

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Balko Wind, LLC
Balko Wind Transmission, LLC
DESRI VI Balko Wind Holdings, L.L.C.

Docket No. EC15-148-000

ORDER AUTHORIZING DISPOSITION OF JURISDICTIONAL FACILITIES

(Issued July 23, 2015)

On May 28, 2015 Balko Wind, LLC (Balko), Balko Wind Transmission, LLC (Balko Transco), and DESRI VI Balko Wind Holdings, L.L.C. (Balko Holding) (collectively, Applicants), filed an application under sections 203(a)(1) and 203(a)(2) of the Federal Power Act (FPA),¹ whereby Applicants request authorization for the disposition of jurisdictional facilities. The disposition results from the acquisition by BAL Investment & Advisory, Inc. or an affiliate (BALIA Investor), EFS Renewables Holdings, LLC, (EFS Investor), Flamingo Wind OK, LLC (Flamingo Investor), and Citicorp North America, Inc. (Citi Investor) (collectively, Equity Investors), of non-controlling passive equity interests in Balko and Balko Transco, each of which will own certain Commission-jurisdictional assets at the time the transaction is closed (Proposed Transaction).² The jurisdictional facilities affected by the Proposed Transaction are the Gen-Tie Interconnection Facilities, Balko's market-based rate tariff and related contracts, books, and records, and Balko Transco's market-based rate tariff and related contracts, books, and records.

Applicants state that they are engaged in the generation of wind-powered electric energy. Applicants state that Balko is a Delaware limited liability company that is developing and will own and operate a 299.7 megawatt (MW) wind-powered electric generation facility located in Beaver County, Oklahoma (Facility). According to Applicants the Facility is interconnected to the electric transmission grid owned by

¹ 16 U.S.C. § 824b (2012).

² Applicants state that, because the Proposed Transaction involves the transfer of passive membership interests that do not confer rights to control the Applicants, authorization under Section 203(a)(1) may not be required. Nevertheless Applicants request, out of an abundance of caution, that the Commission authorize the Proposed Transaction without making a finding as to jurisdiction, citing *Ocean State Power*, 47 FERC ¶ 61,321 (1989).

Oklahoma Gas and Electric Company (OGEC) within the Southwest Power Pool, Inc. (SPP) via a 345 kilovolt (kV), five-mile, transmission line (Transmission Line). Applicants state that Balko Transco, a wholly owned subsidiary of Balko, owns and operates the Transmission Line, as well as associated facilities that include certain devices used in connection with meeting reactive power requirements (collectively with Transmission Line, Gen-Tie Interconnection Facilities). According to Applicants, Balko began sales of electric energy for testing purposes on April 24, 2015. Applicants state that Balko and Balko Transco are exempt wholesale generators (EWGs) that are authorized to make sales at market-based rates.³

According to Applicants, Balko is committed to sell the full output of the Facility under 20-year power purchase agreements with two non-affiliates; Public Service Company of Oklahoma (PSCO) and Western Farmers Electric Cooperative (WFEC). The power purchase agreement with WFEC for 100 MW of capacity commences at the commercial operation date of the Facility. The power purchase agreement with PSCO for remaining capacity commences in January 2016. Applicants state that they will not own transmission facilities other than the Gen-Tie Interconnection Facilities owned directly by Balko Transco.

Applicants state that Balko Transco is a wholly owned subsidiary of Balko, which in turn, is a wholly owned subsidiary of Balko Holdings, a Delaware limited liability company. According to Applicants, Balko Holdings is an indirect, wholly owned subsidiary of DESRI VI Acquisition Holdings, L.L.C., a Delaware limited liability company, which, in turn, is a wholly owned subsidiary of DESRI VI, L.L.C. (the Fund), a Delaware limited liability company. Applicants state that D.E. Shaw Renewable Investments, L.L.C. (DESRI), a Delaware limited liability company, is manager of the Fund. DESRI is a wholly owned subsidiary of D.E. Shaw & Co., L.P. (DESCO LP), a Delaware limited partnership. Applicants state that D.E. Shaw & Co., Inc. (DESCO Inc.), a Delaware corporation, is the general partner of DESCO LP and that an individual is the Chairman, president, and sole stockholder of DESCO Inc.

According to Applicants, Flamingo Investor is a wholly owned subsidiary of Google Inc. (Google), a Delaware corporation. Applicants state that Flamingo Investor does not own, control, or operate generation or transmission in any region, or hold any interests in generation or transmission facilities, other than passive investment interests, and is not affiliated with entities that own or control transmission facilities or potential inputs to electric power production. Applicants state the Flamingo Investor is affiliated with Google Energy LLC (Google Energy), a Delaware limited liability company and wholly owned subsidiary of Google. Applicants state that Google Energy is a power

³ See *Balko Wind, LLC*, 151 FERC ¶ 61,162 (2015) and *Balko Wind Transmission, LLC*, 152 FERC ¶ 61,011 (2015).

marketer that has been authorized to sell energy, capacity, and ancillary services at market-based rates. Applicants state that, pursuant to long-term power purchase agreements, Google Energy controls the output of a 114 MW generation facility located within the Midcontinent Independent System Operator, Inc.(MISO), and a 100.8 MW generation facility located in SPP.

According to Applicants, Flamingo Investor also is affiliated with Danke Schoen Project LLC, a Delaware limited liability company that has a 33.07 percent indirect upstream ownership interest in Ivanpa I, Ivanpah II, and Ivanpah III, which together comprise the approximately 395 MW Ivanpah Solar Electric Generating System that is located in the California Independent System Operator Corporation. Applicants state that each of the Ivanpah facilities is an EWG with market-based rate authority, and that all of the power produced by the Ivanpah facilities is sold under long-term power purchase agreements to Southern California Edison Company and Pacific Gas and Electric Company. Applicants state that Google, through its subsidiaries, holds thirteen other passive, non-managing investments in renewable generation projects in the United States. Applicants state that each of these investments is pursuant to a passive ownership arrangement, but does not directly or indirectly make or manage any sale of power or transmission service associated with them. According to Applicants, in each case, the owner-manager, and not a Google affiliate, has control over the management, operation, and maintenance of the facility.

According to Applicants, EFS Investor is a wholly owned subsidiary of Aircraft Services Corporation which itself is a wholly owned subsidiary of General Electric Capital Corporation (GE Capital). Applicants state that GE Capital is a wholly owned subsidiary of General Electric Company (GE). Applicants state that although several affiliates of GE have non-passive interests in generating facilities or in entities that own or control generating facilities in the United States, none of these facilities is located in SPP. According to Applicants, neither GE nor any of its affiliates is a public utility with a franchised electric service territory in the United States. Applicants state that, through its subsidiaries, GE is also a passive owner of, and an investor in, a number of generating facilities in the United States and that GE's interests in these facilities is pursuant to a passive ownership arrangement whereby a subsidiary of GE or a financing institution either holds title to the facility for the benefit of GE and leases the facility to another entity, or holds some other non-jurisdictional interest in the facility but does not directly or indirectly make or manage any sale of power or transmission service associated with the facility. In each case, the lessee or owner-manager, and not a GE affiliate, has control over the management, operation, and maintenance of the facility.

According to Applicants Linden VFT, LLC (Linden VFT) is an indirect, wholly owned subsidiary of GE and owns a variable frequency transformer system that is located within PJM Interconnection, L.L.C. (PJM). Applicants assert that all of the transmission capacity on Linden VFT's system is committed to non-affiliated customers, subject to

capacity release provisions in the PJM Open Access Transmission Tariff (OATT). Applicants state that, aside from GE's interest in the Linden VFT system, neither GE nor any of its affiliates owns or controls any transmission facilities in the United States.

According to Applicants, GE is affiliated with natural gas companies providing local and intrastate pipeline and distribution services in Colorado, Nebraska, Wyoming, and Arkansas.

According to Applicants, Citi Investor is a subsidiary of Citigroup Inc., a global financial services company that provides financial products and services to consumer and corporate customers. Applicants state that Citi Investor is not primarily engaged in energy-related business activities and does not directly control or own, other than non-managing or passive interests, any electric generating or transmission assets or generation output in the United States.

According to Applicants, Citigroup Inc. is a bank holding company. Applicants state that through various subsidiaries, Citigroup Inc. indirectly holds non-managing or passive, non-controlling interests in certain electric generating facilities located in the United States, all of which are EWGs, or qualifying facilities but none of which is located in SPP.

According to Applicants, Citigroup Inc. also owns two power marketers, Citigroup Energy Inc. (CEI) and Citigroup Energy Canada ULC (CECU). CEI has its principal place of business in Houston, Texas, is a power and gas marketer and is authorized to make wholesale sales of energy, capacity, and ancillary services at market-based rates. Applicants state that CEI does not own or operate any electric facilities. CECU is based in Alberta, Canada and is authorized to make wholesale sales of energy, capacity, and ancillary services at market-based rates. Applicants state that CECU does not own or operate any electric facilities.

According to Applicants BALIA Investor is an indirect, wholly owned subsidiary of Bank of America Corporation (Bank of America). Applicants state that Bank of America is a Delaware corporation that is a bank holding company and financial holding company. Applicants state that BALIA Investor and Bank of America are not primarily engaged in energy related business activities and do not directly own or control any electric generating or transmission assets or generation output. According to Applicants, other than limited interconnection facilities, none of BALIA Investor's affiliates own any electric transmission facilities. According to Applicants, none of BALIA Investor's energy affiliates owns or controls 10 percent or more of the voting securities in any generating facilities or owns or controls inputs to electric generation or is affiliated with a traditional franchised public utility with captive customers located in SPP.

Applicants state that BALIA Investor or its affiliates own direct and or indirect,

passive, tax equity interests of greater than 10 percent in certain entities that own wind and solar-powered electric generation facilities. Applicants state that these interests do not provide BALIA Investor or its affiliates with any day-to-day control over the facilities. Applicants state that within SPP, BALIA Investor or its affiliates hold passive, non-managing, direct or indirect tax equity interests in entities which own and operate a combined 1699 MW of wind-powered generation located in Oklahoma, Texas, Kansas and Nebraska. Applicants state that the output from each of the facilities is, or will soon be, committed under long-term contract.

According to Applicants an affiliate of BALIA Investor, Merrill Lynch Commodities, Inc. (MLCI), is authorized by the Commission to engage in sales of energy, capacity, and ancillary services at market-based rates, but it does not own or control electric generation or transmission facilities in any market. Applicants state that MLCI may also provide transactional and management services to several electric generation plants located in the United States pursuant to the terms and conditions in energy management agreements between MLCI and the relevant plant owner or operator. Applicants state that in each case, the generation plant owner or operator to which MLCI provides such services retains ultimate decision-making authority over, and control of the operation of, the generation plant and related sales of wholesale power.

According to Applicants BALIA Investor is also affiliated with several entities that hold passive or non-controlling interests in entities that have been authorized to make sales of energy and capacity at market-based rates and/or own electric generation and transmission facilities, none of which is located in SPP. According to Applicants these affiliates hold interests in these entities in the ordinary course of business for investment purposes. Applicants state that these affiliates do not direct or control the jurisdictional activities, including decisions about selling electric energy associated with these facilities.

According to Applicants affiliates of BALIA Investor may hold other debt and equity positions from time to time in energy companies in connection with their broker/dealer, financial trading, banking, or market-making activities. Applicants state that these are transitory, non-controlling interests that change frequently and are passive, and do not give BALIA Investor or its affiliates any discretion as to how and when power may be sold.

Applicants state that, under the Proposed Transaction, all of the managing Class B Membership Interests in Balko will be held by Balko Holdings. According to Applicants, pursuant to the Proposed Transaction, each of the Equity Investors will make a capital contribution to Balko at the time of Balko's commercial operation date. Applicants state that, in exchange for those capital contributions, each of the Equity Investors will receive non-controlling, passive, Class A membership interests in Balko in proportion to its respective capital contribution to Balko. According to Applicants, Balko will continue to

own all of the interests in Balko Transco, so that each of the Equity Investors will acquire indirect interests in Balko Transco in proportion to its respective capital contribution to Balko. Applicants state that the jurisdictional facilities affected by the Proposed Transaction are the market-based rate tariffs of Balko and Balko Transco and associated contracts, books and records and the Gen-Tie Interconnection Facilities owned by Balko Transco.

Applicants state that the Equity Investors will have only limited rights with respect to the actions of Balko, such as consent rights necessary for the Equity Investors to protect their economic investment interests. According to Applicants, none of the Equity Investors will, by virtue of the Proposed Transaction or their membership interests, have the ability to manage Balko or Balko Holdings. According to Applicants they will have only non-controlling, passive equity interests in Balko.

Applicants state that, following the closing of the Proposed Transaction: (1) each of Balko and Balko Transco will continue to have operational control and full ownership of its respective jurisdictional assets; (2) Balko will continue to wholly own Balko Transco, (3) Balko Holdings will continue to own 100% of the Class B Membership Interests in Balko; (4) Balko Holdings will continue to be the Managing Member of Balko with the right to control Balko on a day-to-day basis; and (5) the Equity Investors will own the Class A Membership Interests in Balko.

According to Applicants the Proposed Transaction will not adversely effect competition. Applicants explain that the Transaction does not raise any horizontal market power concerns. Applicants assert that the entire output of Balko is committed to non-affiliated purchasers under long-term agreements, and the Proposed Transaction will have no effect on this arrangement. Further, according to Applicants, the Equity Investors' acquisition of the Class A Membership Interests in Balko will not result in a change in the market share of any of the Equity Investors because none of the Equity Investors will gain control over Balko or Balko Transco as a result of the Proposed Transaction. Applicants state that the Equity Investors' interests in Balko, and indirectly in Balko Transco, will give them only those limited rights that are necessary to protect their investments. According to Applicants, the Equity Investors will not have voting control over wholesale power sales or day-to-day operation of power generation or transmission facilities. Applicants state that the only electric generation capacity owned or controlled by Applicants and their affiliates in SPP is through the Facility which is committed under long-term power purchase agreements.

According to Applicants, if the Proposed Transaction resulted in the Equity Investors acquiring control of Balko through an exercise of certain default-related or other rights vested in the Equity Investors to enable them to protect their passive economic interests, the entire output of Balko will be, as of January 2016, fully committed under long-term power purchase agreements with non-affiliates, and the

aggregate uncommitted capacity of Balko and each of the Equity Investors will be no greater as of that date than is the combined uncommitted capacity of each of the Equity Investors prior to the Proposed Transaction. According to Applicants, Balko's total capacity represents 0.5 percent of the 63,604 MW of Installed Capacity in the SPP market. Applicants state that if Balko and the Equity Investors were treated as affiliates in the relevant market area, any overlap between the operations of the Equity Investors and their affiliates in the relevant market area and the operations of Applicants and their affiliates in SPP totals only 2,099.95 MW, which according to Applicants, constitutes 3.3 percent of the SPP's installed capacity of 63,604 MW. Applicants therefore conclude that they and their affiliates represent only a *de minimis* share of the relevant market.

Applicants state that the Proposed Transaction does not raise any vertical market power concerns. Applicants state that neither they, nor any of their affiliates, own or control transmission facilities in any market. Applicants state that, except for any interconnection facilities necessary to connect electric generating facilities to the transmission grid, none of the Equity Investors or their affiliates own or control transmission facilities in any market, other than the transmission facilities owed by Linden VFT, which is located outside SPP. According to Applicants, neither Applicants nor the Equity Investors, nor their respective affiliates, own or control intrastate natural gas transportation, storage or distribution facilities, sources of coal supplies, or equipment for transporting coal supplies, except for the interests held by affiliates of the EFS Investor in local natural gas distribution companies and intrastate natural gas pipelines. According to Applicants, the interests held by affiliates of EFS Investor in the relevant market are interests in local natural gas distribution companies in Arkansas and Nebraska. Applicants assert that these interests do not provide the EFS Investor with any ability to exercise vertical market power in the relevant market. Applicants state that neither the Applicants nor the Equity Investors, nor their respective affiliates, own or control any unique sites in the United States to develop new generating capacity that raise vertical market power concerns. Applicants therefore assert that there is no issue of vertical market power arising from the Proposed Transaction.

According to Applicants the Proposed Transaction will have no effect on rates. Applicants state that Balko will continue to make sales pursuant to its market-based rate tariff and its existing long-term wholesale contracts or merchant sales arrangements. Applicants represent that Balko Transco does not plan to make any sales of electric energy. Applicants state that the Proposed Transaction will not change the rates, terms, or conditions contained in any of the tariffs or long-term sales contracts of Balko or Balko Transco. According to Applicants, none of the Equity Investors or Applicants have any captive customers that could be affected by the Proposed Transaction. Applicants therefore assert that the Proposed Transaction will not have an adverse effect on rates.

Applicants state that the Proposed Transaction will have no adverse effect on

regulation at the state or federal level. According to Applicants, after the Proposed Transaction is consummated, the Commission will continue to exercise the same jurisdiction over Balko, Balko Transco, and their respective jurisdictional activities as it exercises currently. Applicants state that no facilities will be removed from the Commission's jurisdiction. Applicants assert that the Proposed Transaction will have no effect on state-commission regulation and is not subject to approval by any state commission. Applicants therefore state that the Proposed Transaction will not have an adverse effect on regulation.

According to Applicants, the Proposed Transaction does not pose a risk of cross-subsidization and does not involve any pledge or encumbrance of utility assets. Applicants state that, because the Proposed Transaction does not involve a franchised public utility with captive customers, the Proposed Transaction raises no issues concerning cross-subsidization. Applicants state that no pledges or encumbrances of any assets of a traditional public utility that have captive customers or provide transmission service over jurisdictional transmission facilities will occur as a result of the Proposed Transaction. Applicants verify with respect to themselves and their affiliates, based on the facts and circumstances known to Applicants or that are reasonably foreseeable as of the date of the application, the Proposed Transaction will not result in, at the time of the Proposed Transaction or in the future: (1) 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; (2) 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; (3) 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; or (4) any new affiliate contract between a non-utility 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 non-power goods and services agreements subject to review under Sections 205 and 206 of the Federal Power Act.

This filing was noticed on May 28, 2015, with comments, protests or interventions due on or before June 18, 2015. None was received.

Information and/or systems connected to the bulk power system involved in this Proposed Transaction may be subject to reliability and cyber security standards approved by the Commission pursuant to FPA section 215 of the FPA.⁴ Compliance with these standards is mandatory and enforceable regardless of the physical location of the

⁴ 16 U.S.C. § 824o (2012).

affiliates or investors, information databases, and operating systems. If affiliates, personnel or investors are not authorized for access to such information and/or systems connected to the bulk power system, a public utility is obligated to take the appropriate measures to deny access to this information and/or the equipment/software connected to the bulk power system. The mechanisms that deny access to information, procedures, software, equipment, etc., must comply with all applicable reliability and cyber security standards. The Commission, North American Electric Reliability Corporation or the relevant regional entity may audit compliance with reliability and cyber security standards.

Order No. 652 requires that sellers with market-based rate authority timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.⁵ The foregoing authorization may result in a change in status. Accordingly, applicants that have market-based rates are advised that they must comply with the requirements of Order No. 652. In addition, Applicants shall make appropriate filings under section 205 of the FPA to implement the Proposed Transaction.

When a controlling interest in a public utility is acquired by another company, whether a domestic company or a foreign company, the Commission's ability to adequately protect public utility customers against inappropriate cross-subsidization may be impaired absent access to the parent company's books and records. Section 301(c) of the FPA gives the Commission authority to examine the books and records of any person who controls, directly or indirectly, a jurisdictional public utility insofar as the books and records relate to transactions with or the business of such public utility. The approval of this Proposed Transaction is based on such examination ability.

After consideration, it is concluded that the Proposed Transaction is consistent with the public interest and is authorized, subject to the following conditions:

- (1) The Proposed Transaction is authorized upon the terms and conditions and for the purposes set forth in the application;
- (2) The foregoing authorization is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates, or determinations of cost, or any other matter whatsoever now pending or which may become before the Commission;

⁵ *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 70 Fed. Reg. 8,253 (Feb. 18, 2005), FERC Stats. & Regs. ¶ 31,175, order on reh'g, 111 FERC ¶ 61,413 (2005).

- (3) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted;
- (4) The Commission retains authority under sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate;
- (5) If the Proposed Transaction results in changes in the status or the upstream ownership of Applicants' affiliated qualifying facilities, if any, an appropriate filing for recertification pursuant to 18 C.F.R. § 292.207 (2014) shall be made;
- (6) Applicants shall make appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transaction;
- (7) Applicants must inform the Commission of any material change in circumstances that departs from the facts or representations that the Commission relied upon in authorizing the Proposed Transaction within 30 days from the date of the material change in circumstances.; and
- (8) Applicants shall notify the Commission within 10 days of the date that the Proposed Transaction has been consummated.

This action is taken pursuant to the authority delegated to the Director, Division of Electric Power Regulation – West, under 18 C.F.R. § 375.307 (2014). This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. § 385.713 (2014).

Steve P. Rodgers, Director
Division of Electric Power
Regulation – West