

157 FERC ¶ 61,030
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, and Colette D. Honorable.

Community Wind North, LLC

Docket No. ES16-46-000

ORDER AUTHORIZING ISSUANCES OF SECURITIES

(Issued October 20, 2016)

1. On July 22, 2016, Community Wind North, LLC (Community Wind) filed an application pursuant to section 204 of the Federal Power Act (FPA)¹ (Application) seeking blanket authorization to issue securities and assume liabilities. We will grant the authorizations, as discussed below.

I. Application

A. Background

2. Community Wind states that it owns all of the membership interests of North Community Turbines LLC (NC Turbines) and North Wind Turbines LLC (NW Turbines).² NC Turbines and NW Turbines are power marketers, and together own all of the membership interests of 12 project companies (collectively, Project Companies) that own and operate wind-powered generation facilities in the Midcontinent Independent System Operator, Inc. (MISO) market. Specifically, NC Turbines owns all of the membership interests of six Project Companies, each of which owns and operates a 2.5 MW wind turbine in Lincoln County, Minnesota.³ NW Turbines owns all of the

¹ 16 U.S.C. § 824c (2012).

² Application at 2.

³ *Id.* at 2-3. The six Project Companies owned by NC Turbines are: Community Wind North 1 LLC, Community Wind North 2 LLC, Community Wind North 5 LLC, Community Wind North 6 LLC, Community Wind North 8 LLC, and Community Wind North 15 LLC.

membership interests in six Project Companies, each of which owns and operates a 2.5 MW wind turbine in Lincoln County, Minnesota.⁴

3. Community Wind states that it owns and operates interconnection facilities used to deliver the output of the Project Companies' generation facilities to the MISO-controlled grid. It explains that the Project Companies' use of, and cost responsibility for, the interconnection facilities is governed by the First Amended and Restated Common Facilities, Operation and Revenue Sharing Agreement, among Community Wind, NC Turbines, NW Turbines and the Project Companies (Common Facilities Agreement). Community Wind explains that the Common Facilities Agreement was filed with the Commission.⁵ However, Community Wind states that, when it submitted the Common Facilities Agreement, it did not request or receive the waivers and blanket authorizations that are requested in this Application.

B. Request for Blanket Authorization

4. Community Wind seeks blanket authorization under section 204 of the FPA and Part 34 of the Commission's regulations to issue securities and to assume obligations and liabilities. It states that such authorization is consistent with Commission precedent granting blanket authorizations under section 204 and Part 34 to entities that are "interconnection-only entities that serve only their own affiliates."⁶ Community Wind asserts that, like the entities in past cases in which such blanket authorization was granted, it "is an interconnection-only entity that serves only... its own affiliates."⁷

⁴ *Id.* at 3-4. The six Project Companies owned by NW Turbines are: Community Wind North 3 LLC, Community Wind North 7 LLC, Community Wind North 9 LLC, Community Wind North 10 LLC, Community Wind North 11 LLC, and Community Wind North 13 LLC.

⁵ The Common Facilities Agreement was accepted for filing on January 5, 2011. *Community Wind North, LLC*, Docket No. ER11-2620-000, (Feb. 11, 2011) (delegated letter order).

⁶ *Id.* at 6 (citing *Dominion Solar Gen-Tie, LLC*, 152 FERC ¶ 61,014, at P 9 (2015) (*Dominion Gen-Tie*); *East Ridge Transmission, LLC*, 155 FERC ¶ 61,123, at P 12 (2016) (*East Ridge*); *Me. GenLead, LLC*, 152 FERC ¶ 61,015, at P 8 (2015) (*Maine GenLead II*)).

⁷ *Id.* at 6-7 (quoting *East Ridge*, 115 FERC ¶ 61,123 at P 12; *Dominion Gen-Tie*, 152 FERC ¶ 61,014 at P 9; *Maine GenLead II*, 152 FERC ¶ 61,015 at P 8)).

5. Community Wind further maintains that granting the requested blanket authorizations does not implicate the concerns underlying section 204 of the FPA, which “was intended to protect the public from unsound financial choices by public utilities.”⁸ It also states that Community Wind is not a franchised public utility and does not provide service at cost-based rates to any non-affiliates. Community Wind asserts that the consequences of Community Wind’s financial choices will be borne exclusively by it and its investors, and there is no danger of any of its issuances of securities or assumptions of liabilities “put[ting] at risk [its] ability to provide service to customers that depend on that service.”⁹

C. Requests for Waiver

6. Community Wind requests waiver of sections 41.10 through 41.12 of the Commission’s regulations,¹⁰ regarding accounts, records, and memoranda; Part 101 of the Commission’s regulations,¹¹ regarding the Commission’s Uniform System of Accounts; and Part 141 of the Commission’s regulations,¹² regarding statements and reports, except for sections 141.14 and 141.15 of the Commission’s regulations.¹³ It asserts that, like entities granted such waivers by the Commission in the past, Community Wind owns only limited and discrete transmission facilities used to deliver energy from generating facilities owned by its affiliates to the transmission grid.¹⁴ Moreover, Community Wind contends that, as in past cases in which the Commission has granted such waivers to interconnection-only entities, the affiliates that use those interconnection

⁸ *Id.* at 7 (quoting *Dominion Gen-Tie*, 152 FERC ¶ 61,014 at P 10; *Maine GenLead II*, 152 FERC ¶ 61,015 at P 9).

⁹ *Id.* (quoting *Dominion Gen-Tie*, 152 FERC ¶ 61,014 at P 10; *Maine GenLead II*, 152 FERC ¶ 61,015 at P 9).

¹⁰ 18 C.F.R. pt. 41 (2016).

¹¹ *Id.* pt. 101.

¹² *Id.* pt. 141.

¹³ *Id.* §§ 141.14, 141.15.

¹⁴ Application at 6 (citing *East Ridge*, 155 FERC ¶ 61,123 at P 10; *Evergreen GenLead, LLC*, 149 FERC ¶ 61,237 at P 18; *Me. GenLead, LLC*, 146 FERC ¶ 61,223, at P 17 (2014) (*Maine GenLead I*)).

facilities (the Project Companies) make sales exclusively at market-based rates and have no captive, non-affiliate customers.¹⁵

7. Community Wind also seeks waiver of the requirements of Part 34 of the Commission's regulations¹⁶ pertaining to the contents of applications for authorization to issue securities and assume obligations and liabilities, as well as ongoing reporting requirements for public utilities authorized to issue securities and assume obligations and liabilities. Community Wind argues that the Commission routinely grants blanket authorization of the kind requested in the Application in connection with applications for market-based rate authority without requiring applicants to provide the information and supporting documentation identified in Part 34 or to file reports concerning securities issuances and assumptions of obligations and liabilities. For the same reasons, Community Wind argues that the Commission should waive any such requirements here. Community Wind commits that it will notify the Commission of any material change in facts relevant to the requested blanket authorization, consistent with the conditions imposed in past orders granting similar authorization to interconnection-only entities.¹⁷

II. Notice of Filing

8. Notice of the Application was published in the *Federal Register*, 81 Fed. Reg. 54,082 (2016), with interventions and protests due on or before August 12, 2016. None was filed.

III. Commission Determination

9. FPA section 204(a) provides that requests for authorization to issue securities or to assume any obligation or liability as guarantor, indorser, surety, or otherwise in respect of any security of another person shall be granted if the Commission finds that the issuance or assumption: (1) is for some lawful object, within the corporate purposes of the applicant and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the applicant of service as a public utility and

¹⁵ *Id.* (citing *East Ridge*, 155 FERC ¶ 61,123 at P 10).

¹⁶ 18 C.F.R. pt. 34 (2016).

¹⁷ Application at 7-8 (citing *East Ridge*, 155 FERC ¶ 61,123 at P 12; *Me. GenLead II*, 152 FERC ¶ 61,015 at P 9).

which will not impair its ability to perform that service; and (2) is reasonably necessary or appropriate for such purposes.¹⁸

10. A review of the legislative history pertaining to section 204 of the FPA¹⁹ shows that the section was intended to protect the public from unsound financial choices by public utilities. As noted in Senate Report No. 621, “[c]ontrol over the capitalization of operating utilities is plainly an essential means of safeguarding the public interest against the unsound financial practices which make impossible the proper and most economical performance of public utility functions.”²⁰ As the Commission previously noted, FPA section 204 serves to ensure that public utilities do not, by issuing securities or assuming obligations or liabilities, put at risk their ability to provide service to customers that depend on that service.²¹

11. Applying the foregoing principles here, we grant Community Wind’s request for blanket authorization for issuance of securities and assumptions of obligations and liabilities under Part 34. Community Wind is an interconnection-only entity whose sole customers will be its affiliates. However, Community Wind must notify the Commission if the circumstances providing the basis for the blanket authorization change.²² We also grant the requested waiver of sections 41.10 through 41.12 of the Commission’s regulations,²³ regarding accounts, records, and memoranda; Part 101 of the Commission’s regulations,²⁴ regarding the Commission’s Uniform System of Accounts; and Part 141 of the Commission’s regulations,²⁵ regarding statements and

¹⁸ 16 U.S.C. § 824c(a) (2012).

¹⁹ 16 U.S.C. § 824c (2012).

²⁰ S. Rep. No. 621, 74th Cong., 1st Sess. 50 (1935).

²¹ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 999.

²² We further note that if the Commission subsequently grants a request by a non-affiliated entity to use Community Wind’s facilities, Community Wind would no longer qualify for blanket authorization and the Commission may revoke the blanket authorization at that time.

²³ 18 C.F.R. pt. 41 (2016).

²⁴ *Id.* pt. 101.

²⁵ *Id.* pt. 141.

reports, except for sections 141.14 and 141.15 of the Commission's regulations.²⁶ We also grant waiver of Part 34 of the Commission's regulations²⁷ pertaining to the contents of applications for authorization to issue securities and assume obligations and liabilities, as well as ongoing reporting requirements for public utilities authorized to issue securities and assume obligations and liabilities.

The Commission orders:

(A) Community Wind's request for blanket authorization for issuance of securities and assumptions of obligations and liabilities under Part 34 is hereby granted, as discussed in the body of this order.

(B) Community Wind is hereby granted waiver from compliance with the Commission's requirements to provide certain accounting, information and reports at 18 C.F.R. pt. 34, 41, 101, and 141 (2016), except for sections 141.14 and 141.15.

(C) Community Wind must notify the Commission if the circumstances providing the basis for the blanket authorization change.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²⁶ *Id.* §§ 141.14, 141.15.

²⁷ *Id.* pt. 34.