

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, Richard Glick,
and Bernard L. McNamee.

Flat Ridge 2 Wind Energy LLC
Fowler Ridge II Wind Farm LLC
Southwestern Electric Power Company
Indiana Michigan Power Company
Ohio Power Company

Docket No. ER19-1112-000

ORDER GRANTING AUTHORIZATION TO MAKE AFFILIATE SALES

(Issued April 18, 2019)

1. On February 2, 2019, Flat Ridge 2 Wind Energy LLC (Flat Ridge 2), Fowler Ridge II Wind Farm LLC (Fowler Ridge II) (together, Sellers), and American Electric Power Service Corporation (AEP Service), on behalf Southwestern Electric Power Company (SWEPCO), Indiana Michigan Power Company (Indiana Michigan Power), and Ohio Power Company (Ohio Power) (together, Purchasers) (collectively, Applicants) requested authorization under section 205 of the Federal Power Act (FPA)¹ and sections 35.39(b) and 35.44(a) of the Commission's regulations² to make affiliate sales under five existing power purchase agreements (PPAs). The parties to the PPAs are not currently affiliates but are expected to become affiliated when AEP Clean Energy Resources, LLC (AEP Clean Energy) acquires Sempra Renewables LLC's (Sempra Renewables) interests in Flat Ridge 2 and Fowler Ridge II (Proposed Transaction).³ As discussed below, we authorize continued sales under these

¹ 16 U.S.C. § 824d (2012).

² 18 C.F.R. §§ 35.39(b) and 35.44(a) (2018).

³ Flat Ridge 2, Fowler Ridge II, and others submitted an application pursuant to section 203 of the FPA to request the authorizations necessary to complete the Proposed Transaction. *See* Apple Blossom Wind, LLC, Application For Authorization Of Transaction Pursuant To Section 203 Of The Federal Power Act, Docket No. EC19-61-000 (filed Feb. 22, 2019).

PPAs after the Proposed Transaction because they were negotiated at arms-length several years before the Proposed Transaction and, as such, satisfy the Commission's concerns regarding the potential for affiliate abuse. This authorization will take effect as of the date of the consummation of the Proposed Transaction.

I. Background

2. Flat Ridge 2 owns a 419 megawatt (MW) wind generation facility, a 51 MW wind generation facility, and associated interconnection facilities in south-central Kansas (Flat Ridge 2 Facility).⁴ Fifty percent of the membership interests in Flat Ridge 2 are currently held by an indirect wholly owned subsidiary of Sempra Renewables but will soon be transferred to AEP Clean Energy pursuant to the Proposed Transaction. BP p.l.c. (BP) indirectly owns the remaining 50 percent of the membership interests in Flat Ridge 2. SWEPCO, also an affiliate of AEP Clean Energy, purchases output from the Flat Ridge 2 Facility pursuant to two 20-year PPAs – one for 31 MW and the other for 77.8 MW – both of which expire in 2032. The remaining output of the Flat Ridge 2 Facility is sold under two other long-term PPAs with third parties that are not affiliated with Flat Ridge 2 or AEP Clean Energy.

3. Fowler Ridge II owns a 199.5 MW wind generation facility and associated interconnection facility in Benton and Tipton Counties Indiana (Fowler Ridge II Facility).⁵ Fifty percent of the membership interests in Fowler Ridge II are currently held by an indirect wholly owned subsidiary of Sempra Renewables but will soon be transferred to AEP Clean Energy pursuant to the Proposed Transaction. BP indirectly owns the remaining 50 percent of the membership interests in Fowler Ridge II. Indiana Michigan Power, an affiliate of AEP Clean Energy, purchases 50 MW of output from the Fowler Ridge II Facility pursuant to a 20-year PPA that expires in 2029. Ohio Power, also an affiliate of AEP Clean Energy, purchases output from the Fowler Ridge II Facility pursuant to two 50 MW 20-year PPAs, both of which expire in 2029. The remaining output of the Fowler Ridge II Facility is sold to a third party that is not affiliated with Fowler Ridge II or AEP Clean Energy.

4. AEP Clean Energy, along with Purchasers, are wholly owned subsidiaries of American Electric Power Company (AEP). Following consummation of the Proposed Transaction, sales pursuant to the two PPAs between Flat Ridge 2 and SWEPCO, the

⁴ Flat Ridge 2 is authorized to sell electric energy, capacity, and certain ancillary services at market-based rates. *See Flat Ridge 2 Wind Energy LLC*, 139 FERC ¶ 61,160 (2012).

⁵ Fowler Ridge II is authorized to sell electric energy, capacity, and certain ancillary services at market-based rates. *See Fowler Ridge II Wind Farm LLC*, Docket No. ER09-165-000 (Dec. 30, 2009) (delegated order).

two PPAs between Fowler Ridge II and Ohio Power, and the PPA between Fowler Ridge II and Indiana Michigan Power will become affiliate sales transactions.

5. Applicants argue that there is no potential for affiliate abuse because the existing PPAs were negotiated at arms-length between unaffiliated parties years ago. They state that if Sellers and Purchasers become affiliates following consummation of the Proposed Transaction, the wholesale sales of power will continue to be made pursuant to the existing pricing and other provisions of the PPAs.

6. With respect to the PPAs between Fowler Ridge II and Ohio Power, Applicants state that the Commission's affiliate restrictions codified at 18 C.F.R. 35.39(b) and 35.44(a) do not apply because Ohio Power does not have captive retail customers due to retail choice in Ohio.

II. Notice of Filing

7. Notice of this filing was published in the *Federal Register*,⁶ with interventions and protests due on or before March 15, 2019. None was filed.

III. Discussion

A. Affiliate Abuse Analysis

8. At issue here is whether the affiliate sales transactions described above satisfy the Commission's concerns regarding the potential for affiliate abuse. In *Edgar*, the Commission stated that, in cases where affiliates are entering into market-based rate agreements, it is essential that ratepayers be protected and that transactions be above suspicion in order to ensure that the market is not distorted.⁷ Under *Edgar*, the Commission has approved affiliate sales after the Commission has determined that, based on the evidence, the proposed sale was a result of direct head-to-head competition between affiliated and competing unaffiliated suppliers.⁸

⁶ 84 Fed. Reg. 7356 (2019).

⁷ *Boston Edison Co. Re: Edgar Electric Energy Company*, 55 FERC ¶ 61,382 (1991) (*Edgar*).

⁸ *See id.*, 55 FERC ¶ 61,382 at 62,167-69. *See also Connecticut Light & Power Co.*, 90 FERC ¶ 61,195, at 61,633-34 (2000); *MEP Pleasant Hill, LLC*, 88 FERC ¶ 61,027, at 61,059-60 (1999); *Aquila Energy Marketing Corp.*, 87 FERC ¶ 61,217, at 61,857-58 (1999).

9. *Edgar* describes three types of evidence that demonstrate a lack of affiliate abuse: (1) evidence of direct head-to-head competition; (2) evidence of the prices non-affiliated buyers were willing to pay for similar services from the affiliate; or (3) benchmark evidence that shows the prices, terms, and conditions of sales made by non-affiliated sellers.⁹

10. We find that Applicants have set forth evidence as contemplated in *Edgar* to ensure that the affiliate sales are above suspicion, the market is not distorted, and captive ratepayers are protected.¹⁰ Specifically, the PPAs were negotiated at arms-length several years ago by unaffiliated parties. The Commission recently approved a similar affiliate sale associated with a long-term PPA that had been negotiated between parties several years before they became affiliates.¹¹ As the Commission found in that case, the arms-length pricing terms in the instant PPAs constitute evidence of the price purchasers were willing to pay for identical services in the same market from an unaffiliated seller and provide a precise benchmark for the prices, terms, and conditions of sales made by unaffiliated sellers to purchasers.¹²

⁹ *Edgar*, 55 FERC ¶ 61,382 at 62,168-69; *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, 119 FERC ¶ 61,295, P 532 n.544, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, 123 FERC ¶ 61,055, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, 125 FERC ¶ 61,326 (2008), *order on reh'g*, Order No. 697-C, 127 FERC ¶ 61,284 (2009), *order on reh'g*, Order No. 697-D, 130 FERC ¶ 61,206 (2010), *aff'd sub nom. Mont. Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011), *cert. denied sub nom. Public Citizen, Inc. v. FERC*, 567 U.S. 934 (2012).

¹⁰ We agree that the PPAs between Ohio Power and Fowler Ridge II do not implicate the Commission's affiliate sales restrictions because Ohio Power is not a "franchised public utility with captive customers" due to the existence of retail choice in Ohio. *See* 18 C.F.R. 35.39(b) (2018) (requiring prior authorization for sales between a franchised public utility with captive customers and a market-regulated power sales affiliate); Order No. 697, 119 FERC ¶ 61,295 at P 479 (excluding from the definition of "captive customers" those customers that have retail choice).

¹¹ *See AltaGas Renewable Energy Colorado, LLC*, 165 FERC ¶ 61,196, at P 9 (2018) (authorizing affiliate transaction under a PPA that was negotiated several years prior by third parties).

¹² *Id.*

B. Other Issues

11. This order satisfies the requirement that Sellers must first receive Commission authorization, pursuant to FPA section 205, before engaging in power sales at market-based rates for the affiliate sales discussed herein. We note that Sellers must receive prior approval from the Commission under FPA section 205 for any other sales to affiliates with a franchised electric service territory and captive customers.

12. Finally, we direct Flat Ridge 2 and Fowler Ridge II Wind Farm to submit compliance filings, within 30 days of the date of the consummation of the Proposed Transaction, notifying the Commission of such consummation and revising the limitations and exemptions section of their respective market-based rate tariffs to list the specific, limited authorizations granted herein and to include a citation to this order.¹³

The Commission orders:

(A) Flat Ridge 2 and Fowler Ridge II are hereby authorized to make affiliate wholesale power sales under the existing PPAs described in their application, effective upon consummation of the Proposed Transaction, as discussed in the body of this order.

(B) Flat Ridge 2 and Fowler Ridge II are hereby directed to submit compliance filings within 30 days of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹³ Order No. 697, 119 FERC ¶ 61,295 at App. C; Order No. 697-A, 123 FERC ¶ 61,055 at P 384.