

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Investigation of Certain Enron-Affiliated QFs
Green Power Partners I, LLC

Docket Nos. EL03-47-001
QF00-96-001

NOTICE OF FINALITY OF INITIAL DECISION

January 22, 2004

1. On December 11, 2003, the presiding administrative law judge issued an initial decision in this proceeding. Investigation of Certain Enron-Affiliated QFs, Green Power Partners I, LLC, 105 FERC ¶ 63,040 (2003). No participant in the proceeding filed briefs on exceptions to the initial decision, and the Commission has decided not to initiate review of the initial decision. Accordingly, the presiding judge's decision is considered a final order of the Commission pursuant to Rules 708(d) and 712(a) of the Commission's Rules of Practice and Procedure. 18 C.F.R. §§ 385.708(d), .712(a) (2003).

2. The proceeding addressed issues relating to the qualifying facility (QF) status of Green Power Partners I, LLC (Green Power); Green Power owned and operated a 16.5 MW wind energy facility located in Palm Springs, California.¹ Green Power is an indirect wholly-owned subsidiary of Enron Corporation (Enron). Enron is considered a public utility holding company by virtue of its ownership of Portland General Electric Company. As a result, Green Power's generating facility would not satisfy the ownership requirements for QF status, unless Enron was exempt by rule or order issued pursuant to Sections 3(a)(3) and 3(a)(5) of the Public Utility Holding Company Act (PUHCA), 15 U.S.C. §§ 79c(a)(3), (a)(5) (2000) or declared not to be an electric utility by the Securities and Exchange Commission.² According to the initial decision the facility relied on Enron's then-pending application for an exemption under Sections 3(a)(3) and 3(a)(5) of PUHCA as the basis for satisfying this Commission's ownership requirements for QF status. The initial decision recited that Enron was entitled to be considered exempt from the utility ownership prohibition of the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. §§ 796(17)(c)(ii), 18(c)(ii) (2000) during the pendency of its

¹ Green Power's assets have since been sold to a subsidiary of FPL Energy, LLC and the facility does not currently have QF status. See Enron Wind LLC, et al., 105 FERC ¶ 62,171 (2003)

² See 18 C.F.R. § 292.206 (2003).

PUHCA application at the Securities and Exchange Commission (SEC), provided that Enron's then-pending filing with the SEC was made in "good faith."³

3. On December 29, 2003, the SEC issued an order denying Enron's application for exemption from PUHCA.⁴ Accordingly, the initial decision's conclusion as to Green Power's QF status is valid only up to the date that the SEC issued its decision denying Enron's application for exemptions from PUHCA and Enron's application that was the basis of the claim that Green Power satisfied the ownership requirements for QF status is no longer pending. However, the QF status for the period following the SEC's decision is not at issue because Green Power's assets have since been sold to a subsidiary of FPL Energy, LLC and are no longer a QF. See Enron Wind LLC, et al., 105 FERC ¶ 62,171 (2003).

By direction of the Commission.

Magalie R. Salas
Secretary.

³ The "good faith" of an application under Section 3(a) of PUHCA is a determination to be made by the SEC. 15 U.S.C. § 79c(c) (2000).

⁴ In the Matter of the Application of Enron Corporation, Public Utility Holding Company Act of 1933 Rel. No. 27782 (December 29, 2003). The SEC made no finding that Enron's application had not been made in "good faith."