

**PUBLIC VERSION - PRIVILEGED
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January 28, 2015

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BY ELECTRONIC FILING

Honorable Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

**Re: Osage Wind, LLC, EC15-_____-000
Application for Authorization Under Section 203 of the Federal Power Act, Request for
Expedited Consideration and Confidential Treatment**

Dear Secretary Bose:

Enclosed for filing is this Application for Authorization Under Section 203 of the Federal Power Act for the Disposition of Jurisdictional Facilities, Request for Expedited Consideration and Confidential Treatment (the "Application") which is being submitted on behalf of Osage Wind, LLC ("Applicant").

Applicant respectfully requests that the Commission issue an order approving the transaction on or before April 15, 2015.

Applicant respectfully requests confidential treatment of Exhibit I to the Application pursuant to Section 388.112 of the Commission's Regulations. Exhibit I contains commercial information that is privileged and confidential and not publicly available. Applicant is submitting a confidential, non-public version of this Application marked "**CONTAINS PRIVILEGED AND CONFIDENTIAL INFORMATION – DO NOT RELEASE**" and a public version of this Application. Pursuant to 18 C.F.R. § 388.112(b)(2)(i), a proposed protective order and non-disclosure certificate are attached to the filing as Attachment 2.

Respectfully submitted,

/s/ Jason A. Johns

Jason A. Johns
Chad T. Marriott
Counsel for Osage Wind, LLC

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

Osage Wind, LLC

Docket No. EC15-____-000

**APPLICATION FOR AUTHORIZATION
UNDER SECTION 203 OF THE FEDERAL POWER ACT
FOR THE DISPOSITION OF JURISDICTIONAL FACILITIES,
REQUEST FOR SHORTENED NOTICE PERIOD, 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 Osage Wind, LLC (“Applicant”) submits this application seeking authorization for the disposition of jurisdictional facilities resulting from the transfer to several investors (the “Class B Equity Investors”) of non-controlling, passive equity interests in Applicant, which will own certain Commission-jurisdictional assets at the time the subject transaction (the “Proposed Transaction”) is closed.

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”).

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Section 203(a)(1)(A) of the Federal Power Act (“FPA”) requires Commission approval for a public utility to directly or indirectly dispose of its jurisdictional facilities.³ Applicant submits that the Proposed Transaction does not result in a transfer of control over its jurisdictional facilities because Enel Kansas, LLC, a Delaware limited liability company and current Managing Member of Applicant (“Enel Kansas”), will continue serving as the Managing Member with the right to control and make the decisions affecting Applicant and its jurisdictional assets on a day-to-day basis. Nevertheless, for the reasons set forth herein, Applicant seeks the Commission’s prior approval under Section 203(a)(1) of the FPA to facilitate the Proposed Transaction.⁴

Section 203(a)(4) of the FPA requires the Commission to approve a disposition of jurisdictional facilities that is consistent with the public interest and “will not result in the cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets

³ Because the Proposed Transaction involves the transfer of passive membership interests that do not confer rights to control Applicant, authorization under Section 203(a)(1) may not be required for the Proposed Transaction. *See FPA Section 203 Supplemental Policy Statement*, 120 FERC ¶ 61,060 at P 54 (2007) (“Supplemental Policy Statement”). Under the Commission’s holding in *AES Creative Resources*, 129 FERC ¶ 61,239 (2009) (“*AES Creative Resources*”), the Class B Equity Investors will not be acquiring voting securities in Applicant and therefore will not be affiliates of Applicant for purposes of Section 205 of the FPA. However, out of an abundance of caution and in the interest of obtaining prompt approval of the Proposed Transaction, Applicant nonetheless request the Commission grant this petition without ruling on the jurisdictional question. *See, e.g., Southern Company, et al.*, 92 FERC ¶ 62,260 (2000); *National Elec. Associates Ltd. P’ship*, 80 FERC ¶ 62,116, n.2 (1997) (citing *Ocean State Power*, 47 FERC ¶ 61,321 (1989)) (Commission makes no jurisdictional determination but assumes jurisdiction in light of the need for expedited action.).

⁴ *Phelps Dodge Corp.*, 121 FERC ¶ 61,251 at P 15 (2007). To the extent that a Class B Equity Investor is a holding company within the meaning of FPA Section 203(a)(2), such Class B Equity Investor is a holding company only with respect to exempt wholesale generators (“EWGs”), qualifying facilities (“QFs”), or foreign utility companies (“FUCOs”). Applicant is an EWG. Therefore, the Proposed Transaction qualifies for blanket authorization under Section 203(a)(2) of the FPA with respect to each Class B Equity Investor. *See* 18 C.F.R. § 33.1(c)(8) (2014) (blanket authorization for a holding company that is a holding company solely by virtue of owning one or more EWGs, QFs, or FUCOs to acquire additional securities of EWGs, QFs, or FUCOs).

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for the benefit of an associate company” The *Merger Policy Statement* states that in determining whether a transaction is consistent with the public interest, the Commission shall consider whether the transaction will have any adverse impact on (i) competition, (ii) rates, or (iii) regulation.⁵ Consistent with the Commission’s applicable policy statements,⁶ the requirements established in Energy Policy Act of 2005 and Order No. 669, *et seq.*, this Application, inclusive of its exhibits, shows that the Proposed Transaction will have no adverse effect on competition, rates, or regulation, and will not result in cross-subsidization. Indeed, as discussed below, the Application does not require a competitive impact screen analysis because no change of control over Applicant will occur, as Enel Kansas will continue to control Applicant and its jurisdictional facilities, and the output from Applicant’s wind-powered electric generation facility is fully committed to the purchaser.

As demonstrated below, the Proposed 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. 642,⁷ and Order No. 669, except to the extent that Applicant has requested a waiver of those requirements.

Additionally, Applicant requests 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 Proposed Transaction meets the requirements of Section 203, (2) grant confidential treatment

⁵ *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*”); *see also Supplemental Policy Statement*, *supra* note 3.

⁶ *Merger Policy Statement*, *id.*; *Supplemental Policy Statement*, *supra* note 3.

⁷ *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”).

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to the nonpublic version of the Application, (3) provide expedited review, and (4) approve this Application on or before April 15, 2015.

II. COMMUNICATIONS

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

Stephen Champagne
Executive Vice President
& General Counsel
Enel Green Power North America, Inc.
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III. REQUEST FOR EXPEDITED ACTION

Applicant respectfully requests 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. For these reasons, Applicant respectfully submits that the Proposed Transaction wholly comports with the public interest and requests the Commission authorize the Proposed Transaction as soon as possible after the comment period expires, but in any event no later than April 15, 2015.

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IV. REQUEST FOR CONFIDENTIAL TREATMENT

Pursuant to 18 C.F.R. § 388.112, Applicant requests 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 Applicant and its investors to competitive disadvantage or other business injury. Applicant submits 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 asks that the Commission keep it confidential. Applicant is also submitting a public copy of this Application, with the confidential Exhibit I omitted. Any questions concerning this request for confidential treatment should be directed to counsel listed in Part II. Applicant has attached a draft Protective Order as Attachment 2 to this Application.

V. DESCRIPTION OF THE PARTIES TO THE PROPOSED TRANSACTION

A. Applicant

Applicant is a Delaware limited liability company with its principal place of business in Andover, Massachusetts. Applicant owns a wind power project with a nameplate rating of 150.4 MW currently under development and located in Osage County, Oklahoma (the “Osage Project”). The Osage Project is located within the balancing authority area controlled by Associated Electric Cooperative, Inc. (“AECI”) in the southeast region, and the Osage Project’s output is fully committed to AECI under a long-term power purchase agreement. Applicant expects to begin testing the Osage Project in April 2015 and to complete the Osage Project in June 2015. Applicant’s sole business is ownership and operation of the Osage Project. Applicant has obtained Commission authorization to make wholesale sales of electric energy,

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capacity, and ancillary services at market-based rates,⁸ and has filed a Notice of Self-Certification of Exempt Wholesale Generator Status under the Public Utility Holding Company Act of 2005.⁹ Applicant will own no transmission facilities other than limited interconnection facilities needed to connect the Osage Project with the AECI-controlled transmission system.

Currently, Applicant's membership interests are owned by Enel Kansas and EFS Osage Wind, LLC, a Delaware limited liability company ("EFS Osage").¹⁰ Enel Kansas is the Managing Member of Applicant and, as such, Enel Kansas has the right to control Applicant and the Osage Project on a day-to-day basis. Enel Kansas is a wholly-owned subsidiary of Enel Green Power North America, Inc., a Delaware corporation ("Enel NA"). Enel NA is designated as the Manager of Applicant. Enel NA's principal business is owning, operating, and developing hydroelectric and renewable energy generation facilities throughout the United States and Canada. Enel NA is a wholly-owned subsidiary of Enel Green Power International BV, a company organized under the laws of the Netherlands. Enel Green Power International BV is a wholly-owned subsidiary of Enel Green Power S.p.A., an Italian joint-stock company, which in turn is a majority-owned subsidiary of Enel S.p.A., an Italian joint-stock company.

EFS Osage is a passive investor in Applicant, as demonstrated in detail based on the *AES Creative Resources*¹¹ showing in Applicant's Notice of Non-Material Change in Status filed on

⁸ *Osage Wind, LLC*, Docket No. ER11-4363 (letter order issued Sept. 27, 2011).

⁹ Notice of Self-Certification of Exempt Wholesale Generator Status by Osage Wind, LLC, Docket No. EG11-123 (filed Aug. 24, 2011); Caney River Wind Project, LLC, et al., Docket Nos. EG11-115-000, et al., Notice of Effectiveness of Exempt Wholesale Generator Status (Nov. 30, 2011).

¹⁰ This affiliation arose as the result of the Commission's approval of a prior transaction involving Applicant and the Osage Project. *See Osage Wind, LLC*, 148 FERC ¶ 62,188 (2014). Applicant subsequently notified the Commission of the non-material change in status that resulted from that transaction. *Notice of Non-Material Change in Status of Osage Wind, LLC, et. al.*, Docket No. ER13-4363, et al. (filed October 31, 2014).

¹¹ 129 FERC ¶ 61,239 (2009).

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October 31, 2014,¹² and therefore any interests owned or controlled by EFS Osage or its affiliates in generation, transmission, or inputs to generation are not relevant to the Commission's review of the effect of the Proposed Transaction on competition in the relevant market.¹³

Immediately prior to the closing of the Proposed Transaction, Enel Kansas and EFS Osage will contribute one hundred percent (100%) of the membership interests in Applicant to a to-be-formed Delaware limited liability company and subsidiary of Enel Kansas and EFS Osage ("Class A Holdco"), in exchange for membership interests in Class A Holdco. Class A Holdco will be formed for the sole purpose of owning the Class A Membership interests in Applicant upon the consummation of the Proposed Transaction. The transfer of membership interests in Applicant from Enel Kansas and EFS Osage to Class A Holdco immediately prior to the consummation of the Proposed Transaction, and the simultaneous issuance of membership interests in Class A Holdco to Enel Kansas and EFS Osage, qualifies for blanket authorization under Section 203(a)(1) of the FPA with respect to each of Enel Kansas and EFS Osage.¹⁴

The Proposed Transaction will have no effect on Applicant's affiliates that are located in the relevant market or in first-tier markets. Accordingly, the scope of this application is limited to the impacts of the Proposed Transaction on Applicant.

¹² Accession No. 20141031-5214.

¹³ All membership interests in Applicant other than those held by the Managing Member are passive and non-controlling, the holders of which have only limited consent and veto rights over major corporate actions necessary to protect their investments. The Managing Member, which is currently Enel Kansas and will be Class A Holdco (defined below) at and after closing of the Proposed Transaction, has the right to control and make the decisions affecting Applicant and the Osage Project on a day-to-day basis.

¹⁴ See 18 C.F.R. § 33.1(c)(6) (2014) (blanket authorization for internal corporate reorganizations that do not result in the reorganization of a traditional public utility that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and that do not present cross-subsidization issues).

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B. Class A Holdco

Prior to the closing of the Proposed Transaction, Enel Kansas and EFS Osage will form Class A Holdco as a Delaware limited liability company and subsidiary of Enel Kansas and EFS Osage for the sole purpose of owning the Class A Membership Interests in Applicant upon the consummation of the Proposed Transaction. As described in Section V.A., above, pursuant to a blanket authorization under Section 203(a)(1) of the FPA, immediately prior to the closing of the Proposed Transaction, Enel Kansas and EFS Osage will transfer one hundred percent (100%) of the membership interests in Applicant to Class A Holdco in exchange for membership interests in Class A Holdco. Class A Holdco's membership interests will be held by Enel Kansas (50%) and EFS Osage (50%). Enel Kansas will be the managing member of Class A Holdco and, as such, Enel Kansas will have the right to control Class A Holdco and, through Class A Holdco, Applicant, on a day-to-day basis. Enel NA will be designated the manager of Class A Holdco.

C. Class B Equity Investors

There are three Class B Equity Investors, each of which is a financial institution that has investments in certain energy-related activities but does not itself engage in such activities. Consistent with prior cases in which the Commission has approved transactions involving acquisitions of passive equity interests in public utilities by "unidentified investors,"¹⁵ each of the Class B Equity Investors meets the following characteristics:

- The Class B Equity Investors and their affiliates may own or control electric generation facilities in the relevant market area, but any overlap between the operations of the Class B Equity Investors and their affiliates in the relevant market area and the operations of Applicant and its affiliates in the relevant

¹⁵ See, e.g., *Rising Tree Wind Farm LLC, et al.*, 149 FERC ¶ 62,195, (2014); *Headwaters Wind Farm LLC*, 148 FERC ¶ 62,176 (2014); *Steele Flats Wind Project, LLC*, 145 FERC ¶ 62,200 (2013); *Ashtabula Wind II, LLC, et al.*, 130 FERC ¶ 62,216 (2010).

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market area will be *de minimis*. (In fact, in this case, none of the Class B Equity Investors or their affiliates own or control *any* electric generation capacity in the relevant AECI market area .)

- The Class B Equity Investors and their affiliates do not own or control any electric transmission or distribution facilities in the United States, except for the limited interconnection facilities used solely to connect individual generating facilities to the transmission grid, facilities for which the Commission has granted a waiver of the requirement to file an open access transmission tariff (OATT), or transmission facilities that are subject to a Commission-accepted OATT. None of these interconnection facilities is located in the relevant AECI market area.
- The Class B Equity Investors and their affiliates do not own or control any inputs to electricity products or electric generation in the relevant market.
- None of the Class B Equity Investors or any of their affiliates is a public utility with a franchised electric service territory in the United States.

Given the fact that the Class B Equity Investors meet the criteria presented above, and given the fact that the interests being acquired are non-controlling, passive tax equity interests with only limited consent rights (as discussed further below), Applicant respectfully submits that there is no need for public disclosure of the identities of the investors. The Commission has in prior cases used similar criteria in permitting unidentified investors to remain undisclosed.¹⁶ The identities of the Class B Equity Investors and the details regarding the equity interests they plan to acquire are included in the confidential Exhibit I to this Application.

¹⁶ *Pioneer Trail Wind Farm, LLC*, 139 FERC ¶ 62,041, (2012); *Crescent Ridge LLC*, 108 FERC ¶ 62,285 (2004).

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VI. SUMMARY OF THE PROPOSED TRANSACTION

One hundred percent (100%) of Applicant's Class A Membership Interests will be held by Class A Holdco. Pursuant to the Proposed Transaction, each Class B Equity Investor (or its affiliate) will make a capital contribution to Applicant at the time of the Osage Project's commercial operation date, and in exchange the Class B Equity Investors each will receive a percentage of the non-controlling, passive, Class B Membership Interests in Applicant in proportion to its respective capital contribution to Applicant. Subject to the provisions of the Fifth Amended and Restated Limited Liability Company Agreement of Osage Wind, LLC, each of the Class B Equity Investors will receive certain tax benefits and cash distributions, and rights to cash (or other assets) upon liquidation. The Class B Equity Investors will have only limited rights with respect to the actions of Applicant, such as consent rights necessary for the Class B Equity Investors to protect their economic investment interests. None of the Class B Equity Investors will, by virtue of the Proposed Transaction or their Class B Membership Interests, have the ability to manage Applicant or the Osage Project. Accordingly, they will have only non-controlling, passive equity interests in Applicant. Thus, upon the closing of the Proposed Transaction, Applicant's total membership interests will be divided into two classes — the Class A Membership Interests and the Class B Membership Interests. Class A Holdco will own one hundred percent (100%) of Applicant's Class A Membership Interests and the Class B Equity Investors will collectively own one hundred percent (100%) of Applicant's non-controlling, passive Class B Membership Interests.

The Proposed Transaction will be implemented pursuant to, and subject to certain conditions precedent in, an Equity Capital Contribution Agreement among Enel Kansas, EFS Osage, and the Class B Equity Investors (or their affiliates), and the Fifth Amended and Restated

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Limited Liability Company Agreement of Osage Wind, LLC, which will be executed among Class A Holdco and the Class B Equity Investors. The final versions of the Proposed Transaction documents are included herewith as confidential Exhibit I.

Following closing of the Proposed Transaction: (1) Applicant will continue to have operational control and full ownership of its jurisdictional assets; (2) Class A Holdco will own one hundred percent (100%) of the Class A Membership Interests in Applicant; (3) Class A Holdco will be the Managing Member of Applicant with the right to control Applicant on a day-to-day basis; (4) Enel Kansas and EFS Osage will own one hundred percent (100%) of the membership interests in Class A Holdco; (5) Enel Kansas will be the managing member of Class A Holdco with the right to control Class A Holdco and, through Class A Holdco, Applicant on a day-to-day basis; and (6) the Class B Equity Investors will own the Class B Membership Interests in Applicant.

VII. DESCRIPTION OF THE FACILITIES

As described above, Applicant owns a 150.4 MW wind power project currently under development in Osage County, Oklahoma. The Osage Project is located within the balancing authority area controlled by AECI in the southeast region. Applicant expects to begin testing the Osage Project in April 2015 and to complete the Osage Project in June 2015. Applicant's sole business is ownership and operation of the Osage Project. Applicant has obtained Commission authorization to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates,¹⁷ and has filed a Notice of Self-Certification of Exempt Wholesale Generator

¹⁷ *Osage Wind, LLC*, Docket No. ER11-4363 (letter order issued Sept. 27, 2011).

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Status under the Public Utility Holding Company Act of 2005.¹⁸ Applicant is committed to sell the full output of the Osage Project to AECI under a long-term power purchase agreement. Applicant will own no transmission facilities other than limited interconnection facilities needed to connect the Osage Project with the AECI-controlled transmission system.

The facilities subject to the Commission's jurisdiction under the FPA involved in the Proposed Transaction include Applicant's market-based rate tariff and rate schedules, the limited interconnection facilities associated with the Osage Project, the power purchase agreement under which Applicant sells electric power, and other book and records.

VIII. THE TRANSFER IS CONSISTENT WITH THE PUBLIC INTEREST

FPA Section 203(a)(1)(A) requires the Commission's approval before a public utility's indirect disposition of its jurisdictional facilities.¹⁹ Therefore, Applicant seeks the Commission's prior approval for the Proposed Transaction under Section 203(a)(1)(A) of the FPA.

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.²⁰ The *Merger Policy Statement* provides that in determining whether a proposed change in upstream ownership of jurisdictional facilities is consistent with the public interest,²¹ the Commission shall consider whether the

¹⁸ Notice of Self-Certification of Exempt Wholesale Generator Status by Osage Wind, LLC, Docket No. EG11-123 (filed Aug. 24, 2011); Caney River Wind Project, LLC, et al., Docket Nos. EG11-115-000, et al., Notice of Effectiveness of Exempt Wholesale Generator Status (Nov. 30, 2011).

¹⁹ *Phelps Dodge Corp.*, *supra* note 4.

²⁰ Order No. 669, *et seq.*, *supra* note 2; Order No. 642, *supra* note 7; *Merger Policy Statement*, *supra* note 6; *Supplemental Policy Statement*, *supra* note 3.

²¹ *Merger Policy Statement*, *supra* note 5; Order No. 592-A, 79 FERC ¶ 61,321 (1997).

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transaction will have any adverse effects on (1) competition, (2) rates, or (3) regulation.²²

Consistent with the Commission's applicable Policy Statements,²³ the requirements established in the Energy Policy Act of 2005 and Order No. 669, *et seq.*,²⁴ this Application, inclusive of its exhibits, shows that the indirect transfer of Applicant's jurisdictional facilities will have no adverse effects on competition, rates, or regulation, and will not result in cross-subsidization. This Application includes all information and exhibits required by Part 33 of the Commission's regulations, Order No. 642,²⁵ and Order No. 669, except to the extent that Applicant has requested waiver of, or is afforded safe harbor from, those requirements.

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

A. The Proposed 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.²⁶ The Commission uses competitive analysis screens that help to identify proposed transactions that are unlikely to present such competitive concerns.²⁷

The Proposed 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.

²² Order No. 642, *et seq.*, *supra* note 7.

²³ *Merger Policy Statement*, *supra* note 6; *Supplemental Policy Statement*, *supra* note 4.

²⁴ See Order No. 669, *et seq.*, *supra* note 2.

²⁵ Order No. 642, *et seq.*, *supra* note 7.

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

²⁷ Order No. 642, *supra* note 7 at 31,879 & 31,903.

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The Proposed Transaction does not raise any horizontal market power concerns. As described above, the full output of the Osage Project is committed to a non-affiliated purchaser (AECI) under a long-term power purchase agreement, and the Proposed Transaction will have no effect on this arrangement. Furthermore, the Commission has already determined that Applicant lacks horizontal market power in granting it market-based rate authority.²⁸ The Proposed Transaction does not alter the Commission's prior findings. Consequently, the Proposed Transaction raises no horizontal market power concerns.

Additionally, the Proposed Transaction does not raise any vertical market power concerns. Both the ability and the incentive to exercise vertical market power are necessary for a transaction to harm competition.²⁹ At this time, Applicant owns or controls no transmission facilities or other inputs to power production, as Applicant's jurisdictional assets are currently limited to its electric tariff and power purchase agreement. When the Osage Project is operational, Applicant will own no transmission facilities in any market other than those limited interconnection facilities necessary for connecting the Osage Project with the transmission system, nor will Applicant own or control other inputs to power production. Furthermore, (1) as a result of the Proposed Transaction, Applicant will not become affiliated with any entity or person that owns, controls, or operates transmission facilities or other inputs to power production in the same market as the Osage Project and (2) none of Applicant or Class B Equity Investors, or their affiliates, owns or controls any unique sites in the United States to develop new generating capacity that raise vertical market power concerns. The Proposed Transaction therefore does not raise vertical market power issues.

²⁸ See *supra* note 9.

²⁹ *Energy E. Corp.*, 121 FERC ¶ 61,236 at P 24 (2007).

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Finally, the Class B Equity Investors' acquisition of the Class B Membership Interests in Applicant will not result in a change in the market share of any of the Class B Equity Investors because none of the Class B Equity Investors will gain control over the Osage Project as a result of the Proposed Transaction. The Class B Equity Investors' interests in Applicant give them only those limited rights that are necessary to protect their investments. The Class B Equity Investors will not have voting control over wholesale power sales or day-to-day operation of power generation or transmission facilities. In any event, even if the Proposed Transaction resulted in the Class B Equity Investors acquiring control of the Osage Project, the acquisition would shift no share of the market to the Class B Equity Investors or their affiliates, due to the output of the Osage Project being fully committed under a long-term power purchase agreement.

Applicant respectfully requests waiver of the requirement to submit horizontal and vertical competitive analyses, given the representations above. Because the Proposed Transaction raises no horizontal or vertical market power concerns, the Proposed Transaction will not adversely affect competition.³⁰

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

The Proposed 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. Various mechanisms are acceptable for protecting

³⁰ 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).

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ratepayers, including the existence of market-based rates authorized by the Commission.³¹

Here, Applicant will transact according to its market-based rate authority, and the Proposed Transaction will not alter the terms of Applicant's long-term power purchase agreement.

Accordingly, the Proposed Transaction will have no effect on rates.

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

The Proposed 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 Proposed Transaction is not subject to regulation by any state entity and the Proposed Transaction will not affect the extent to which the Commission may regulate Applicant. Therefore, the Proposed 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 Proposed Transaction will have no adverse effect on regulation.

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

The Proposed 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 the public interest.³² The Commission's principal concern with cross-subsidization is the potential impact of a transaction on rates.³³ The Commission has stated that its goal is to "ensure

³¹ See, e.g., *Duquesne Light Holdings*, 117 FERC ¶ 61,326 at P 25 (2006).

³² Order No. 669, *supra* note 2 at P 146.

³³ *Id.* at PP 166, 167.

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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.”³⁴

The Commission has created “safe harbors” for transactions that are unlikely to raise cross-subsidization concerns, *e.g.*, a transaction that is a bona fide, arm’s-length, bargained-for exchange,³⁵ and encompass those transactions in which a franchised utility with captive customers is not involved,³⁶ transactions subject to review by a state commission, and transactions involving non-affiliates.³⁷

The Proposed Transaction falls within the scope of at least two “safe harbors” established by the Commission and thus does not present any issue with respect to cross-subsidization. The Proposed 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, the Proposed Transaction does not raise any concerns of cross-subsidization. Applicant submits Exhibit M with this Application to verify that the Proposed Transaction will not result in an impermissible cross-subsidization. Further, the Proposed 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 Proposed Transaction satisfies the requirements of Section 203 and the Commission’s regulations, the Commission should find that the Proposed Transaction is

³⁴ *Id.* at PP 91, 166.

³⁵ *Id.* at P 15.

³⁶ “Captive customers” are defined, for purposes of FPA section 203, as “any wholesale or retail electric energy customers served under cost-based regulation.” 18 C.F.R. § 33.1(b)(5).

³⁷ Cross-subsidization is less likely when a transaction is between nonaffiliated entities because the risk of improperly benefiting an associate company generally is not present.

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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, Applicant submits the following information, and respectfully requests that the Commission waive certain requirements to the extent such information is not applicable to the Commission's consideration of whether the Proposed Transaction is consistent with the requirements of Section 203.

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

Osage Wind, LLC
C/O Enel Green Power North America, Inc.
One Tech Drive, Suite 220
Andover, MA 01810
Attn: General Counsel

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 Applicant Including:

1. Business Activities

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

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2. Energy Subsidiaries and Energy Affiliates and Their Business Activities

Applicant has no energy subsidiaries, and the Proposed Transaction has no impact on Applicant's energy affiliates. Applicant therefore respectfully requests a waiver of Section 33.2(c)(2) of the Commission's regulations³⁸ to the extent it would require the submission of additional information in Exhibit B. Furthermore, because none of the Class B Equity Investors has non-passive interests in energy subsidiaries or affiliates in the relevant market, Applicant respectfully requests a waiver from the requirement to list the Class B Equity Investors' Energy Subsidiaries and Energy Affiliates in Exhibit B.

3. Organizational Charts

See Exhibit C to this Application. Applicant respectfully requests a partial waiver of Section 33.2(c)(3) of the Commission's regulations³⁹ to the extent necessary to permit them to include only those parent companies, energy subsidiaries, and energy affiliates that are relevant to the Proposed Transaction.

4. Business Agreements

There are no strategic alliances, joint ventures, tolling arrangements, or other proposed business arrangements to which Applicant is a party that will be affected by the Proposed Transaction. Applicant, therefore, requests a waiver of the requirement of Section 33.2(c)(4) of the Commission's regulations⁴⁰ to file Exhibit D.

³⁸ 18 C.F.R. § 33.2(c)(2).

³⁹ 18 C.F.R. § 33.2(c)(3).

⁴⁰ 18 C.F.R. § 33.2(c)(4).

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5. Common Officers or Directors

Applicant anticipates that there may be common officers or directors among the parties to the Proposed Transaction. However, because the identity of those officers and directors cannot be finally identified until the closing of the Proposed Transaction, Applicant requests a waiver of the requirement of Section 33.2(c)(5) of the Commission's regulations⁴¹ to the extent it would require the submission of additional information in Exhibit E.

6. Description of Customers

Applicant respectfully requests a waiver of the requirement of Section 33.2(c)(6) of the Commission's regulations⁴² to submit Exhibit F. As discussed above, the Proposed 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, Applicant requests a waiver of the requirement to file Exhibit G.

E. Narrative Description of the Proposed Transaction

A description of the Proposed Transaction has been provided above in Part VI. Applicant requests a waiver of Section 33.2(e)(2) of the Commission's regulations⁴³ to the extent it would require submission of additional information in Exhibit H.

⁴¹ 18 C.F.R. § 33.2(c)(5).

⁴² 18 C.F.R. § 33.2(c)(6).

⁴³ 18 C.F.R. § 33.2(e)(2).

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F. Contracts Related to the Proposed Transaction

The transaction documents are attached hereto as Exhibit I. Applicant submits 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 Applicant, but for other parties that might engage in similar transactions. As such, pursuant to 18 C.F.R. § 388.112, *Applicant requests that the documents contained in Exhibit I be accorded confidential treatment.* As required by 18 C.F.R. § 388.112(b)(2)(i), Applicant has included a proposed protective order, based on the Commission's Form Protective Order, as Attachment 2.

G. Consistency of the Proposed Transaction with the Public Interest

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

H. Maps

Applicant requests a waiver of the requirement to provide maps because the Proposed Transaction is not a merger of companies with franchised service territories.

I. Regulatory Orders

Applicant is not required to obtain licenses, orders, or other approvals from other regulatory bodies in connection with the Proposed Transaction. Accordingly, Applicant requests a waiver of the requirement to file Exhibit L.

J. Cross-Subsidization

Applicant provides the required verification in Exhibit M.

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X. PROPOSED ACCOUNTING ENTRIES

This Application does not include accounting entries showing the effect of the Proposed Transaction on account balances pursuant to Section 33.5 of the Commission's regulations because Applicant is not required to maintain its books and records in accordance with the Commission's Uniform System of Accounts.⁴⁴

XI. LIST OF ATTACHMENTS

In addition to the Exhibits described above, this Application includes the following attachments:

A. Verifications

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

B. Protective Order

The Proposed Protective Order applicable to Exhibit I is attached as Attachment 2.

XII. CONCLUSION

As described in this Application, Applicant respectfully requests that the Commission (1) authorize the Proposed 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 Proposed Transaction meets the requirements of Section 203, (3) grant

⁴⁴ 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).

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confidential treatment of Exhibit I, and (4) expeditiously review this Application and grant its approval thereof not later than April 15, 2015.

DATED: January 28, 2015.

Respectfully submitted,

/s/ Jason A. Johns

Jason A. Johns
Chad T. Marriott
Stoel Rives LLP

Counsel for Osage Wind, LLC

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EXHIBITS TO THE APPLICATION

EXHIBITS C, I, and M

As explained in the Application above, Applicant respectfully request the Commission waive the requirements to file Exhibits A, B, D, E, F, G, H, J, K and L.

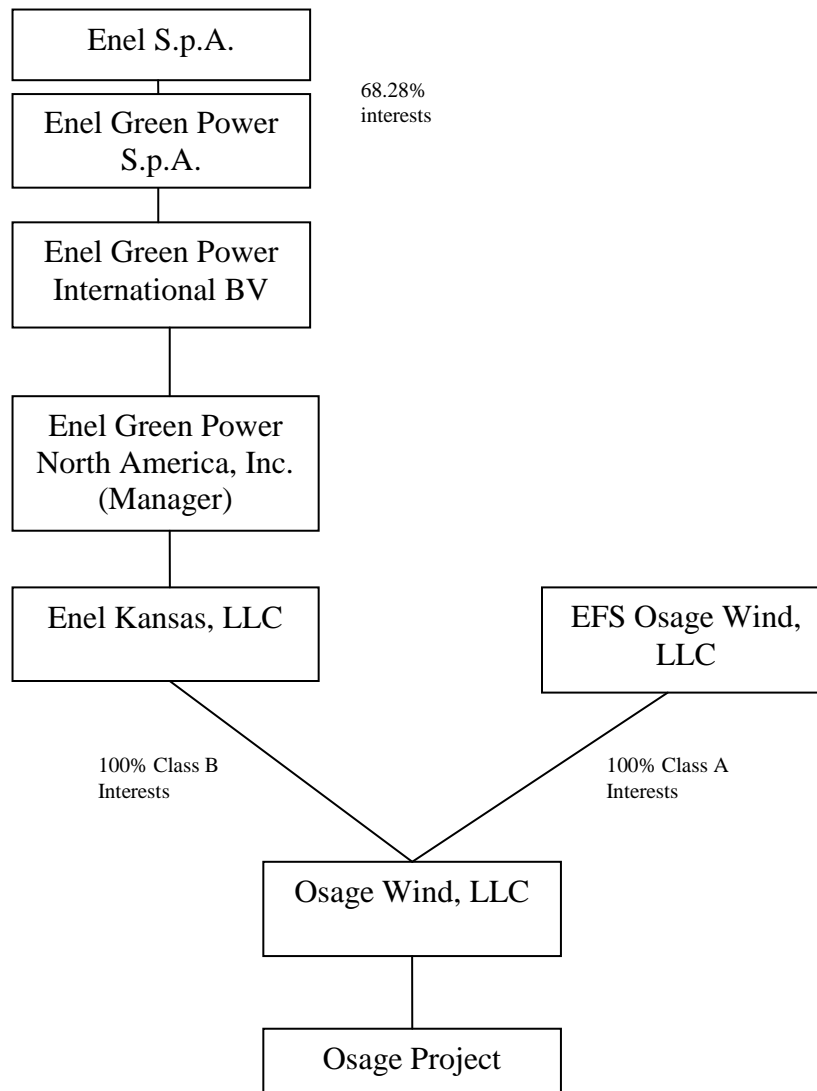
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EXHIBIT C

Organizational Charts

OSAGE WIND, LLC
ORGANIZATION CHART BEFORE PROPOSED TRANSACTION

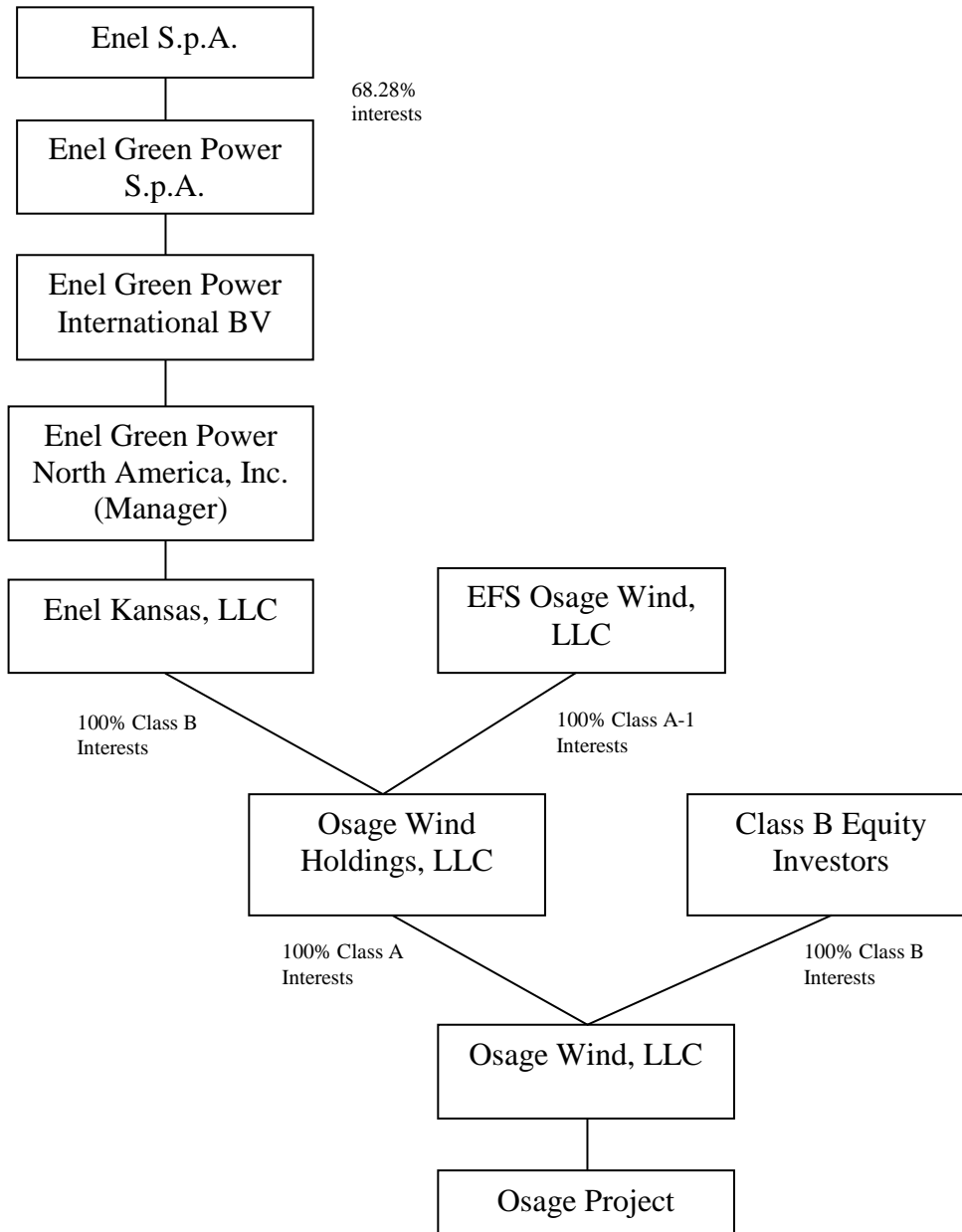
**Each line signifies 100% ownership, unless otherwise stated



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Organizational Charts

OSAGE WIND, LLC
ORGANIZATION CHART AFTER PROPOSED TRANSACTION



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EXHIBIT I

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

CONFIDENTIAL EXHIBIT

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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 Proposed Transaction raises no issues concerning cross-subsidization. Based on the facts and circumstances known to Applicant or that are reasonably foreseeable, the Proposed Transaction will not result in, at the time of the Proposed Transaction 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 Proposed Transaction.

(ii) Detailed showing that the Proposed 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 Proposed 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.

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(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

The Proposed 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 Proposed 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 Proposed 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

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facilities, other than nonpower goods and services agreements subject to review under sections 205 and 206 of the Federal Power Act.

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ATTACHMENT 1

Verification

**NON-PUBLIC VERSION - CONTAINS PRIVILEGED AND
CONFIDENTIAL INFORMATION - DO NOT RELEASE
PURSUANT TO 18 C.F.R. § 388.112**

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

Osage Wind, LLC

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Docket No. EC15-__-000

**VERIFICATION
(18 C.F.R. § 33.7)**

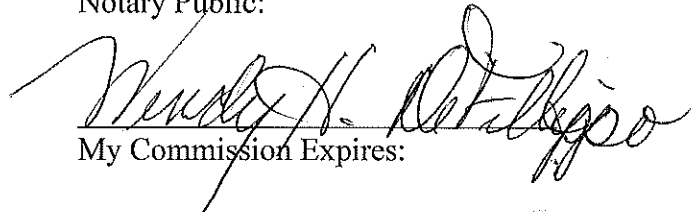
I, Stephen Champage, General Counsel and Executive Vice President, of Enel Kansas, LLC, have read the foregoing Application and have authority with respect thereto. I have knowledge of the matters regarding Osage Wind, LLC and its affiliates set forth in the foregoing Application. The statements in said Application regarding Osage Wind, LLC are true and correct to the best of my knowledge, information, and belief.

By: _____

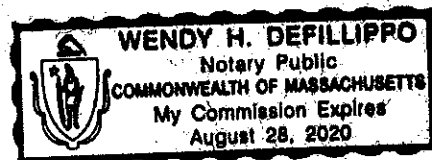


SUBSCRIBED AND SWORN to before me, a Notary Public in and for the Commonwealth of Massachusetts this 22 day of January 2015.

Notary Public:



My Commission Expires:



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ATTACHMENT 2

Protective Order

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

Osage Wind, LLC

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Docket No. EC15-___-000

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 CFR § 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 CFR § 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

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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

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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 CFR § 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

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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.

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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."

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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 CFR §§ 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

**PUBLIC VERSION - PRIVILEGED
AND CONFIDENTIAL INFORMATION HAS BEEN
REMOVED PURSUANT TO 18 C.F.R. § 388.112**

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

Osage Wind, LLC

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Docket No. EC15-____-000

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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