are true and correct.

“My name is Matthew Raben. I am a Director of FR Mariah Holdings LLC which is the indirect owner of Mariah del Norte LLC. My business address is One Lafayette Place, Greenwich, CT 06830. All statements made herein are based upon personal knowledge gained in the course of my employment. I am familiar with the factual statements relating to Mariah contained in the foregoing Application, pursuant to Section 39.158 of the Public Utility Regulatory Act. To the best of my information, knowledge and belief, the factual statements contained therein with respect to Mariah are true and correct. The opinions expressed therein, based upon my professional knowledge and judgment, also are true and correct.”



Matthew S. Raben
Director
FR Mariah Holdings LLC

Subscribed and sworn before me on this 26 day of May, 2016



Notary Public in and for State of Connecticut
My commission expires: WENDY K. CHAUNCEY
NOTARY PUBLIC
State of Connecticut
My Commission Expires
October 31, 2017

PUC DOCKET NO. _____

APPLICATION OF MARIAH DEL
NORTE LLC PURSUANT TO SECTION
39.158 OF THE PUBLIC UTILITY
REGULATORY ACT

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BEFORE THE
PUBLIC UTILITY COMMISSION
OF TEXAS

CERTIFICATE OF MIDAMERICAN WIND TAX EQUITY HOLDINGS, LLC

My name is Kevin D. Dodson. My title is Vice President of MidAmerican Wind Tax Equity Holdings, LLC. ("MidAmerican"). My business address is 666 Grand Avenue, Suite 500, Des Moines, Iowa 50309. All statements made herein are based upon personal knowledge gained in the course of my employment, and I am authorized to provide this certificate on behalf of MidAmerican for use in the above-referenced proceeding.

I am familiar with the factual statements relating to MidAmerican contained in the foregoing Application of Mariah del Norte LLC, pursuant to Section 39.158 of the Public Utility Regulatory Act. To the best of my information, knowledge and belief, the factual statements contained therein with respect to MidAmerican are true and correct.



Kevin D. Dodson
Vice President
MidAmerican Wind Tax Equity Holdings, LLC

PUC DOCKET NO. _____

APPLICATION OF MARIAH DEL	§	BEFORE THE
NORTE LLC PURSUANT TO SECTION	§	
39.158 OF THE PUBLIC UTILITY	§	PUBLIC UTILITY COMMISSION
REGULATORY ACT	§	
	§	OF TEXAS

CERTIFICATE OF CITICORP NORTH AMERICA, INC.

My name is Anu Yadav. My title is a Vice President of Citicorp North America, Inc. My business address is 390 Greenwich Street, Floor 1, NY, NY, 10016. All statements made herein are based upon personal knowledge gained in the course of my employment, and I am authorized to provide this certificate on behalf of Citicorp North America, Inc. for use in the above-referenced proceeding.

I am familiar with the factual statements relating to Citicorp North America, Inc. contained in the foregoing Application of Mariah del Norte LLC, pursuant to Section 39.158 of the Public Utility Regulatory Act. To the best of my information, knowledge and belief, the factual statements contained therein with respect to Citicorp North America, Inc. are true and correct.



Anu Yadav
Vice President
Citicorp North America, Inc.

PUC DOCKET NO. _____

APPLICATION OF MARIAH DEL
NORTE LLC PURSUANT TO SECTION
39.158 OF THE PUBLIC UTILITY
REGULATORY ACT

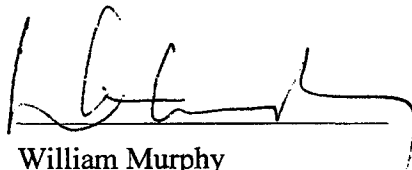
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BEFORE THE
PUBLIC UTILITY COMMISSION
OF TEXAS

CERTIFICATE OF HSBC USA INC.

My name is William Murphy. My title is Senior Vice President of HSBC USA Inc. My business address is 452 Fifth Avenue, New York, NY. All statements made herein are based upon personal knowledge gained in the course of my employment, and I am authorized to provide this certificate on behalf HSBC USA Inc. for use in the above-referenced proceeding.

I am familiar with the factual statements relating to HSBC USA Inc. contained in the foregoing Application of Mariah del Norte LLC, pursuant to Section 39.158 of the Public Utility Regulatory Act. To the best of my information, knowledge and belief, the factual statements contained therein with respect to HSBC USA Inc. are true and correct.



William Murphy
Senior Vice President
HSBC USA Inc.

ATTACHMENT 2

PUBLIC UTILITY COMMISSION OF TEXAS NOTICE OF APPLICATION FOR SALE, TRANSFER OR MERGER

Notice is given to the public of an application for sale, transfer or merger filed with the Public Utility Commission of Texas on May 27, 2015, pursuant to the Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 14.101, 39.154, and 39.158 (West 2015) (“PURA”).

Docket Style and Number: Application of Mariah del Norte LLC Pursuant to § 39.158 of the Public Utility Regulatory Act, Docket No. _____.

The Application: Mariah del Norte LLC (“Mariah” or the “Applicant”) is developing a nameplate 230 MW wind generation project located in Parmer, Castro and Deaf Smith Counties, Texas and interconnected into ERCOT (the “Project”). FR Mariah Holdings LLC (“Mariah Holdings”) currently indirectly owns 100% of the equity interests in Mariah. Mariah and its affiliates own no other generation in ERCOT. Interests in Mariah are indirectly held by funds sponsored or affiliated with Mariah Holdings that indirectly own generation assets that are outside ERCOT, but capable of being delivered to ERCOT. Mariah Holdings desires to issue certain passive equity interests in Mariah to MidAmerican Wind Tax Equity Holdings, LLC (“MidAmerican”), Citicorp North America, Inc. (“CitiCorp”), and HSBC USA Inc. (“HSBC”) (collectively, “Investors”) (the sale hereinafter referred to as the “Transaction”). Investors also own equity interests in generation facilities in ERCOT and capable of delivery into ERCOT. After the Transaction, the combined direct and indirect generation ownership in or capable of tie in to ERCOT owned by Mariah, including its affiliates, and accounting for Investors and their affiliates may equal 1,198.4 MW, which exceeds one percent of the generation ownership in ERCOT but does not exceed PURA § 39.154’s cap.

Applicant is required to obtain Commission approval before closing the Transaction if the electricity to be offered for sale in ERCOT will exceed one percent of the total electricity for sale in ERCOT. The Commission shall approve the Transaction unless the Commission finds that the Transaction results in violation of PURA § 39.154. Under § 39.154, a power generation company may not own and control more than 20% of the installed generation capacity located in, or capable of delivering electricity to ERCOT. The Applicant has stated that Mariah, together with its affiliates, and Investors collectively will directly or indirectly own approximately 1.3 % of the installed generation capacity within ERCOT, which does not exceed the 20% limitation.

Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the Commission’s Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the Commission at (512) 936-7136 or use Relay Texas (toll free) 1-800-735-2989. All correspondence should refer to Docket Number _____.