

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

_____))
Peak View Wind Energy LLC) Docket No. EG16-__-000
_____))

**NOTICE OF SELF-CERTIFICATION OF
EXEMPT WHOLESALE GENERATOR STATUS**

Pursuant to Section 366.7(a) of the Federal Energy Regulatory Commission's (the "Commission") rules¹ implementing the Public Utility Holding Company Act of 2005 ("PUHCA 2005"), enacted by the Energy Policy Act of 2005 §§ 1261 *et seq.*,² Peak View Wind Energy LLC ("Peak View") hereby submits this notice of self-certification that it is an exempt wholesale generator ("EWG") as defined in Section 366.1 of the Commission's rules.³

I. CORRESPONDENCE AND COMMUNICATIONS

All communications and correspondence regarding this notice should be sent to the following persons who are authorized to receive service:

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¹ 18 C.F.R. § 366.7(a).

² Pub. L. No. 109-58, 119 Stat. 594 (2005).

³ 18 C.F.R. § 366.1.

II. DESCRIPTION OF PEAK VIEW

A. Peak View's Ownership Structure

Peak View is an indirect subsidiary of Invenergy Wind LLC ("Invenergy Wind"), which is in the business of developing or acquiring, through subsidiaries, electric generation facilities and related interconnection facilities.⁴

B. Peak View's Existing and Proposed Activities

1. Peak View's Project and Power Sales

Peak View is developing and plans to construct, own and operate an approximately 60 MW wind-powered generation project that will be located in Huerfano/Las Animas Counties, Colorado (the "Peak View Project"). Peak View will sell electric energy, capacity and/or ancillary services from the Peak View Project exclusively at wholesale.⁵ The Peak View Project is estimated to begin test power operations in the future.

The Peak View Project will include limited electric interconnection facilities necessary to effectuate Peak View's wholesale power sales from the Peak View Project.⁶ Through interconnection facilities in which Peak View will own interests, the Peak View Project will be interconnected with the transmission system owned by Black Hills/Colorado Electric Utility Company, LP ("Black Hills"). The Peak View Project, including the limited interconnection

⁴ Peak View is currently an indirect, wholly-owned subsidiary of Invenergy Wind but in the future, it may have different upstream owners.

⁵ Such sales will be made to third-parties through bilateral agreements or through a power exchange. The Commission has determined that sales through a power exchange are considered wholesale sales for EWG purposes. *See Southern California Edison Co.*, 80 FERC ¶ 61,262 (1997). Peak View may also purchase power and resell it at wholesale to third parties. An EWG is permitted to resell at wholesale power that it has not generated. *See CNG Power Services Corp.*, 71 FERC ¶ 61,378 (1995).

⁶ Peak View may occasionally obtain from third-parties back-up power that Peak View may need for station power to operate its Peak View Project when Peak View is not self-supplying its station power load. Such back-up or station power would be delivered to the Peak View Project over the interconnection facilities in which Peak View will own interests. EWGs may use their interconnection facilities to transmit back-up power to their generation facilities. *See Zond Systems, Inc.*, 81 FERC ¶61,001 (1997).

facilities, will be located on land in which Peak View will own, or that is owned by third-parties but which Peak View will have rights to use pursuant to easements or other land use arrangements entered into with such third-parties.

2. Peak View's Other Potential Incidental Activities

In connection with developing, owning and operating the Peak View Project, Peak View may also engage in the following incidental activities that the Commission has found to be permissible EWG activities:

- sell ancillary services available from the Peak View Project which are incidental to, and by-products of, the Peak View Project's operations as a wholesale power generator;⁷
- reassign excess transmission capacity consistent with the Commission's requirement that such reassignment of excess transmission capacity be limited to transmission capacity Peak View originally obtained for the purpose of affecting a specific wholesale sale of electric energy;⁸
- purchase and sell congestion revenue rights that Peak View needs for the Peak View Project's power sale operations;⁹
- resell excess fuel supplies or assign its excess fuel transportation capacity provided that such sales be made only if such fuel supplies or transportation were originally contracted by Peak View to operate the Peak View Project;¹⁰
- trade emission allowances consistent with the Commission's limitation that an EWG may only engage in such trading so long as the emission allowances were originally obtained in the normal course of operating the Peak View Project;¹¹

⁷ The ancillary services Peak View may sell would include reactive power and voltage support, regulation and frequency response services, load following, energy balancing services, spinning and supplemental reserves, blackstart capability, and any other ancillary services consistent with the Commission's rules or as otherwise permitted by the Commission. *See, e.g., Duke Energy Oakland, LLC*, 83 FERC ¶ 61,304 (1998); *Sithe Framingham, LLC*, 83 FERC ¶ 61,106 (1998).

⁸ *See CNG Power Services Corp.*, 71 FERC ¶ 61,026, at 61,103-04 (1995).

⁹ *See Duquesne Power, LP*, 106 FERC ¶ 61,104 (2004).

¹⁰ *See Selkirk Cogen Partners, L.P.*, 69 FERC ¶ 61,037, 61,168-69 (1994).

¹¹ *See UGI Development Co.*, 89 FERC ¶ 61,192 (1999).

- sell "green" power certificates or credits consistent with the Commission's limitation that an EWG may sell such certificates or credits where they are associated with power produced by the Peak View Project;¹²
- lease or rent property to third parties but to the extent a lease arrangement is not reasonably necessary to Peak View's wholesale power business and a rental fee is received above a nominal amount, Peak View will, consistent with EWG precedent, donate or transfer such rental revenues to a non-affiliated entity;¹³
- engage in project development activities associated with the Peak View Project. Such project development activities may include, but are not necessarily limited to, the following activities: due diligence; site investigations; feasibility studies; preliminary design and engineering; licensing and permitting; negotiation of asset and land acquisitions; negotiation of contractual commitments with lenders, equity investors, governmental authorities and other project participants and such other activities as may be necessary to financially close on eligible facilities; negotiation of power sales contracts; equipment purchases; fuel supply; engineering, construction, interconnection, and related matters; preparation and submission of bid proposals; and development of financing programs related to owning or operating the Peak View Project and/or additional electric generation facilities that satisfy the criteria for EWG status;¹⁴ and
- engage in other activities incidental to the sale of electric energy at wholesale that are consistent with the Commission's EWG precedent.

III. PEAK VIEW'S REPRESENTATIONS REGARDING EXEMPT WHOLESALE GENERATOR STATUS

Peak View makes the following representations in order to demonstrate that it meets the Commission's definition of an EWG under Section 366.1 of the Commission's regulations.

A. Peak View will be engaged directly and exclusively in the business of owning and operating all or part of one or more Eligible Facilities¹⁵ and selling electric energy at wholesale.

¹² See *Madison Windpower, LLC*, 93 FERC ¶ 61,270 (2000).

¹³ See, e.g., *Duke Energy Hot Spring, LLC*, 98 FERC ¶61,287 (2002); *PSEG Fossil, LLC, et al.*, 95 FERC ¶ 61,405 (2001).

¹⁴ See, e.g., *Empresa Valley Hermoso, S.A.*, 72 FERC ¶ 61,306 at 62,288 (1995). Peak View will, to the extent required by the Commission, file a new notification of EWG status if it acquires ownership and/or operating interests in any additional Eligible Facilities not described herein or EWGs.

¹⁵ Section 366.1 of the Commission's regulation adopts by reference Section 32(a)(2) of the Public Utility Holding Company Act of 1935 ("PUHCA 1935"), 15 U.S.C. § 79z-5a(a)(2), which defines the term eligible wholesale facilities ("Eligible Facilities"). Thus, the term Eligible Facilities as used herein has the meaning ascribed to it in Section 32(a)(2) of PUHCA 1935.

The Peak View Project, including the interconnection facilities described in Section II.B.1 above, satisfy the definition of Eligible Facilities because they will be used for the generation of electric energy exclusively for sale at wholesale. Consistent with the Commission's EWG precedent, the activities described in Section II.B. 2 above that Peak View may engage in will be incidental to the wholesale generation business and will not violate the EWG exclusivity requirement.

B. Peak View will not make any foreign sales of power at retail.

C. Through the interconnection facilities described in Section II.B.1 above, the Peak View Project will be interconnected with transmission facilities owned by Black Hills. Peak View will own interconnection facilities that will be necessary to effectuate the Peak View Project's wholesale power sales.

D. No rate or charge for, or in connection with, the construction of the Peak View Project or for electric energy produced by the Peak View Project was in effect under the laws of any state as of October 24, 1992. Accordingly, no state commission determinations pursuant to Section 32(c) of the Public Utility Holding Company Act of 1935 are required.

E. Except for other EWGs, no portion of the Peak View Project will be owned or operated by an Electric Utility Company that is an Affiliate or Associate Company¹⁶ of Peak View.¹⁷

¹⁶ The terms "Electric Utility Company," "Affiliate" and "Associate Company" have the meanings ascribed to them in Section 366.1 of the Commission's regulations.

¹⁷ See *Buffalo Gap 2, supra*, at P 13 (interpreting Section 32(d)(1) of PUHCA 1935, incorporated into the definition of "exempt wholesale generator" in Section 366.1 of the Commission's regulations, "as not precluding co-ownership (or joint operation) by affiliated EWGs".)

In accordance with Section 366.7(a) of the Commission's regulations,¹⁸ a copy of this notice of self-certification was concurrently served upon the Colorado Department of Regulatory Agencies Public Utilities Commission.

IV. CONCLUSION

For the reasons set forth in this notice of self-certification, Peak View satisfies the requirements for EWG status.

Dated: April 14, 2016

Respectfully submitted,



Name: Steve Ryder
Title: Vice President of Peak View Wind
Energy LLC

¹⁸ 18 C.F.R. §366.7(a).

CERTIFICATE OF SERVICE

I hereby certify that Peak View Wind Energy LLC's foregoing Notice of Self-Certification of Exempt Wholesale Generator Status was served this 14th day of April, 2016, by first-class mail, postage prepaid, upon the following:

Colorado Department of Regulatory Agencies
Public Utilities Commission
1560 Broadway
Suite 250
Denver, CO 80202



Laura V. Szabo

Document Content(s)

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