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PURSUANT TO 18 C.F.R. § 388.112**



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July 31, 2014

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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, EC14-\_\_\_\_-000**

**Application for Authorization Under Section 203 of the Federal Power Act, Request  
for Shortened Notice Period, 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 September 4, 2014.

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.

Furthermore, because the transaction documents are not yet finalized as of the date of this Application, Applicant submits a term sheet in Exhibit I that reflects the relevant terms of the proposed transaction. As required by Order No. 642, the undersigned counsel for Applicant

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hereby certifies that, to the best of his knowledge, the final agreements will reflect the terms and conditions contained in the attached term sheet in all material respects.

Respectfully submitted,

*/s/ Jason Johns*

Jason Johns  
Chad T. Marriott  
Stoel Rives LLP

*Counsel for Osage Wind, LLC*

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

Osage Wind, LLC

Docket No. EC14-\_\_\_\_-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”)<sup>1</sup> and Part 33 of the Federal Energy Regulatory Commission’s (the “Commission”) regulations,<sup>2</sup> Osage Wind, LLC (“Applicant”) submits this application seeking authorization for the disposition of jurisdictional facilities resulting from the purchase by Enel Kansas, LLC (“Enel Kansas”) of 100% of the membership interests in Applicant from TradeWind Energy, Inc (“TradeWind”) (such purchase being the “Proposed Transaction”). Applicant is developing a 150.4 MW wind power project in Osage County, Oklahoma (the “Osage Project”). Currently, TradeWind owns 100% of the membership interests in Applicant. Following closing of the Proposed Transaction, Enel Kansas will own 100% of Applicant’s membership interests.

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<sup>1</sup> 16 U.S.C. § 824b.

<sup>2</sup> 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.<sup>3</sup> Applicant therefore seeks the Commission’s prior approval under Section 203(a)(1)(A) of the FPA to facilitate the consummation of the Proposed Transaction.<sup>4</sup>

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 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.<sup>5</sup> Consistent with the Commission’s applicable policy statements,<sup>6</sup> 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 the Proposed Transaction will not result in any new affiliations that impact Applicant’s

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<sup>3</sup> To the extent that Enel Kansas or an upstream parent is a holding company within the meaning of FPA Section 203(a)(2), such party 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. *See* 18 C.F.R. § 33.1(c)(8) (2011) (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).

<sup>4</sup> *Phelps Dodge Corp.*, 121 FERC ¶ 61,251 at P 15 (2007).

<sup>5</sup> *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* FPA Section 203 *Supplemental Policy Statement*, 120 FERC ¶ 61,060 (2007) (“*Supplemental Policy Statement*”).

<sup>6</sup> *Id.*

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horizontal or vertical market power, and the output from Applicant's wind-powered generation facility is fully subscribed.

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,<sup>7</sup> 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 of Exhibit I, (3) provide a 21-day notice period and expedited review, and (4) approve this Application on or before September 4, 2014.

## **II. COMMUNICATIONS**

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

Robert H. Freeman  
Chief Executive Officer  
TradeWind Energy, Inc.  
Southlake Technology Park  
16105 West 113th Street, Suite 105  
Lenexa, KS 66219  
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<sup>7</sup> *Revised Filing Requirements Under Part 33 of the Commission's Regulations*, FERC Stats and Regs. ¶ 31,111 (2000) ("Order No. 642"), *order on reh'g*, 94 FERC ¶ 61,289 (2001) ("Order No. 642-A").

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**III. REQUEST FOR SHORTENED NOTICE PERIOD AND EXPEDITED ACTION**

Applicant respectfully requests a 21-day notice period and 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. The Proposed Transaction is step one of a two-step transaction that will result in an infusion of equity capital necessary for the development and operation of the Applicant's wind power generation facility. For these reasons, Applicant respectfully submits that the Proposed Transaction wholly comports with the public interest and requests the Commission grant a 21-day notice period and approve this Application as soon as possible after the comment period expires, but in any event no later than September 4, 2014.

**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 nonpublic 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 material redacted. Any questions

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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 Lenexa, Kansas. Applicant is developing the Osage Project in Osage County, Oklahoma. 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 has obtained Commission authorization to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates,<sup>8</sup> and is an exempt wholesale generator.<sup>9</sup> Applicant’s sole business is ownership and operation of Osage Project. Applicant will own no transmission facilities other than limited interconnection facilities needed to connect the Osage Project with the AECI-controlled transmission system.

**B. TradeWind**

TradeWind is a Kansas corporation with its principal place of business in Lenexa, Kansas. TradeWind specializes in the development of wind and solar energy projects across the U.S. TradeWind does not own or operate any electric generation or transmission facilities in the U.S. that are currently in service. TradeWind’s issued and outstanding stock is owned 19.9% by

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

<sup>9</sup> *See* 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).

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Enel Kansas, and the remaining 80.1% of TradeWind's issued and outstanding stock is owned in equal 26.7% parts by three individuals, Mr. Robert H. Freeman, Mr. Geoffrey A. Coventry, and Mr. Matthew F. Gilhousen (the "Investors").

**C. Enel Kansas**

Enel Kansas is a Delaware limited liability company. Enel Kansas is a wholly-owned subsidiary of Enel Green Power North America, Inc. ("Enel NA"), a Delaware corporation. Each of Enel Kansas and Enel NA is a holding company solely with respect to qualifying facilities and exempt wholesale generators. 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. Enel NA, directly or through subsidiaries, owns or operates in various U.S. markets electric generating facilities that are either qualifying facilities under the Public Utility Regulatory Policies Act of 1978 or eligible facilities of exempt wholesale generators under PUHCA.

Neither Enel NA nor any of its affiliates owns or controls any electric generation facilities in the AECI balancing authority area. In addition, neither Enel NA nor any of its affiliates owns or controls any transmission facilities in the United States, except for limited interconnection facilities necessary to interconnect a generation facility to the grid. Enel NA or its affiliates own or control sites for new generation capacity development in various markets, however none of these sites is located in areas that have scarcity of similar alternatives for market entrants. None of Enel NA or any of its affiliates owns or controls any other inputs to



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electric power production, as defined in section 35.36 of the Commission's regulations, 18 C.F.R. § 35.36 in any market.

**VI. SUMMARY OF THE PROPOSED TRANSACTION**

Pursuant to the Proposed Transaction, Enel Kansas will purchase, and TradeWind will sell, 100% of the membership interests in Applicant. As a result, Applicant will become a wholly-owned subsidiary of Enel Kansas. The Proposed Transaction will be implemented pursuant to, and subject to certain conditions precedent in, a Membership Interest Purchase Agreement between Enel Kansas and TradeWind (the "MIPA"), the material terms of which are set out in a term sheet (the "MIPA Term Sheet") that is included herewith as confidential Exhibit I.<sup>10</sup>

Accordingly, following closing under the Proposed Transaction, (1) Applicant will continue to have operational control and full ownership of its jurisdictional assets; and (2) Applicant will become a wholly-owned subsidiary of Enel Kansas.

**VII. 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.<sup>11</sup> 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

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<sup>10</sup> As required by Order No. 642, Applicant's counsel has certified in the filing letter that, to the best of his knowledge, the final agreements will reflect the terms and conditions contained in the MIPA Term Sheet in all material respects. See Order No. 642, *supra* note 7 at 31,877.

<sup>11</sup> *Phelps Dodge Corp.*, *supra* note 4.

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Commission's applicable Orders and Policy Statements.<sup>12</sup> The *Merger Policy Statement* provides that in determining whether a proposed change in upstream ownership of jurisdictional facilities is consistent with the public interest,<sup>13</sup> the Commission shall consider whether the transaction will have any adverse effects on (1) competition, (2) rates, or (3) regulation.<sup>14</sup> Consistent with the Commission's applicable Policy Statements,<sup>15</sup> the requirements established in the Energy Policy Act of 2005 and Order No. 669, *et seq.*,<sup>16</sup> 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,<sup>17</sup> 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

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<sup>12</sup> Order No. 669, *et seq.*, *supra* note 2; Order No. 642, *supra* note 7; *Merger Policy Statement*, *supra* note 5; *Supplemental Policy Statement*, *supra* note 5.

<sup>13</sup> *Merger Policy Statement*, *supra* note 5; Order No. 592-A, 79 FERC ¶ 61,321 (1997).

<sup>14</sup> Order No. 642, *et seq.*, *supra* note 7.

<sup>15</sup> *Merger Policy Statement*, *supra* note 5; *Supplemental Policy Statement*, *supra* note 5.

<sup>16</sup> *See* Order No. 669, *et seq.*, *supra* note 2.

<sup>17</sup> Order No. 642, *et seq.*, *supra* note 7.

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coordination with other firms.<sup>18</sup> The Commission uses competitive analysis screens that help to identify proposed transactions that are unlikely to present such competitive concerns.<sup>19</sup>

Applicant maintains that 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. 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.<sup>20</sup> The Proposed Transaction does not alter the Commission's prior findings. Furthermore, the Proposed Transaction does not in any way modify Applicant's affiliations that could impact horizontal market power, which affiliations have already been described to, and reviewed by, the Commission.<sup>21</sup> The Proposed Transaction merely causes Applicant to become a wholly-owned subsidiary of one of Applicant's current indirect, partial upstream owners. Consequently, the Proposed Transaction raises no horizontal market power concerns.

Additionally, the Proposed Transaction does not raise any vertical market power concerns. At this time, Applicant owns or controls no transmission facilities, 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

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<sup>18</sup> 18 C.F.R. § 2.26; *see also* Order No. 642, *id.*

<sup>19</sup> Order No. 642, *supra* note 7 at 31,879 & 31,903.

<sup>20</sup> *See supra* note 8.

<sup>21</sup> *Osage Wind, LLC*, Order Authorizing Disposition of Jurisdictional Facilities, 145 FERC ¶ 61,212 (2013).

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Project with the transmission system. Furthermore, as a result of the Proposed Transaction, Applicant will not become affiliated with anyone that owns, controls, or operates transmission facilities in any market. In fact, the Commission has already considered whether vertical market power issues exist as the result of TradeWind's existing affiliation with Enel Kansas.<sup>22</sup> The Proposed Transaction does not alter the Commission's conclusions in that docket. Accordingly, Applicant does not have vertical market power in any market, and the Proposed Transaction will not alter that status. The Proposed Transaction therefore does not raise vertical market power issues.

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.

**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 ratepayers, including the existence of market-based rates authorized by the Commission.<sup>23</sup> 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.

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<sup>22</sup> *Id.*

<sup>23</sup> *See, e.g., Duquesne Light Holdings*, 117 FERC ¶ 61,326 at P 25 (2006).

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**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.<sup>24</sup> The Commission’s principal concern with cross-subsidization is the potential impact of a transaction on rates.<sup>25</sup> 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.”<sup>26</sup>

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<sup>24</sup> Order No. 669, *supra* note 2 at P 146.

<sup>25</sup> *Id.* at PP 166, 167.

<sup>26</sup> *Id.* at PP 91, 166.

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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,<sup>27</sup> and encompass those transactions in which a franchised utility with captive customers is not involved,<sup>28</sup> transactions subject to review by a state commission, and transactions involving non-affiliates.<sup>29</sup>

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 and does not involve a franchised utility with captive customers. Consequently, the Proposed Transaction does not raise any concerns of cross-subsidization. Applicant nonetheless submits Exhibit M with this Application to verify that the Proposed Transaction will not result in an impermissible cross-subsidization. Further, Applicant’s representative confirms in the verification attached hereto that 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 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.

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<sup>27</sup> *Id.* at P 15.

<sup>28</sup> “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).

<sup>29</sup> 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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**VIII. 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  
Southlake Technology Park  
16105 West 113th Street, Suite 105  
Lenexa, KS 66219

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

Applicant requests that the following persons be placed on the official service list for this proceeding and, to the extent necessary, respectfully requests waiver of Section 385.203(b)(3) of the Commission's regulations,<sup>30</sup> in order to permit designation of such persons for service in this proceeding.

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<sup>30</sup> 18 C.F.R. § 385.203(b)(3).

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For Applicant:

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*\* Designated for Service*

For Enel Kansas:

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Executive Vice President  
& General Counsel  
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One Tech Drive, Suite 220  
Andover, MA 01810  
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Fax: (978) 681-7727  
Email: steve.champagne@enel.com

**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.

**2. Energy Subsidiaries and Energy Affiliates and Their Business Activities**

The Proposed Transaction will affect only Applicant. Applicant respectfully requests a waiver of Section 33.2(c)(2) of the Commission's regulations<sup>31</sup> to the extent it would require the submission of additional information in Exhibit B.

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<sup>31</sup> 18 C.F.R. § 33.2(c)(2).



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**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 regulations<sup>32</sup> 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 regulations<sup>33</sup> to file Exhibit D.

**5. Common Officers or Directors**

There are currently no common officers between Applicant and Enel Kansas. To the extent that any person may in the future hold an interlocking position subject to the Commission's regulations, the appropriate filings under 18 C.F.R. Parts 45 and 46 will be timely made. Applicant respectfully requests a waiver of the requirement of Section 33.2(c)(5) of the Commission's regulations<sup>34</sup> to the extent it would require the submission of additional information at Exhibit E.

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<sup>32</sup> 18 C.F.R. § 33.2(c)(3).

<sup>33</sup> 18 C.F.R. § 33.2(c)(4).

<sup>34</sup> 18 C.F.R. § 33.2(c)(5).

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**6. Description of Customers**

Applicant respectfully requests a waiver of the requirement of Section 33.2(c)(6) of the Commission's regulations<sup>35</sup> 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 Part V of this Application. Because the Applicant's jurisdictional facilities are limited to its electric tariff and long-term power purchase agreement, 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 regulations<sup>36</sup> to the extent it would require submission of additional information in Exhibit H.

**F. Contracts Related to the Proposed Transaction**

The MIPA Term Sheet is 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*

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<sup>35</sup> 18 C.F.R. § 33.2(c)(6).

<sup>36</sup> 18 C.F.R. § 33.2(e)(2).

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*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 VII 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.

**IX. 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.<sup>37</sup>

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<sup>37</sup> 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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**X. 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.

**XI. CONCLUSION**

As described in this Application, Applicant respectfully requests that the Commission (1) authorize the Proposed Transaction pursuant to Section 203(a)(1)(A) 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 confidential treatment of Exhibit I, and (4) expeditiously review this Application and grant its approval thereof not later than September 4, 2014.

DATED: July 31, 2014.

Respectfully submitted,

/s/ Jason Johns

Jason 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

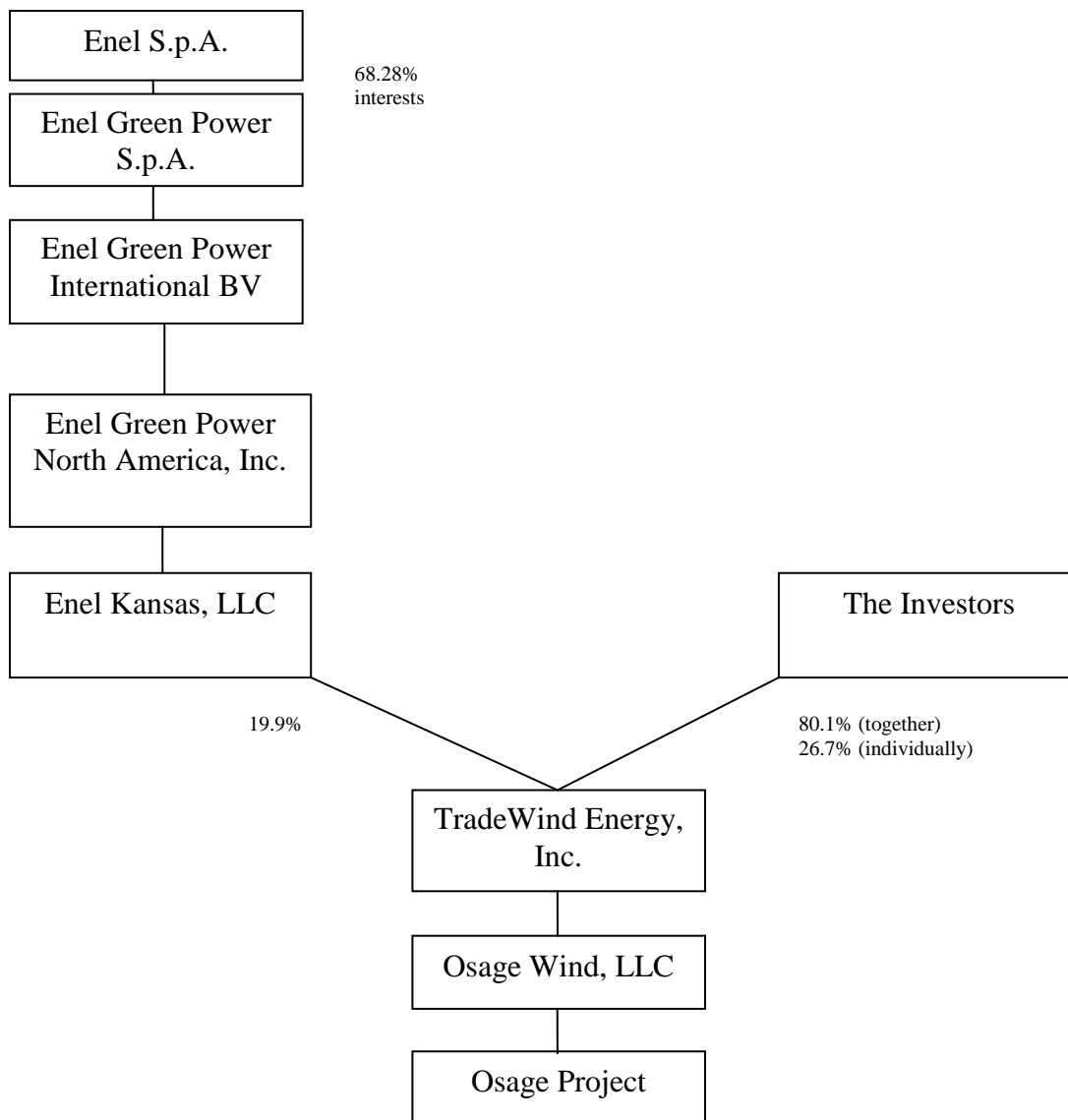


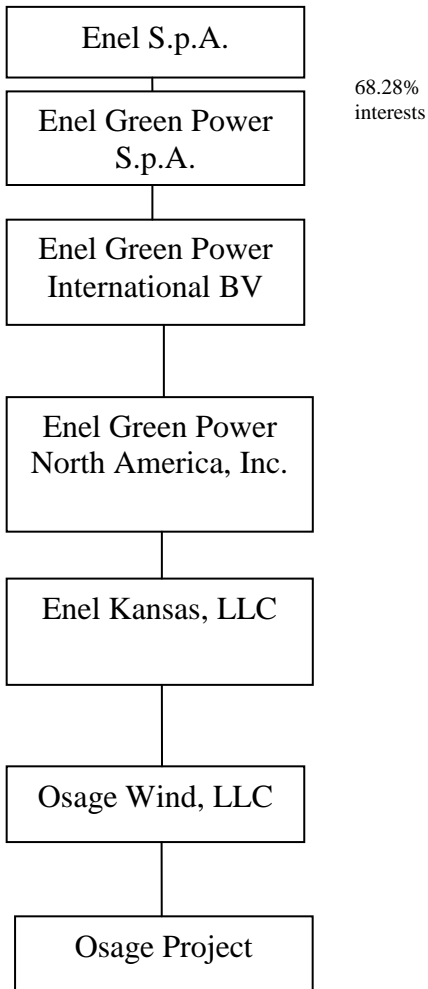
Exhibit C-1

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Organizational Charts

OSAGE WIND, LLC  
ORGANIZATION CHART AFTER PROPOSED TRANSACTION

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



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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**

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

Exhibit I



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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**

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**Verification**

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

Osage Wind, LLC

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Docket No. EC14-\_\_\_-000

**VERIFICATION  
(18 C.F.R. § 33.7)**

I, Rob H. Freeman, of Osage Wind, 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: *Rob H. Freeman*

SUBSCRIBED AND SWORN to before me, a Notary Public in and for the State of KANSAS this 30<sup>th</sup> day of July 2014.



Notary Public:

*Vicki Schumacher*  
My Commission Expires: 9-8-2017

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

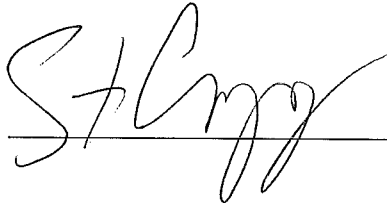
Osage Wind, LLC

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Docket No. EC14-\_\_\_-000

**VERIFICATION  
(18 C.F.R. § 33.7)**

I, Stephen Champagne, EVP, of Enel Kansas, LLC, have read the foregoing Application and have authority with respect thereto. I have knowledge of the matters regarding Enel Kansas, LLC and its affiliates set forth in the foregoing Application. The statements in said Application regarding Enel Kansas, 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 State of Massachusetts this 30 day of July 2014.

Notary Public:



  
My Commission Expires:

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**ATTACHMENT 2**

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**Protective Order**

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

Osage Wind, LLC

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Docket No. EC14-\_\_\_\_-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.

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**Presiding Administrative Law Judge**

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

Osage Wind, LLC

)

Docket No. EC14-\_\_\_\_-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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