

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Odell Wind Farm, LLC) Docket No. EC16-____-000
Algonquin Power (Odell Holdings) Inc.)
Odell SponsorCo, LLC
Odell Holdings, LLC
Enel Kansas, LLC

**APPLICATION FOR AUTHORIZATION
UNDER SECTION 203 OF THE FEDERAL POWER ACT
THE DISPOSITION OF JURISDICTIONAL FACILITIES,
REQUEST FOR EXPEDITED CONSIDERATION
AND CONFIDENTIAL TREATMENT**

I. INTRODUCTION

Pursuant to Section 203(a)(1) of the Federal Power Act (“FPA”)¹ and Part 33 of the Federal Energy Regulatory Commission’s (the “Commission”) regulations,² Odell Wind Farm, LLC (“Odell”), Algonquin Power (Odell Holdings) Inc. (“Algonquin Member”), Odell SponsorCo, LLC (“SponsorCo”), Odell Holdings, LLC (“Holdings”) and Enel Kansas, LLC (“Enel Kansas”) (the “Applicants”) hereby request that the Commission grant all necessary authorizations for a transaction associated with the acquisition by the Algonquin Member of all of the membership interests in SponsorCo, the indirect owner of the Odell project, a 200 MW wind-powered electric generating facility (the “Facility”) currently under construction and located in Cottonwood, Jackson, Martin and Watonwan Counties, Minnesota. Applicants seek authorization for the Algonquin Member to acquire the remaining 50% of the interests in

¹ 16 U.S.C. § 824b.

² 18 C.F.R. § 33.1 *et seq.* as amended by *Transactions Subject to FPA Section 203*, 71 Fed. Reg. 1,348 (2006), Order No. 669, FERC Stats. & Regs. ¶ 31,200 (2005) (“Order No. 669”), *order on reh’g*, 71 Fed. Reg. 28,421 (2006), Order No. 669-A (“Order No. 669-A”), *order on reh’g*, Order No. 669-B, FERC Stats & Regs ¶ 31,225 (2006) (“Order No. 669-B”).

SponsorCo currently owned by Enel Kansas (“Purchase Transaction”). After the Purchase Transaction, Algonquin Member will own 100% of the membership interests in SponsorCo.

Commission authorization under Section 203(a) is required prior to the disposition of jurisdictional facilities. The Commission has interpreted FPA Section 203(a)(1) to include indirect changes of control of jurisdictional facilities, which includes indirect ownership changes in public utilities.³

As shown below, the Purchase Transaction will not have an adverse effect on competition, rates or regulation, will not result in cross-subsidization or a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company, and is in the public interest, and should be authorized by the Commission pursuant to FPA Section 203.

The *Merger Policy Statement* states that in determining whether a transaction is consistent with the public interest, the Commission considers whether the transaction will have any adverse impact on (i) competition, (ii) rates, or (iii) regulation.⁴ In addition, FPA Section 203(a)(4) requires a showing that a proposed transaction will not result in cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company. Consistent with the Commission’s applicable policy statements, the requirements established in the Energy Policy Act of 2005 and Order No. 669, *et seq.*, this

³ *FPA Section 203 Supplemental Policy Statement*, FERC Stats. & Regs. ¶ 31,253 at P.45 (2007), *order on clarification and reconsideration*, 122 FERC ¶ 61,157 (2008) (“*Supplemental Policy Statement*”); *Phelps Dodge Corp.*, 121 FERC ¶ 61,251 (2007).

⁴ *Inquiry Concerning the Commission’s Merger Policy under the Federal Power Act: Policy Statement*, Order No. 592, FERC Stats. and Regs. ¶ 31,044 (1996) (“*Merger Policy Statement*”), *reconsideration denied*, Order No. 592-A, 79 FERC ¶ 61, 321 (1997).

Application, inclusive of its exhibits, demonstrates that the proposed transaction will have no adverse effect on competition, rates, or regulation, and will not result in cross-subsidization.

Therefore, the Purchase Transaction is consistent with the public interest and should be approved expeditiously. This Application includes all information and exhibits required by Part 33 of the Commission's regulations, Order No. 642,⁵ and Order No. 669, except to the extent that Applicants have requested a waiver of those requirements.

Additionally, Applicants request that the Commission (1) grant a limited waiver of the Commission's filing requirements to the extent that such information is not necessary to ensure the Purchase Transaction meets the requirements of Section 203, (2) grant confidential treatment to the nonpublic version of the Application, (3) provide expedited review, and (4) approve this Application on or before _____.

II. COMMUNICATIONS

Communications regarding this Application should be addressed to the following persons:

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⁵ *Revised Filing Requirements Under Part 33 of the Commission's Regulations*, Order No. 642, 65 Fed. Reg. 70,984, FERC Stats and Regs. Preambles 1996-2000 ¶ 31,111 (2000) ("Order No. 642"), *order on reh'g*, Order No. 642-A, 94 FERC ¶ 61,289 (2001) ("Order No. 642-A").

III. REQUEST FOR EXPEDITED ACTION

The Applicants respectfully request expedited action on this Application so that the parties will have sufficient time following the Commission's order to complete any remaining steps needed to close the proposed transaction as soon as possible. As demonstrated below, expedited consideration of this Application is warranted under the Commission's regulations because the proposed transaction (1) does not involve a merger, (2) is consistent with Commission precedent, and (3) does not require an Appendix A analysis.⁶ For these reasons, Applicants respectfully submit that the proposed transaction wholly comports with the public interest and request the Commission establish a 21 day notice period for comments to the Application. Applicants further request that the Commission authorize the proposed transaction as soon as possible after the comment period expires, but in any event no later than _____.

IV. REQUEST FOR CONFIDENTIAL TREATMENT

Pursuant to Sections 33.9 and 388.112 of the Commission's regulations, Applicants request confidential treatment of Exhibit I because it contains sensitive commercial and financial information that is privileged or confidential and not publicly available. Should this information become public, it could subject Applicants and their investors to competitive disadvantage or other business injury. Applicants submit a non-public version of the Application that is marked **“Non-Public Version - Contains Privileged and Confidential Information — Do Not Release Pursuant to 18 C.F.R. § 388.112”** and ask that the Commission keep it confidential. Applicants are also submitting a public copy of this Application, with the confidential material redacted. Any questions concerning this request for confidential treatment should be directed to

⁶ 18 C.F.R. § 33.11(b) and (c).

counsel listed in Part II. Applicants have attached a draft Protective Order as Attachment 2 to this Application.

V. DESCRIPTION OF THE PARTIES TO THE PROPOSED TRANSACTION

A. Odell

Odell is a Minnesota limited liability company. Odell is solely in the business of developing, owning and operating the Facility (as defined above) in the Midcontinent Independent System Operator, Inc. (“MISO”) Regional Transmission Owner (“RTO”). Odell is an exempt wholesale generator⁷ and has market-based rate authority.⁸

Odell is constructing and will own and operate a 200 MW wind-powered electric generating facility to be located in Cottonwood, Jackson, Martin and Watonwan Counties, Minnesota. Odell has executed a long-term Power Purchase Agreement with Xcel Energy’s Northern States Power Company (“Xcel”) for the entire capacity of the Facility (the “Power Purchase Agreement”). The Facility is the subject of an Interconnection Agreement executed among Odell, MISO and Xcel filed with the Commission on June 23, 2015 in Docket No. ER15-1968 and designated as Second Revised Service Agreement 2707.

B. Algonquin Member

Odell’s sole and managing member is Holdings. Currently, Holdings’ sole and managing member is SponsorCo.⁹ Upon closing of the Tax Equity Transaction, Holdings will issue passive

⁷ *Odell Wind Farm, LLC*, Docket No. EG15-124-000, Notice of Self-Certification of Exempt Wholesale Generator Status (filed September 9, 2015).

⁸ *Odell Wind Farm, LLC*, Docket No. ER15-2361-003, Letter Order dated December 11, 2015.

⁹ On July 12, 2016, the Commission issued an “Order Authorizing Disposition of Jurisdictional Facilities”, approving, pursuant to FPA Section 203(a)(1), a transaction whereby JPM Capital Corporation (“JPM Capital”) and Metropolitan Life Insurance Company (“MetLife”) will acquire 100% of the passive Class A membership interests in Holdings (“Tax Equity Transaction”). This transaction is expected to close on or
(Footnote continued on next page)

Class A interests to JPM Capital and MetLife and will issue Class B interests to SponsorCo in exchange for the interests currently held by SponsorCo in Holdings. SponsorCo has two members with an equal fifty percent interest: Enel Kansas and Algonquin Member. Odell has no subsidiaries.

The Algonquin Member is a Delaware corporation. It is a wholly owned subsidiary of Algonquin Power Fund (America) Inc., which is a wholly owned indirect subsidiary of Algonquin Power Co., a trust formed under the laws of the Province of Ontario, Canada. Algonquin Power Co.'s ultimate parent is Algonquin Power & Utilities Corp. ("Algonquin"), a diversified electric power generation and utility infrastructure company with a principal place of business in Oakville, Ontario. Algonquin is a publicly traded company on the Toronto Stock Exchange.

Through its distinct operating subsidiaries, Algonquin owns and operates a diversified portfolio of renewable electric generation, electric transmission and utility businesses throughout North America.¹⁰ No single investor or affiliated group of investors owns directly or indirectly more than ten percent of Algonquin (based on the most current, publicly-available information).

As described below and in Exhibit B hereto, Odell, through its affiliates, holds interests in companies that, among other things, are engaged in the electric utility, electric generation, natural gas distribution, and pipeline businesses in Canada and the United States of America. Most notably for purposes of this Application, Odell is affiliated with:

about July 31, 2016. *Odell Wind Farm, LLC, et al.*, 156 FERC ¶ 62,030 (2016). The disposition proposed in the instant Application is intended to take place after the acquisition by JPM Capital and Metlife of their passive Class A interests.

¹⁰ See *Algonquin Updated FERC Form 65, Notification of Holding Company Status*, Docket No. HC 13-1-000 (filed Jan. 4, 2013).

a. Algonquin Energy Services Inc.

Algonquin Energy Services Inc. (“AES”) is a marketing arm of Algonquin Power Co. (“APCo”), which is a wholly-owned subsidiary of Algonquin. AES’ business primarily involves marketing APCo’s supplying standard offer contracts and acting as a competitive electricity provider for the sale of energy to commercial and industrial customers in Maine. All jurisdictional sales by AES are into the markets operated by ISO New England, Inc. (“ISO-NE”), and the Northern Maine Independent System Administrator, Inc. (“NMISA”). AES has received market-based rate authority.¹¹

b. Algonquin Northern Maine Gen Co.

Algonquin Northern Maine Gen Co. owns or controls approximately 2.3 MW (nameplate) of hydroelectric generation facilities located in the area administered by the NMISA, including the 1.5 MW (nameplate) Squa Pan hydroelectric generating facility and the approximately 900 kW Caribou hydroelectric generating facility. Algonquin Northern Maine Gen Co. is a qualifying small power production facility (“QF”)¹² and is an exempt wholesale generator (“EWG”).¹³ Algonquin Northern Maine Gen Co. has cancelled its market-based rate authority, effective September 19, 2015.¹⁴

c. Algonquin Power Sanger LLC

Algonquin Power Sanger LLC (“Algonquin Power Sanger”) owns the Sanger Facility, a 61.5 MW (nameplate) natural gas-fired generating facility located in Sanger, California. Algonquin Power Sanger provides Pacific Gas & Electric Company (“PG&E”) with 38 MW of firm capacity pursuant to a long-term agreement. The Sanger Facility is a Qualifying Facility (“QF”).¹⁵

d. Algonquin Power Windsor Locks LLC

Algonquin Power Windsor Locks LLC (“Windsor Locks”) owns the Windsor Locks Facility, a 71 MW (gross) natural gas-fired generating facility located

¹¹ *Algonquin Energy Servs. Inc.*, Docket No. ER10-310-000, Letter Order, Jan. 7, 2010.

¹² *Algonquin Northern Maine Gen Co.*, Docket No. QF14-396, Notice of Self Certification (filed March 14, 2014).

¹³ *PDI New England, Inc.*, 87 FERC ¶ 62,162 (1999); *Algonquin Northern Maine Gen Co.*, Docket No. EG99-105-000, Notice of Non-Material Change in Facts (filed Feb. 12, 2010).

¹⁴ *Algonquin Northern Maine Gen Co.*, Docket No. ER15-2674-000, Letter Order dated Nov. 2, 2015.

¹⁵ *Algonquin Power Sanger L.L.C.*, Docket No. QF02-97-002, Notice of Self Re-Certification of Qualifying Facility Status (filed Feb. 19, 2010).

in Windsor Locks, Connecticut. The Windsor Locks facility is comprised of a 15 MW Solar Titan 130 with a once through steam generator (“OTSG”), a 40 MW GE Frame 6B combustion turbine generator, a heat recovery steam generator, two Deltak/Nebraska dual-fuel auxiliary boilers, and a 16 MW extraction steam turbine generator. Windsor Locks sells up to 16.6 MW of the electricity and steam generated by the facility to Ahlstrom Windsor Locks LLC in Connecticut. The remaining energy is sold into the ISO-NE market at market-based rates.¹⁶

e. Algonquin SKIC 20 Solar, LLC

Algonquin SKIC 20 Solar, LLC (“Algonquin SKIC 20”) owns the Bakersfield Facility, a 20 MW (nameplate) solar-powered generating facility located in Kern County, California. The Bakersfield Facility achieved commercial operation in April 2015. Algonquin SKIC 20 sells the output of the Bakersfield Facility to PG&E pursuant to a long-term power purchase agreement. The Bakersfield Facility is a QF.¹⁷ Algonquin SKIC 20 has applied for market based rate authority.¹⁸

f. Algonquin Tinker Gen Co.

Algonquin Tinker Gen Co. (“Algonquin Tinker”) beneficially owns the 33.5 MW (nameplate) Tinker hydroelectric generation facility and the 1 MW (nameplate) capacity Tinker diesel facility, both located in New Brunswick, Canada. The Tinker hydroelectric facility is dispatched to serve load in the area overseen by the NMISA and to provide ancillary services for the 8 MW load of the Perth Andover Electric Light Commission in New Brunswick, Canada. Algonquin Tinker also owns a segment of a 69 kV transmission facility in New Brunswick, Canada that runs through the switchyard of the Tinker hydroelectric facility and is used to connect Perth Andover to the area overseen by the NMISA and to NB Power in Canada. Algonquin Tinker has received market-based rate authority.¹⁹

¹⁶ Windsor Locks has market-based rate authority. *Algonquin Power Windsor Locks LLC*, Docket No. ER10-716-000, Letter Order dated May 11, 2010.

¹⁷ *Algonquin SKIC 20 Solar, LLC*, Docket No. QF15-215-000, Notice of Certification of Qualifying Facility (filed Dec. 18, 2014), recertification filed May 6, 2016.

¹⁸ *Algonquin SKIC 20 Solar, LLC*, Docket No. ER16-2169-000, Application for Order Accepting Initial Tariff, Waiving Regulations and Granting Blanket Approvals, Including Blanket Approval Under Part 34 for Issuances of Securities and Assumptions of Liabilities (filed July 8, 2016).

¹⁹ *Algonquin Energy Servs. Inc.*, Docket Nos. ER10-310-000 *et al.*, Letter Order dated Aug. 4, 2010.

g. GSG 6, LLC

GSG 6, LLC (“GSG 6”) owns and operates a 109.5 MW (nameplate) wind farm located near Compton, Illinois (the “Shady Oaks Facility”), within the PJM Interconnection, L.L.C. (“PJM”) balancing authority area (“BAA”). GSG 6 is an EWG,²⁰ and has received market-based rate authority.²¹ The Shady Oaks Facility is connected to the Commonwealth Edison Company transmission system, and is located in the Northeast Region of the PJM BAA. GSG 6 sells the power produced by the Shady Oaks Facility into the PJM BAA.

h. Liberty Utilities (CalPeco Electric) LLC

Liberty Utilities (CalPeco Electric) LLC (“CalPeco”) is an electric utility that serves approximately 49,000 electric customers in eastern California near Lake Tahoe. The only generation jurisdictional physical asset owned or controlled by CalPeco is the 12 MW (summer) Kings Beach diesel-fired generation facility located in Placer County, California (and associated books and records), in the Sierra Pacific Power Company (“SPPC”) BAA. CalPeco also has on file with the Commission several agreements pursuant to which it provides wholesale capacity and energy, emergency backup services, and borderline services to SPPC and/or PG&E.²² CalPeco does not have a market-based rate tariff on file with the Commission.

i. Liberty Utilities (EnergyNorth Natural Gas) Corp.

Liberty Utilities (EnergyNorth Natural Gas) Corp. (“EnergyNorth”) is a natural gas utility providing retail natural gas service (sales and distribution) to over 89,000 customers in five counties and 30 communities in New Hampshire. EnergyNorth’s franchise territory includes southern and central New Hampshire, as well as Berlin, New Hampshire and covers approximately 1,001 square miles. EnergyNorth’s distribution system includes approximately 2,210 miles of distribution pipelines, 2.8 miles of transmission-pressure mains, and eight city gates. EnergyNorth’s services, rates, tariff and operating procedures are regulated by the New Hampshire Public Utilities Commission. In connection with its retail services, EnergyNorth holds

²⁰ *GSG 6, LLC*, Notice of Effectiveness of Exempt Wholesale Generator Status, Docket No. EG11-133-000 (filed Dec. 21, 2011).

²¹ *GSG 6, LLC*, Docket No. ER11-4694-000, Letter Order dated Nov. 10, 2011.

²² The output of the Kings Beach facility is committed to both CalPeco and SPPC pursuant to a long-term agreement. *See Cal. Pac. Elec. Co., LLC*, Docket No. ER10-1703-000, Letter Order, dated Aug. 20, 2010 (accepting agreement for filing). The Commission has disclaimed jurisdiction over CalPeco’s distribution system. *Cal. Pac. Elec. Co.*, 133 FERC ¶ 61,018 (2010).

interstate natural gas transportation and storage capacity on a number of interstate pipelines.

On January 2, 2015, New Hampshire Gas Corporation (“NH Gas”) merged into EnergyNorth and, as a result, EnergyNorth now provides regulated propane air service to the approximately 1,200 former customers of NH Gas, who are located in and around Keene, New Hampshire.

j. Liberty Utilities (Granite State Electric) Corp.

Liberty Utilities (Granite State Electric) Corp. (“Granite State”) owns an electric distribution system in the State of New Hampshire. It is engaged in the purchase, distribution and sale of electric energy at retail and provides service to approximately 44,000 customers in 21 communities in southern New Hampshire in a geographic area of approximately 810 square miles. Granite State’s distribution system consists of approximately 1,100 miles of distribution lines and 15 substations. Granite State’s services, rates, tariff and operating procedures are regulated by the New Hampshire Public Utilities Commission. Granite State has received market-based rate authority,²³ and has a borderline sales tariff on file with the Commission.²⁴

k. Liberty Utilities (Midstates Natural Gas) Corp.

Liberty Utilities (Midstates Natural Gas) Corp. (“Liberty Midstates”) is a regulated natural gas utility providing natural gas service to approximately 85,900 customers in Illinois, Iowa, and Missouri²⁵ (57,800 in Missouri, 23,600 in Illinois, and 4,500 in Iowa). Liberty Midstates’ distribution system includes approximately 3,025 miles of pipeline of varying diameters from two inches to 10 inches.²⁶ Liberty Midstates has a Section 284.224 Limited Jurisdiction Blanket Certificate and Statement of Operating Conditions on file with the Commission.

²³ *Granite State Elec. Co., et al.*, 113 FERC ¶ 61,289 (2005).

²⁴ *Granite State Elec. Co.*, Docket No. ER11-2894-000, Letter Order dated Mar. 31, 2011.

²⁵ Liberty Midstates holds capacity on certain interstate pipelines (ANR, NGPL, PEPL, SSCGT, MRT, Ozark, TETCO, and Trunkline) for purposes of meeting its local distribution system needs. This capacity is dedicated to meeting the needs of Liberty Midstates’ local distribution customers and is held under long-term arrangements. Accordingly, the natural gas capacity on interstate pipeline systems held by Liberty Midstates is not an input to electricity production that could create potential market power concerns.

²⁶ Included in this figure are 243 miles of intrastate gas transmission lines, the state-by-state breakdown of which is as follows: (i) in Illinois, 8 miles of 4-inch transmission pipe; (ii) in Iowa, 12 miles of 4-inch, 11 miles of 6-inch, two miles of 8-inch, and 16 miles of 10-inch pipe; and (iii) in Missouri, 130 miles of 6-inch, 17 miles of 8-inch, and 47 miles of 10-inch pipe.

l. Liberty Utilities (New England Natural Gas Company) Corp.

Liberty Utilities (New England Natural Gas Company) Corp. (“Liberty New England”) is a natural gas local distribution company serving approximately 54,000 customers in the areas of Fall River and North Attleboro, Massachusetts. Liberty New England owns no natural gas transmission assets.

m. Liberty Utilities (Peach State Natural Gas) Corp.

Liberty Utilities (Peach State Natural Gas) Corp. (“Peach State”) is a natural gas utility serving the following counties in the State of Georgia: Barrow, Chattahoochee, Hall, Harris, Jackson, Muscogee, and Oconee. Its distribution assets include approximately 1,261 miles of pipeline of varying diameters from two inches to 16 inches. Of this pipeline, 68 miles are intrastate transmission and the balance is classified as distribution.

n. Minonk Wind, LLC

Minonk Wind, LLC (“Minonk”) owns a 200 MW (nameplate) wind generating facility located within the PJM BAA. Minonk is an EWG,²⁷ and has received market-based rate authority.²⁸

o. Sandy Ridge Wind, LLC

Sandy Ridge Wind, LLC (“Sandy Ridge”) owns a 50 MW (nameplate) wind-powered generating facility located in Blair and Centre Counties, Pennsylvania. Sandy Ridge is an EWG,²⁹ and has received market-based rate authority.³⁰

p. Senate Wind, LLC

Senate Wind, LLC (“Senate Wind”) owns the 150 MW (nameplate) wind-powered generating facility located near Graham, Texas, 200 km west of

²⁷ *Minonk Wind, LLC*, Docket No. EG12-60-000, Notice of Self-Certification of Exempt Wholesale Generator Status (filed Apr. 19, 2012).

²⁸ *Minonk Wind, LLC*, Docket No. ER12-1680-000, Letter Order dated June 12, 2012.

²⁹ *Sandy Ridge Wind, LLC*, Docket No. EG11-5-000, Notice of Self-Certification of Exempt Wholesale Generator Status (filed Oct. 14, 2010).

³⁰ *Sandy Ridge Wind, LLC*, Docket No. ER11-113-000, Letter Order dated Dec. 2, 2010.

Dallas, Texas, within the BAA of the Electric Reliability Council of Texas. Senate Wind is an EWG.³¹

q. Deerfield Wind Energy, LLC

Deerfield Wind Energy, LLC (“Deerfield Wind”) intends to construct, own, and operate a 149 MW (nameplate) wind-powered electric generating facility located in central Michigan in the MISO BAA. The Commission has accepted an interconnection agreement among Deerfield Wind, International Transmission Company, and MISO.³² Deerfield Wind anticipates that it will begin commercial operation during 2016/2017.

r. Great Bay Solar I, LLC

Great Bay Solar I, LLC (“Great Bay”) intends to construct, own, and operate an approximately 75 MW solar generating facility located in Maryland in the PJM BAA. The Commission has accepted an interconnection agreement among Great Bay, Delmarva Power and Light Company, and PJM.³³ Great Bay anticipates that it will begin commercial operation during 2017.

s. Algonquin SKIC 10 Solar, LLC

Algonquin SKIC 10 Solar, LLC (“Algonquin SKIC 10”) is developing a 10 MW solar-powered electric generating facility located in Kern County, CA. The facility is expected to achieve Commercial Operation (as defined in the long-term Power Purchase Agreement with Southern California Edison Company) on or about August 2016. Prior to commencing operation the facility will apply for market based rate authority and file a Notice of Certification of Qualifying Facility Status.

In addition, on March 16, 2016, as supplemented on April 8, 2016, in Docket No. EC16-88-000, Liberty Utilities (Central) Co. and The Empire District Electric Company (“Empire”) submitted an Application for Authorization for Disposition of Jurisdictional Facilities. As

³¹ *Senate Wind, LLC*, Docket No. EG12-61-000, Notice of Self-Certification of Exempt Wholesale Generator Status (filed Apr. 19, 2012).

³² *Midcontinent Independent System Operator, Inc.*, Docket No. ER15-1948-000, Letter Order dated August 13, 2015.

³³ *PJM Interconnection, L.L.C.*, Docket No. ER15-2286-000, Letter Order dated September 17, 2015. On February 2, 2016, PJM filed an amended interconnection agreement in Docket No. ER16-868, which remains pending as of the filing of this Application.

proposed, Liberty Utilities (Central) Co. would acquire Empire's issued and outstanding common stock in a transaction described in such Application. In an order issued May 6, 2016, the Commission issued an Order Authorizing Disposition of Jurisdictional Facilities.³⁴ While the transaction has not yet been consummated, Empire is treated as an Affiliate for purposes of this Application. Empire is a small investor-owned utility providing electric service to approximately 169,000 customers in Southwest Missouri, southeast Kansas, northeast Oklahoma and northwest Arkansas. Empire is a public utility company regulated by the Missouri Public Service Commission, the Kansas Corporation Commission, the Oklahoma Corporation Commission, the Arkansas Public Service Commission and the Commission. Empire is a transmission-owning member of the Southwest Power Pool, Inc. ("SPP"). All requests for transmission service on Empire's transmission system are made through SPP under the terms and conditions of the SPP Tariff. Empire has market-based rate authority.³⁵ Empire also provides service to its customers under cost-based rate schedules on file with the Commission.

Empire owns a number of generating stations located within the SPP BAA, including: (1) Asbury, a 191 MW facility located in Missouri; (2) Empire Energy Center, a 267 MW facility located in Missouri; (3) Iatan, a 192 MW facility located in Missouri (Empire owns a 12% interest in this facility); (4) Ozark Beach, a 16 MW facility located in Missouri; (5) Riverton, a 248 MW facility located in Kansas; (6) State Line 1, a 96 MW facility located in Missouri; and (7) State Line Combined Cycle, a 297 MW facility located in Missouri (Empire owns a 60% share in this facility).

³⁴ *The Empire District Electric Company and Liberty Utilities (Central) Co.*, 155 FERC ¶ 62,091 (2016).

³⁵ *See The Empire District Electric Co.*, 116 FERC ¶ 61,150 (2006), *order denying reh'g*, 123 FERC ¶ 61,084 (2008).

Other U.S. energy affiliates of Odell are described fully in Exhibit B hereto.

C. Enel Kansas

Enel Kansas is a wholly-owned subsidiary of Enel Green Power North America, Inc., which is a wholly-owned subsidiary of Enel SpA. Enel S.P.A is an Italian joint stock company and a publicly traded company on the Milan Stock Exchange.

Enel has two affiliates with market-based rate authority located in MISO and is affiliated with 130.36 MW of generating capacity consisting entirely of qualifying small power production facilities, each of which is smaller than 20 MW and has fully committed its output on a long-term basis to unaffiliated offtakers.

VI. SUMMARY OF THE PROPOSED TRANSACTION

Pursuant to a Purchase and Sale Agreement dated November 7, 2014 between Enel Kansas and SponsorCo, SponsorCo purchased 100% of the equity interests of Odell from Enel Kansas. SponsorCo immediately contributed Odell to Holdings. As part of the transaction, a portion of the purchase price payable by SponsorCo to Enel Kansas was contributed by Enel Kansas as capital to SponsorCo in exchange for a 50% equity interest in SponsorCo. Thus, SponsorCo is currently owned 50% by Enel Kansas and 50% by Algonquin Member.

Pursuant to the terms of the limited liability company agreement of SponsorCo dated as of November 7, 2014, as amended from time to time (the "SponsorCo LLCA"), Algonquin Member has a right to exercise an option to purchase and acquire Enel Kansas' 50% interest in SponsorCo at any time prior to the date that is 30 days following the commercial operation date (as defined in the Power Purchase Agreement) of the Facility. The Algonquin Member intends to exercise its right to purchase Enel Kansas' interest in SponsorCo, subject to receipt of all required approvals. The closing of this transaction will occur on or prior to the date that is ten

(10) business days after the later of (i) the date of delivery of written notice by the Algonquin Member to Enel Kansas confirming its exercise of such right and (ii) receipt of all material approvals of any governmental authority required to be obtained in connection with such transfer.

Upon completion of the Purchase Transaction contemplated in the SponsorCo LLCA, (i) the Algonquin Member will own all of the equity interests of SponsorCo, (ii) SponsorCo will own all of the Class B membership interests of Holdings, and (iii) Holdings will own all of the equity interests of Odell.

VII. DESCRIPTION OF THE FACILITIES

As described above, the Odell project is a 200 MW wind generating facility currently under construction in Minnesota. Odell is located within the MISO BAA. Odell began testing the Facility in May 2016 and expects to achieve commercial operation by the end of July 2016. Odell will sell the entire capacity and energy to Xcel pursuant to the long term Power Purchase Agreement. Odell has market-based rate authority and is an EWG. Odell will own no transmission facilities other than limited interconnection facilities needed to connect the Facility with the MISO-controlled transmission system.

Because the Facility is in testing, Odell's interconnection facilities are energized, and Odell is delivering power to Xcel Energy pursuant to the terms and conditions of the long-term Power Purchase Agreement. As such, the facilities subject to the Commission's jurisdiction under the FPA involved in the Purchase Transaction include the limited interconnection facilities associated with the Facility, the market-based rate authority under which Odell sells electric power, and other books and records.

VIII. THE TRANSFER IS CONSISTENT WITH THE PUBLIC INTEREST

As noted above, the Purchase Transaction involves an indirect change in the upstream ownership of Odell. The Purchase Transaction is consistent with the public interest and will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company.

FPA Section 203(a)(4) instructs the Commission to approve jurisdictional transactions that are “consistent with the public interest,” the analysis for which is set forth in the Commission’s applicable Orders and Policy Statements.³⁶ The *Merger Policy Statement* provides that in determining whether a proposed disposition in upstream ownership of jurisdictional facilities is consistent with the public interest,³⁷ the Commission shall consider whether the transaction will have any adverse effects on (1) competition, (2) rates, or (3) regulation.³⁸ Consistent with the Commission’s applicable Policy Statements,³⁹ the requirements established in the Energy Policy Act of 2005 and Order No. 669, *et seq.*,⁴⁰ this Application, inclusive of its exhibits, shows that the indirect disposition of Odell’s jurisdictional facilities will have no adverse effects on competition, rates, or regulation, and will not result in cross-subsidization.

As demonstrated below, an examination of the appropriate criteria demonstrates that the Purchase Transaction is fully consistent with the public interest and should be approved.

³⁶ Order No. 669, *et seq.*, *supra* note 2; Order No. 642, *supra* note 5; *Merger Policy Statement*, *supra* note 3.

³⁷ *Merger Policy Statement*, *supra* note 3; Order No. 592-A, 79 FERC ¶ 61,321 (1997).

³⁸ Order No. 642, *et seq.*, *supra* note 5.

³⁹ *Merger Policy Statement*, *supra* note 3.

⁴⁰ *See* Order No. 669, *et seq.*, *supra* note 2.

A. The Purchase Transaction Will Not Adversely Affect Competition

In analyzing a transaction's effects on competition, the Commission generally focuses on whether the transaction will result in higher prices or reduced output in electricity markets, which may occur if the merged entity is able to exercise market power, either alone or in coordination with other firms.⁴¹ The Commission uses competitive analysis screens that help to identify proposed transactions that are unlikely to present such competitive concerns.⁴²

The Purchase Transaction will not result in higher prices or reduced output in electricity markets and the filing of competitive analysis screens is unnecessary to reach that conclusion. The Purchase Transaction does not raise any horizontal market power concerns because, as described above, the full output of the Facility is committed to a non-affiliated purchaser, Xcel, under a long-term Power Purchase Agreement, and the Purchase Transaction will not effect this arrangement. Further, Algonquin Member already indirectly owns 50% of the equity interests in the Facility so the transaction will not result in any new affiliation or combination of electric generating assets that could have an impact on competitive markets. There will be no change to uncommitted capacity in the MISO market. In addition, under Commission precedent, generation capacity acquired that is already committed under a long-term contract is not attributable to the acquiring entity for assessing market power because the capacity is not with Odell's control.⁴³ Accordingly, the Purchase Transaction raises no horizontal market power concerns.

Additionally, the Purchase Transaction does not raise any vertical market power concerns. Both the ability and the incentive to exercise vertical market power are necessary for a

⁴¹ 18 C.F.R. § 2.26; *see also* Order No. 642, *id.*

⁴² Order No. 642, *supra* note 5 at 31,879 & 31,903.

⁴³ *Southern Company Energy Marketing, LP*, 81 FERC ¶ 61,009 at 61,043 (1997).

transaction to harm competition.⁴⁴ Upon consummation of the Purchase Transaction, Odell will not own or control any transmission facilities in the relevant MISO BAA market other than its control over those limited interconnection facilities necessary for connecting the Facility with the MISO transmission system. No change in control of electric transmission assets or other inputs to electricity generation will occur as a result of the Purchase Transaction. The Purchase Transaction does not involve any inputs to electricity protection that would allow the Applicants to erect barriers to entry to new generation. Therefore, the Purchase Transaction does not raise vertical market power issues.

Applicants respectfully request waiver of the requirement to submit horizontal and vertical competitive analyses, given the representations above. Because the Purchase Transaction raises no horizontal or vertical market power concerns, the transaction will not adversely affect competition.⁴⁵

B. The Proposed Transaction Will Have No Adverse Effect on Rates

The Purchase Transaction will not subject wholesale customers to increased rates. In determining whether a proposed transaction may adversely affect rates, the Commission's primary concern is to protect wholesale ratepayers and transmission customers from rate increases resulting from the transaction.⁴⁶ Various mechanisms are acceptable for protecting

⁴⁴ *Energy East Corp.*, 121 FERC ¶ 61,236 at P 24 (2007).

⁴⁵ *See, e.g., Noble Clinton Windpark I, LLC*, 121 FERC ¶ 62,164 (2007) (finding that the transfer of a 100.5 MW wind-powered generating facility, the output of which was to be sold under power purchase contracts or into NYISO markets, did not adversely affect competition because the transfer involved a *de minimis* share of generation in the relevant market, raising no horizontal market concerns, and because none of the applicants owned transmission facilities or other inputs to power generation, raising no vertical market concerns).

⁴⁶ *See Merger Policy Statement*, FERC Stats. & Regs. ¶31,044 at 30,123.

ratepayers, including the existence of market-based rates authorized by the Commission.⁴⁷ Here, all sales from the Facility will be made at market-based rates, and pursuant to a long-term Power Purchase Agreement with Xcel for the entire output of the Facility. The Purchase Transaction does not involve transmission rates or transmission customers. Accordingly, the transaction will have no effect on rates.

C. The Proposed Transaction Will Have No Adverse Effect on Regulation

The Purchase Transaction will not adversely affect state or federal regulation. When the Commission reviews a proposed transaction to determine its effect on regulation, the Commission focuses on ensuring that the transaction will not result in a regulatory gap at the federal or state level. The transaction is not subject to regulation by any state Commission and the transaction will not affect the extent to which the Commission may regulate Odell. Therefore, the Purchase Transaction will not create a regulatory gap at the federal or state level or shift regulatory authority between the Commission and any state commission. Thus, the transaction will have no adverse effect on regulation.

D. The Proposed Transaction Will Not Result in Cross-Subsidization

The Purchase Transaction does not pose a risk of cross-subsidization and does not pledge or otherwise encumber utility assets. Section 203(a)(4) of the FPA requires the Commission to determine whether a jurisdictional transaction will “result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company,” and, if so, whether the cross-subsidy, pledge, or encumbrance will be consistent with

⁴⁷ See, e.g., *Duquesne Light Holdings*, 117 FERC ¶ 61,326 at P 25 (2006); *Ameren Energy Generating Co.*, 145 FERC ¶ 61,034 at PP. 83-88 (2013).

the public interest.⁴⁸ The Commission's principal concern with cross-subsidization is the potential impact of a transaction on rates.⁴⁹ The Commission has stated that its goal is to "ensure that public utilities with captive customers do not cross-subsidize 'non-regulated' associate companies, *i.e.*, companies that are not subject to traditional cost-based regulation."⁵⁰

The Purchase Transaction falls within the scope of at least two "safe harbors" established by the Commission and does not present any issue with respect to cross-subsidization. The Purchase Transaction is a bona fide, arm's-length, bargained-for exchange between non-affiliated entities and does not involve a franchised utility with captive customers. Consequently, there are no concerns of cross-subsidization. Applicants submit Exhibit M with this Application to verify that the transaction will not result in an impermissible cross-subsidization. Further, the Purchase Transaction does not raise any of the concerns regarding cross-subsidization enumerated in the Commission's regulations in 18 C.F.R. § 33.2(j).

In summary, because the transaction satisfies the requirements of Section 203 and the Commission's regulations, the Commission should find that the Purchase Transaction is consistent with the public interest and approve the Application as soon as possible, without modification or condition and without holding a trial-type adjudicatory hearing.

IX. OTHER REQUIREMENTS

Pursuant to Section 33.2 of the Commission's regulations, the Applicants submit the following information, and respectfully request that the Commission waive certain requirements to the extent such information is not applicable to the Commission's consideration.

⁴⁸ Order No. 669, at P. 146, 18 C.F.R. §2.26(f).

⁴⁹ *Id.* at P.P. 166, 167.

⁵⁰ *Id.* at P.P. 91, 166.

A. The Exact Name and Address of the Principal Business Office

Odell Wind Farm, LLC

56866 County Road 17

Mt. Lake, MN 56159

B. Names and Addresses of Persons Authorized to Receive Notices and Communications Regarding this Application

The names and addresses of the persons authorized to receive notices and communications with respect to this Application are identified in Part II above.

C. Description of the Applicants Including:

1. Business Activities

Applicants' business activities are described in Part V above. Accordingly, Applicants request a waiver of the requirement to file Exhibit A.

2. Energy Subsidiaries and Energy Affiliates and Their Business Activities

Odell has no energy subsidiaries, and the consummation of the Purchase Transaction has no impact on Odell's energy affiliates. The Purchase Transaction will affect only the Applicants each of which is described in this Application. Thus, the Applicants request waiver of Section 33.2(c)(2) of the Commission's regulations to the extent it would require submission of such information on Exhibit B.

3. Organizational Charts

Applicants provide as Exhibit C simplified organizational charts illustrating Applicants' pre-transaction and post-transaction upstream ownership.

4. Business Agreements

There are no strategic alliances, joint ventures, tolling arrangements, or other proposed business arrangements to which either Applicant is a party that will be affected by the

transaction. Applicants, therefore, request a waiver of the requirement of Section 33.2(c)(4) of the Commission's regulations⁵¹ to file Exhibit D.

5. Common Officers or Directors

There are no common officers or directors among the counter parties to the Purchase Transaction. Therefore, Applicants request a waiver of the requirement of Section 33.2(c)(5) of the Commission's regulations⁵² to the extent it would require the submission of additional information in Exhibit E.

6. Description of Customers

Applicants respectfully request a waiver of the requirement of Section 33.2(c)(6) of the Commission's regulations⁵³ to submit Exhibit F. As discussed above, the Purchase Transaction does not have any detrimental impact on competition, rates, or regulation and will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company.

D. Description of Jurisdictional Facilities

See Parts V and VII of this Application. Accordingly, Applicants request a waiver of the requirement to file Exhibit G.

⁵¹ 18 C.F.R. § 33.2(c)(4).

⁵² 18 C.F.R. § 33.2(c)(5).

⁵³ 18 C.F.R. § 33.2(c)(6).

E. Narrative Description of the Proposed Transaction

A description of the Purchase Transaction has been provided above in Part VI. Applicants request a waiver of Section 33.2(e)(2) of the Commission's regulations⁵⁴ to the extent it would require submission of additional information in Exhibit H.

F. Section 33.2(f) Contracts Related to the Proposed Transaction

The SponsorCo LLCA is attached hereto as Exhibit I. Applicants submit that Exhibit I contains commercially sensitive information, the release of which would cause competitive harm. Further, the release of such information would cause an impediment in future negotiations of similar transactions, not just for Applicants, but for other parties that might engage in similar transactions. As such, pursuant to 18 C.F.R. § 388.112, *Applicants request that the documents contained in Exhibit I be accorded confidential treatment.* As required by 18 C.F.R. § 388.112(b)(2)(i), Applicants have included a proposed protective order, based on the Commission's Form Protective Order, as Attachment 2.

G. Section 33.2(g): Consistency of the Proposed Transaction with the Public Interest

Part VIII of this Application demonstrates that the Purchase Transaction will be in the public interest. Accordingly, Applicants request a waiver of the requirement to file Exhibit J.

H. Section 33.2(h): Maps of Physical Property

Applicants request a waiver of the requirement to provide maps because the Purchase Transaction is not a merger of companies with franchised service territories.

⁵⁴ 18 C.F.R. § 33.2(e)(2).

I. Section 33.2(j): Status of Regulatory Orders and Approvals

Applicants are not required to obtain licenses, orders, or other approvals from other regulatory bodies in connection with the Purchase Transaction. Accordingly, Applicants request a waiver of the requirement to file Exhibit L.

J. Section 33.2(j): Cross-Subsidization and Encumbrances

Applicants provide the required verifications in Exhibit M.

K. Section 33.5: Accounting Entries

This Application does not include accounting entries showing the effect of the Purchase Transaction on account balances pursuant to Section 33.5 of the Commission's regulations because Applicants are not required to maintain their books and records in accordance with the Commission's Uniform System of Accounts.⁵⁵

L. Section 33.7: Verifications

An authorized representative for each of the Applicants has provided a verification as required by 18 C.F.R. § 33.7, attached as Attachment 1.

X. CONCLUSION

As described in this Application, Applicants respectfully request that the Commission (1) authorize the Purchase Transaction pursuant to Section 203 of the FPA, (2) grant a limited waiver of the Commission's filing requirements to the extent that such information is not necessary to ensure the Purchase Transaction meets the requirements of Section 203, (3) grant confidential treatment of Exhibit I and certain information otherwise identified as confidential,

⁵⁵ The Commission has granted similar waivers in the past. *See, e.g., North Western Corp.*, 117 FERC 61,100 at P 66 (2006); *Gen. Elec. Capital Corp.*, 115 FERC ¶ 62,024 (2006); *Exelon New England Holdings, LLC*, 107 FERC ¶ 61,148 (2004).

and (4) expeditiously review this Application and grant its approval thereof not later than September 6, 2016.

DATED: July 22, 2016

Respectfully submitted,

Elizabeth W. Whittle

Elizabeth W. Whittle
Counsel to Odell Wind Farm, LLC

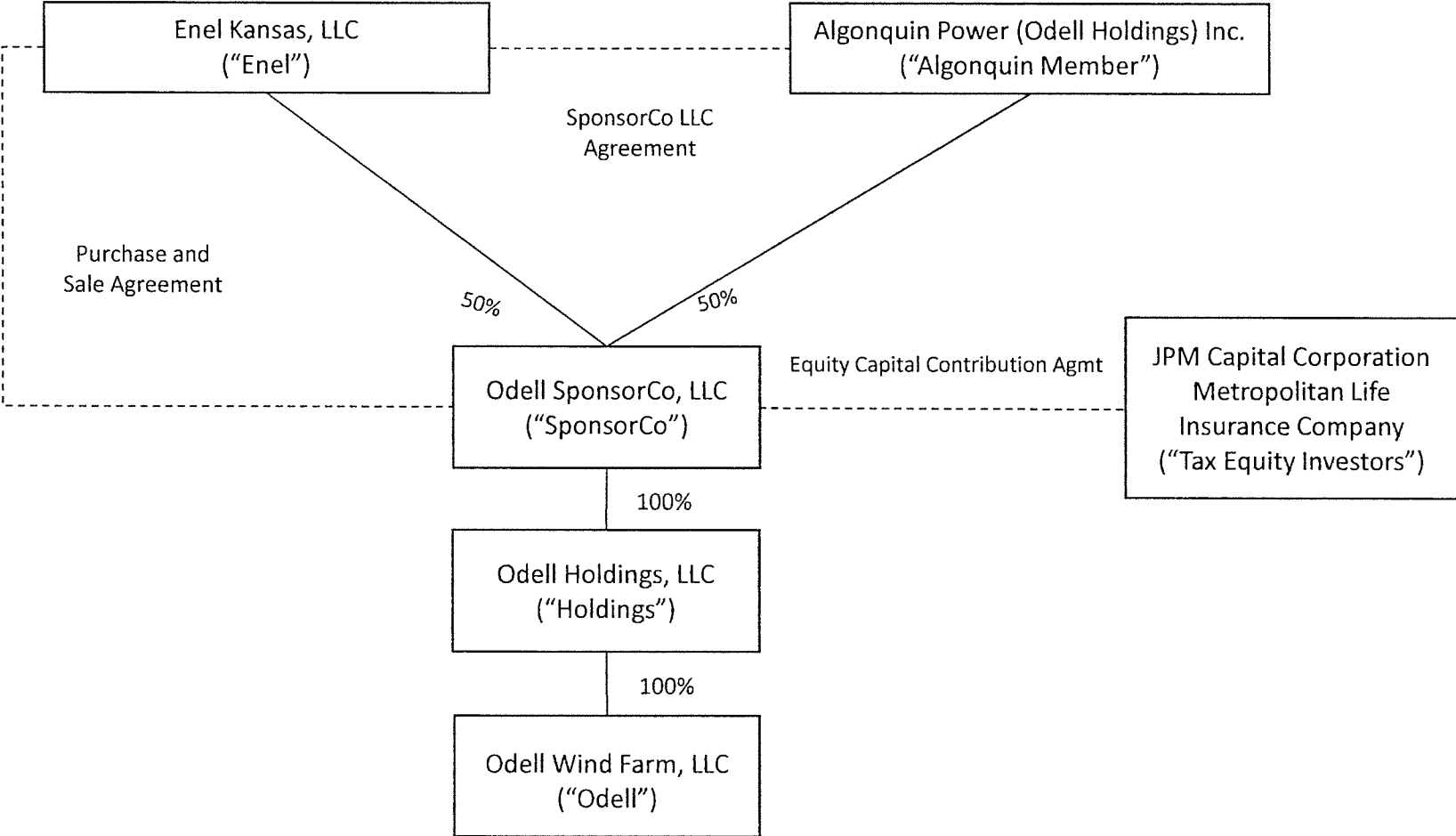
Nixon Peabody LLP
799 9th Street, N.W.
Suite 500
Washington, DC 20001
202-585-8338
ewhittle@nixonpeabody.com

Dated: July 22, 2016

EXHIBITS TO THE APPLICATION

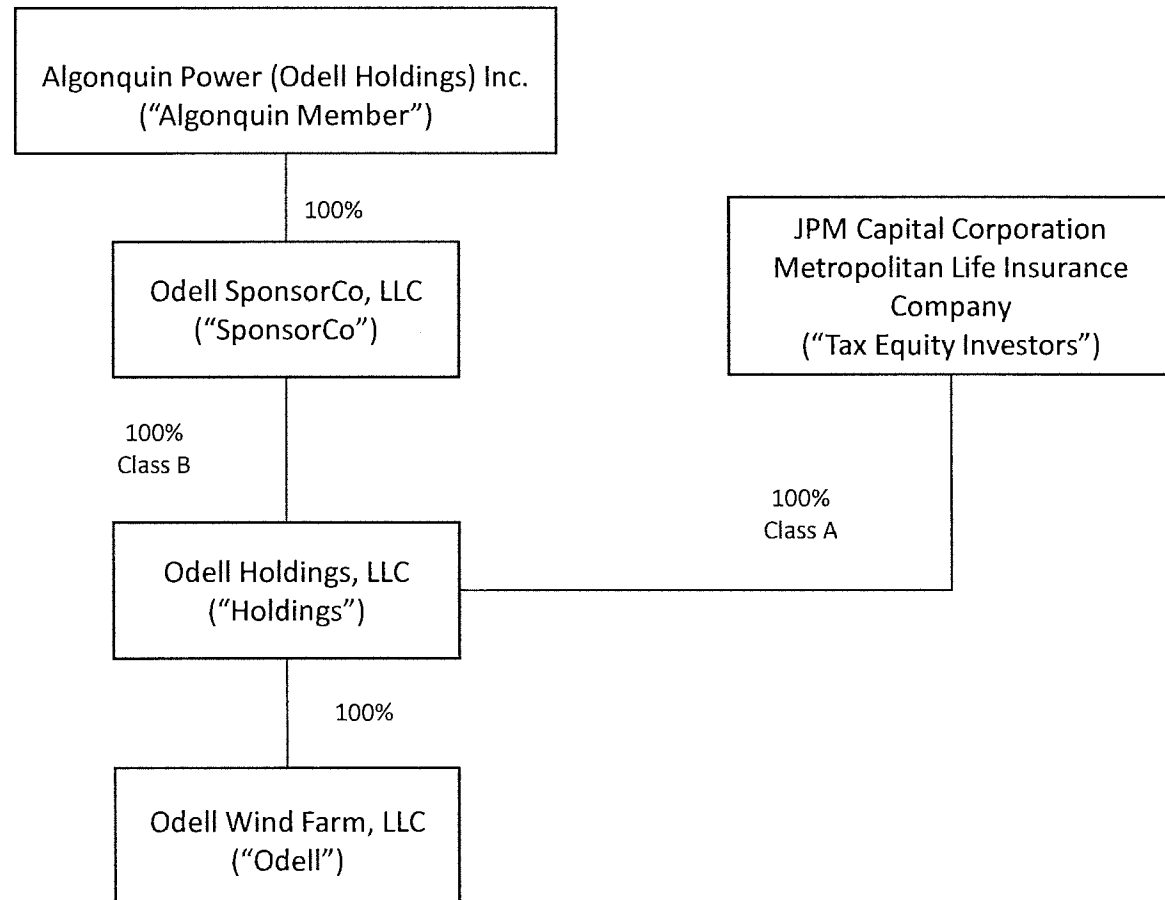
EXHIBIT C
ORGANIZATIONAL CHART

CURRENT OWNERSHIP STRUCTURE



July 14, 2016

OWNERSHIP STRUCTURE POST-CLOSING OF PURCHASE TRANSACTION*



*Assumes transaction approved by the Commission pursuant to an "Order Authorizing Disposition of Jurisdictional Facilities" dated July 12, 2016 in accordance with FPA Section 203(a)(1) has been completed prior to closing of the Purchase Transaction

EXHIBIT I

All contracts related to the Purchase Transaction together with copies of all other written instruments entered into or proposed to be entered into by the parties thereto

CONFIDENTIAL EXHIBIT

Protected Materials containing confidential and privileged information
have been removed from the public version of this Application.

Exhibit I

EXHIBIT M**Explanation Regarding Cross-Subsidization****EXPLANATION PROVIDING ASSURANCE THAT THE PROPOSED TRANSACTION WILL NOT RESULT IN CROSS-SUBSIDIZATION OR PLEDGE OR ENCUMBRANCE OF UTILITY ASSETS**

The Purchase Transaction raises no issues concerning cross-subsidization. Based on the facts and circumstances known to Applicants or that are reasonably foreseeable, the transaction will not result in, at the time of the closing, or in the future, cross-subsidization of a nonutility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company.

(i) Disclosure of existing pledges or encumbrances

No pledges or encumbrances of any assets of a traditional public utility that has captive customers or provides transmission service over jurisdictional transmission facilities will occur as a result of the transaction.

(ii) Detailed showing that the transaction will not result in:

(A) Any transfer of facilities between a traditional public utility associate company that has captive ratepayers or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company

The Purchase Transaction does not involve a transfer of facilities between a traditional public utility associate company that has captive ratepayers, or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company.

(B) 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

Exhibit M-1

The Purchase Transaction does not result in 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.

(C) 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

The Purchase Transaction does not result in 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.

(D) Any new affiliate contract between a nonutility 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 nonpower goods and services agreements subject to review under sections 205 and 206 of the Federal Power Act.

The Purchase Transaction does not result in any new affiliate contract between a nonutility 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 nonpower goods and services agreements subject to review under sections 205 and 206 of the Federal Power Act.

ATTACHMENT 1

Verifications

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Odell Wind Farm, LLC) Docket No. EC16-____-000
Algonquin Power (Odell Holdings) Inc.)
Enel Kansas, LLC)
Odell Holdings, LLC)
Odell SponsorCo, LLC)

**VERIFICATION
(18 C.F.R. § 33.7)**

I, Nick Lincoln, of Enel Kansas, LLC, have read the foregoing Application and have authority with respect thereto. I have knowledge of the matters regarding Odell Wind Farm, LLC and its affiliates set forth in the foregoing Application. The statements in said Application regarding Odell Wind Farm, LLC and its affiliates are true and correct to the best of my knowledge, information, and belief.

By: 

SUBSCRIBED AND SWORN to before me, a Notary Public in and for the State of Massachusetts this 21 day of July, 2016.

Notary Public:




My Commission Expires: _____

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Odell Wind Farm, LLC)	Docket No. EC16-____-000
Algonquin Power (Odell Holdings) Inc.)	
Enel Kansas, LLC)	
Odell Holdings, LLC)	
Odell SponsorCo, LLC)	

**VERIFICATION
(18 C.F.R. § 33.7)**

I, _____, of the Administrator of Odell Wind Farm LLC, have read the foregoing Application and have authority with respect thereto. I have knowledge of the matters regarding Odell Wind Farm, LLC and its affiliates set forth in the foregoing Application. The statements in said Application regarding Odell Wind Farm, LLC and its affiliates are true and correct to the best of my knowledge, information, and belief.

By: _____

SUBSCRIBED AND SWORN to before me, a Notary Public in and for the _____ of _____ this ____ day of _____, 2016.

Notary Public:

My Commission Expires:

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Odell Wind Farm, LLC)	Docket No. EC16-____-000
Algonquin Power (Odell Holdings) Inc.)	
Enel Kansas, LLC		
Odell Holdings, LLC)	
Odell SponsorCo, LLC)	

**VERIFICATION
(18 C.F.R. § 33.7)**

I, _____, of Enel Kansas, LLC, have read the foregoing Application and have authority with respect thereto. I have knowledge of the matters regarding Odell Wind Farm, LLC and its affiliates set forth in the foregoing Application. The statements in said Application regarding Odell Wind Farm, LLC and its affiliates are true and correct to the best of my knowledge, information, and belief.

By: _____

SUBSCRIBED AND SWORN to before me, a Notary Public in and for the State of _____ this ____ day of _____, 2016.

Notary Public:

My Commission Expires:

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Odell Wind Farm, LLC) Docket No. EC16-__-000
Algonquin Power (Odell Holdings) Inc.)
Enel Kansas, LLC)
Odell Holdings, LLC)
Odell SponsorCo, LLC)

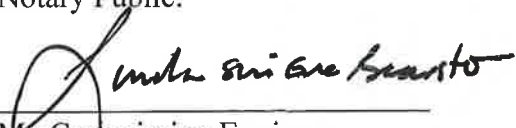
VERIFICATION
(18 C.F.R. § 33.7)

I, Danielle Waldman, Senior Counsel, of the Administrator of Odell Wind Farm LLC, have read the foregoing Application and have authority with respect thereto. I have knowledge of the matters regarding Odell Wind Farm, LLC and its affiliates set forth in the foregoing Application. The statements in said Application regarding Odell Wind Farm, LLC and its affiliates are true and correct to the best of my knowledge, information, and belief.

By: 

SUBSCRIBED AND SWORN to before me, a Notary Public in and for the Province of Ontario this 21st day of July, 2016.

Notary Public:



My Commission Expires:

Does not expire

ATTACHMENT 2

Protective Order

**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

Odell Wind Farm, LLC)	Docket No. EC16-____-000
Algonquin Power (Odell Holdings) Inc.)	
Enel Kansas, LLC		
Odell Holdings, LLC)	
Odell SponsorCo, LLC)	

**PROTECTIVE ORDER
(Issued)**

1. This Protective Order shall govern the use of all Protected Materials produced by, or on behalf of, any Participant. Notwithstanding any order terminating this proceeding, this Protective Order shall remain in effect until specifically modified or terminated by the Presiding Administrative Law Judge (“Presiding Judge”) or the Federal Energy Regulatory Commission (“Commission”).

2. This Protective Order applies to the following two categories of materials: (A) A Participant may designate as protected those materials which customarily are treated by that Participant as sensitive or proprietary, which are not available to the public, and which, if disclosed freely, would subject that Participant or its customers to risk of competitive disadvantage or other business injury; and (B) A Participant shall designate as protected those materials which contain critical energy infrastructure information, as defined in 18 C.F.R. § 388.113 (c)(1) (“Critical Energy Infrastructure Information”).

3. Definitions – For purposes of this Order:

(a) The term “Participant” shall mean a Participant as defined in 18 C.F.R. § 385.102(b).

(b) (1) The term “Protected Materials” means (A) materials (including depositions) provided by a Participant in response to discovery requests and designated by such Participant as protected; (B) any information contained in or obtained from such designated materials; (C) any other materials which are made subject to this Protective Order by the Presiding Judge, by the Commission, by any court or other body having appropriate authority, or by agreement of the Participants; (D) notes of Protected Materials; and (E) copies of Protected Materials. The Participant producing the Protected Materials shall physically mark them on each page as “PROTECTED MATERIALS” or with words of similar import as long as the term “Protected Materials” is included in that designation to indicate that they are Protected Materials. If the Protected Materials contain Critical Energy Infrastructure Information, the Participant producing such information shall additionally mark on each page containing such information the words “Contains Critical Energy Infrastructure Information – Do Not Release.”

(2) The term “Notes of Protected Materials” means memoranda, handwritten notes, or any other form of information (including electronic form) which

copies or discloses materials described in Paragraph 3(b)(1). Notes of Protected Materials are subject to the same restrictions provided in this order for Protected Materials except as specifically provided in this order.

(3) Protected Materials shall not include (A) any information or document contained in the files of the Commission, or any other federal or state agency, or any federal or state court, unless the information or document has been determined to be protected by such agency or court, or (B) information that is public knowledge, or which becomes public knowledge, other than through disclosure in violation of this Protective Order, or (C) any information or document labeled as “Non-Internet Public” by a Participant, in accordance with Paragraph 30 of FERC Order No. 630, FERC Stat. & Reg. & 31,140. Protected Materials do include any information or document contained in the files of the Commission that has been designated as Critical Energy Infrastructure Information.

(c) The term “Non-Disclosure Certificate” shall mean the certificate annexed hereto by which Participants who have been granted access to Protected Materials shall certify their understanding that such access to Protected Materials is provided pursuant to the terms and restrictions of this Protective Order, and that such Participants have read the Protective Order and agree to be bound by it. All Non-Disclosure Certificates shall be served on all parties on the official service list maintained by the Secretary in this proceeding.

(d) The term “Reviewing Representative” shall mean a person who has signed a Non-Disclosure Certificate and who is:

- (1) Commission Trial Staff designated as such in this proceeding;
 - (2) an attorney who has made an appearance in this proceeding for a Participant;
 - (3) attorneys, paralegals, and other employees associated for purposes of this case with an attorney described in Subparagraph (2);
 - (4) an expert or an employee of an expert retained by a Participant for the purpose of advising, preparing for or testifying in this proceeding;
 - (5) a person designated as a Reviewing Representative by order of the Presiding Judge or the Commission; or
 - (6) employees or other representatives of Participants appearing in this proceeding with significant responsibility for this docket.
4. Protected Materials shall be made available under the terms of this Protective Order only to Participants and only through their Reviewing Representatives as provided in Paragraphs 7-9.
 5. Protected Materials shall remain available to Participants until the later of the date that an order terminating this proceeding becomes no longer subject to judicial review, or the date

that any other Commission proceeding relating to the Protected Material is concluded and no longer subject to judicial review. If requested to do so in writing after that date, the Participants shall, within fifteen days of such request, return the Protected Materials (excluding Notes of Protected Materials) to the Participant that produced them, or shall destroy the materials, except that copies of filings, official transcripts and exhibits in this proceeding that contain Protected Materials, and Notes of Protected Material may be retained, if they are maintained in accordance with Paragraph 6, below. Within such time period each Participant, if requested to do so, shall also submit to the producing Participant an affidavit stating that, to the best of its knowledge, all Protected Materials and all Notes of Protected Materials have been returned or have been destroyed or will be maintained in accordance with Paragraph 6. To the extent Protected Materials are not returned or destroyed, they shall remain subject to the Protective Order.

6. All Protected Materials shall be maintained by the Participant in a secure place. Access to those materials shall be limited to those Reviewing Representatives specifically authorized pursuant to Paragraphs 8-9. The Secretary shall place any Protected Materials filed with the Commission in a non-public file. By placing such documents in a nonpublic file, the Commission is not making a determination of any claim of privilege. The Commission retains the right to make determinations regarding any claim of privilege and the discretion to release information necessary to carry out its jurisdictional responsibilities. For documents submitted to Commission Trial Staff ("Staff"), Staff shall follow the notification procedures of 18 C.F.R. § 388.112 before making public any Protected Materials.
7. Protected Materials shall be treated as confidential by each Participant and by the Reviewing Representative in accordance with the certificate executed pursuant to Paragraph 9. Protected Materials shall not be used except as necessary for the conduct of this proceeding, nor shall they be disclosed in any manner to any person except a Reviewing Representative who is engaged in the conduct of this proceeding and who needs to know the information in order to carry out that person's responsibilities in this proceeding. Reviewing Representatives may make copies of Protected Materials, but such copies become Protected Materials. Reviewing Representatives may make notes of Protected Materials, which shall be treated as Notes of Protected Materials if they disclose the contents of Protected Materials.
8. (a) If a Reviewing Representative's scope of employment includes the marketing of energy, the direct supervision of any employee or employees whose duties include the marketing of energy, the provision of consulting services to any person whose duties include the marketing of energy, or the direct supervision of any employee or employees whose duties include the marketing of energy, such Reviewing Representative may not use information contained in any Protected Materials obtained through this proceeding to give any Participant or any competitor of any Participant a commercial advantage.

(b) In the event that a Participant wishes to designate as a Reviewing Representative a person not described in Paragraph 3 (d) above, the Participant shall seek agreement from the Participant providing the Protected Materials. If an agreement is reached that person shall be a Reviewing Representative pursuant to Paragraphs 3(d) above with respect to those

materials. If no agreement is reached, the Participant shall submit the disputed designation to the Presiding Judge for resolution.

9. (a) A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Protected Materials pursuant to this Protective Order unless that Reviewing Representative has first executed a Non-Disclosure Certificate; provided, that if an attorney qualified as a Reviewing Representative has executed such a certificate, the paralegals, secretarial and clerical personnel under the attorney's instruction, supervision or control need not do so. A copy of each Non-Disclosure Certificate shall be provided to counsel for the Participant asserting confidentiality prior to disclosure of any Protected Material to that Reviewing Representative.
 - (b) Attorneys qualified as Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with this order.
10. Any Reviewing Representative may disclose Protected Materials to any other Reviewing Representative as long as the disclosing Reviewing Representative and the receiving Reviewing Representative both have executed a Non-Disclosure Certificate. In the event that any Reviewing Representative to whom the Protected Materials are disclosed ceases to be engaged in these proceedings, or is employed or retained for a position whose occupant is not qualified to be a Reviewing Representative under Paragraph 3(d), access to Protected Materials by that person shall be terminated. Even if no longer engaged in this proceeding, every person who has executed a Non-Disclosure Certificate shall continue to be bound by the provisions of this Protective Order and the certification.
11. Subject to Paragraph 18, the Presiding Administrative Law Judge shall resolve any disputes arising under this Protective Order. Prior to presenting any dispute under this Protective Order to the Presiding Administrative Law Judge, the parties to the dispute shall use their best efforts to resolve it. Any participant that contests the designation of materials as protected shall notify the party that provided the protected materials by specifying in writing the materials the designation of which is contested. This Protective Order shall automatically cease to apply to such materials five (5) business days after the notification is made unless the designator, within said 5-day period, files a motion with the Presiding Administrative Law Judge, with supporting affidavits, demonstrating that the materials should continue to be protected. In any challenge to the designation of materials as protected, the burden of proof shall be on the participant seeking protection. If the Presiding Administrative Law Judge finds that the materials at issue are not entitled to protection, the procedures of Paragraph 18 shall apply. The procedures described above shall not apply to protected materials designated by a Participant as Critical Energy Infrastructure Information. Materials so designated shall remain protected and subject to the provisions of this Protective Order, unless a Participant requests and obtains a determination from the Commission's Critical Energy Infrastructure Information Coordinator that such materials need not remain protected.
12. All copies of all documents reflecting Protected Materials, including the portion of the hearing testimony, exhibits, transcripts, briefs and other documents which refer to Protected Materials, shall be filed and served in sealed envelopes or other appropriate containers

endorsed to the effect that they are sealed pursuant to this Protective Order. Such documents shall be marked “PROTECTED MATERIALS” and shall be filed under seal and served under seal upon the Presiding Judge and all Reviewing Representatives who are on the service list. Such documents containing Critical Energy Infrastructure Information shall be additionally marked “Contains Critical Energy Infrastructure Information – Do Not Release.” For anything filed under seal, redacted versions or, where an entire document is protected, a letter indicating such, will also be filed with the Commission and served on all parties on the service list and the Presiding Judge. Counsel for the producing Participant shall provide to all Participants who request the same, a list of Reviewing Representatives who are entitled to receive such material. Counsel shall take all reasonable precautions necessary to assure that Protected Materials are not distributed to unauthorized persons.

13. If any Participant desires to include, utilize or refer to any Protected Materials or information derived therefrom in testimony or exhibits during the hearing in these proceedings in such a manner that might require disclosure of such material to persons other than reviewing representatives, such participant shall first notify both counsel for the disclosing participant and the Presiding Judge of such desire, identifying with particularity each of the Protected Materials. Thereafter, use of such Protected Material will be governed by procedures determined by the Presiding Judge.
14. Nothing in this Protective Order shall be construed as precluding any Participant from objecting to the use of Protected Materials on any legal grounds.
15. Nothing in this Protective Order shall preclude any Participant from requesting the Presiding Judge, the Commission, or any other body having appropriate authority, to find that this Protective Order should not apply to all or any materials previously designated as Protected Materials pursuant to this Protective Order. The Presiding Judge may alter or amend this Protective Order as circumstances warrant at any time during the course of this proceeding.
16. Each party governed by this Protective Order has the right to seek changes in it as appropriate from the Presiding Judge or the Commission.
17. All Protected Materials filed with the Commission, the Presiding Judge, or any other judicial or administrative body, in support of, or as a part of, a motion, other pleading, brief, or other document, shall be filed and served in sealed envelopes or other appropriate containers bearing prominent markings indicating that the contents include Protected Materials subject to this Protective Order. Such documents containing Critical Energy Infrastructure Information shall be additionally marked “Contains Critical Energy Infrastructure Information – Do Not Release.”
18. If the Presiding Judge finds at any time in the course of this proceeding that all or part of the Protected Materials need not be protected, those materials shall, nevertheless, be subject to the protection afforded by this Protective Order for three (3) business days from the date of issuance of the Presiding Judge’s determination, and if the Participant seeking protection files an interlocutory appeal or requests that the issue be certified to the Commission, for an additional seven (7) business days. None of the Participants waives its rights to seek

additional administrative or judicial remedies after the Presiding Judge's decision respecting Protected Materials or Reviewing Representatives, or the Commission's denial of any appeal thereof. The provisions of 18 C.F.R. §§ 388.112 and 388.113 shall apply to any requests under the Freedom of Information Act. (5 U.S.C. 552) for Protected Materials in the files of the Commission.

19. Nothing in this Protective Order shall be deemed to preclude any Participant from independently seeking through discovery in any other administrative or judicial proceeding information or materials produced in this proceeding under this Protective Order.
20. None of the Participants waives the right to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of Protected Materials.
21. The contents of Protected Materials or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with this Protective Order and shall be used only in connection with this (these) proceeding(s). Any violation of this Protective Order and of any Non-Disclosure Certificate executed hereunder shall constitute a violation of an order of the Commission.

Presiding Administrative Law Judge

**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

Odell Wind Farm, LLC) Docket No. EC16-____-000
Algonquin Power (Odell Holdings) Inc.)
Enel Kansas, LLC)
Odell Holdings, LLC)
Odell SponsorCo)

NON-DISCLOSURE CERTIFICATE

I hereby certify my understanding that access to Protected Materials is provided to me pursuant to the terms and restrictions of the Protective Order in this proceeding, that I have been given a copy of and have read the Protective Order, and that I agree to be bound by it. I understand that the contents of the Protected Materials, any notes or other memoranda, or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with that Protective Order. I acknowledge that a violation of this certificate constitutes a violation of an order of the Federal Energy Regulatory Commission.

By: _____

Title: _____

Representing: _____

Date: _____

By: _____

Title: _____

Representing: _____

Date: _____

Document Content(s)

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