

UNITED STATES OF AMERICA
Before The
FEDERAL ENERGY REGULATORY COMMISSION

Osage Wind, LLC

)

Docket No. EC13-142-000

MOTION TO INTERVENE AND PROTEST OF OSAGE NATION

On August 29, 2013, Osage Wind LLC filed, pursuant to section 203 of the Federal Power Act, 16 U.S.C. § 824b(a)(1)(A) (2012), an application for authorization to transfer 100% of the ownership interests in a 150 MW electric generating facility under development in Osage County, Oklahoma (“Osage Wind Facility”) from Wind Capital Group, LLC to TradeWind Energy, Inc. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure,¹ the Osage Nation hereby moves to intervene and protests the proposed transaction. Osage Nation files this motion to intervene on a timely basis, and files a preliminary protest which it intends to supplement in the near future, once it has had more time to thoroughly review the proposed transaction and its potential impacts on the Osage Wind Facility and the Osage Nation.

I. Correspondence and Communications

All communications and correspondence regarding this pleading should be directed to:

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** Designated to receive service pursuant to Rule 203(b)(3) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.203(b)(3) (2012).

¹ 18 C.F.R. § 385.214(a)(3) (2012).

II. Motion to Intervene

The Osage Nation is a Native American Siouan-speaking tribe in the United States that originated in the Ohio River valley in present-day Kentucky. After years of war with invading Iroquois, the Osage migrated west of the Mississippi River to their historic lands in present-day Arkansas, Missouri, Kansas, and Oklahoma by the mid-17th century. The Osage Nation is a federally recognized tribe, based mainly in Osage County, Oklahoma, coterminous with their reservation.

The Osage Wind Facility is located on property belonging to members of the Osage Nation, and the mineral rights under the Osage Wind Facility are held in trust by the U.S. Government for the benefit of the Osage Nation. As discussed in greater detail below, the Osage Nation is involved in a dispute with Wind Capital Ventures regarding the Osage Wind Facility's impacts on the Osage Nation's mineral rights and cultural resources. As such, the Osage Nation is an interested party whose interests will not be adequately represented by any other party in this proceeding.

III. Protest

In 1906 by way of the Osage Allotment Act of 1906, 34 Stat. 539, the Osage reservation was divided into individual allotments of 657 acres of surface rights divided among 2,229 Osage Tribal Members. This act created the present day Osage Reservation which includes approximately 160,000 acres of restricted lands and three villages located at Pawhuska, Hominy, and Grayhorse near Fairfax, Oklahoma. The mineral rights associated with the allotment were severed from the surface rights, and reserved to the tribe, held in trust by the U.S. Government for the benefit of the Osage Nation as a whole. The mineral estate is managed by the Osage Nation's tribal council.

The Osage Nation has been involved in a dispute with the Osage Wind Facility regarding the impact the proposed facility will have on the Osage Nation. The Osage Wind Facility is located on land owned by private individuals in fee simple but the mineral rights have been severed and belong to the Osage Nation as a whole. The Osage Nation has raised three primary concerns regarding the Osage Wind Facility. First, the presence of the Osage Wind Facility will interfere with the Osage Nation's ability to exploit its sub-surface mineral rights, particularly the extraction of natural gas and oil. Second, the Osage Wind Facility has sought permission from the U.S. Fish and Wildlife service to kill up to three (3) bald eagles per year through an Eagle Take Permit, for the proposed forty (40) year lifespan of the facility. The bald eagle is sacred and symbolic to the Osage people; as such, they vehemently oppose the permit.² A kill permit such as the one requested by Osage Wind LLC is unprecedented, particularly when requested against the wishes of the landowner. Third, the Osage Nation is concerned that the site proposed for the Osage Wind Facility will impact significant cultural resources for the tribe: a preliminary assessment of the site found more than seventy (70) potential sites of tribal significance, four (4) of which may be eligible to be added to the National Register of Historical Places.

The Osage Nation is raising its concerns regarding the Eagle Take Permit request and cultural resource concerns to the U.S. Fish and Wildlife Service ("USFWS"), which is currently performing an Environmental Site Assessment ("ESA"). The USFWS is also meeting with both Osage Wind Facility's current owners, the Wind Capitol Group and the Osage Nation, to try to work out these concerns. An expedited transfer of the Osage Wind Facility's ownership, particularly by expedited Commission order within the next two weeks as requested by

² See, e.g., Osage Nation Objects to Wind-Turbine Company's Potentially Precedent-Setting Request to Kill Bald Eagles, available at <http://indiancountrytodaymedianetwork.com/2013/06/14/osage-nation-objects-wind-turbine-companys-potentially-precedent-setting-request-kill>.

Applicant, could negatively impact such discussions, particularly in the absence of a commitment by the new owner, TradeWind Energy, Inc., to work with the Osage Nation to resolve these very significant concerns.

Although these concerns do not fall squarely within the traditional scope of the issues considered by the Commission's in analyzing an application under section 203 of the Federal Power Act, they are important considerations and the Commission cannot act in a vacuum in determining whether the proposed transaction is in the public interest. Osage Nation notes that Osage Wind LLC made no mention of the on-going permitting disputes in the instant application, and asserted in Attachment L of their application that no permits or licenses are necessary. Under Section 33.2 of the Commission's regulations, an applicant applying for authorization under section 203 must disclose to the Commission "licenses, orders, or other approvals from other regulatory bodies in connection with the proposed transaction . . . ³ if there is a transfer of physical property ownership. Here, although Applicants have styled the transaction as an acquisition of 100% of the ownership interests in Osage Wind LLC by TradeWind Energy, the physical ownership of the generation site will be impacted, as the ultimate ownership of the site on which the Osage Wind Facility will be located will change from Wind Capital Ventures to TradeWind Energy, and the parties to the on-going negotiations will change, as presumably TradeWind Energy will engage in further discussions with the Osage Nation and USFWS.

Osage Nation files this motion to intervene and protest today, in order to meet the Commission's notice and comment deadline. We reserve the right, however, to supplement this protest within the next several days as Osage Nation has only recently learned of the section 203

³ 18 C.F.R. § 33.2(h)(i) (2012).

application and has not had adequate time to fully review both the applicant and the potential impacts of the application on the current situation.

IV. Conclusion

The Osage Nation therefore respectfully requests that the Commission grant its motion to intervene and reject the proposed transfer of the Osage Wind Facility under section 203 of the Federal Power Act.

Respectfully submitted,

/s/ Ruta Kalvaitis Skučas

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CERTIFICATE OF SERVICE

I HEREBY certify that I have this day caused the foregoing document to be served, via electronic mail, upon each person designated on the Official Service List compiled by the Secretary in these proceedings.

DATED at Washington, D. C. as of the 19th day of September, 2013.

/s/ Ruta Kalvaitis Skučas
Ruta Kalvaitis Skučas, Esq.