

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION


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VERIFIED JOINT PETITION OF FOWLER)
RIDGE II WIND FARM LLC, AND)
DOMINION FOWLER RIDGE II WIND LLC)
FOR APPROVAL OF THE TRANSFER OF A)
PORTION OF FOWLER RIDGE II WIND)
FARM LLC'S FRANCHISE, WORKS, OR)
SYSTEM TO DOMINION FOWLER RIDGE)
II WIND LLC, PURSUANT TO INDIANA)
CODE § 8-1-2-83; FOR CONTINUED)
DECLINATION OF THE COMMISSION'S)
JURISDICTION OVER DOMINION)
FOWLER RIDGE II WIND LLC AND THE)
PORTIONS OF THE POWER GENERATING)
FACILITY TRANSFERRED TO DOMINION)
FOWLER RIDGE II WIND LLC, PURSUANT)
TO INDIANA CODE § 8-1-2.5-5; AND FOR)
APPROVAL OF OR DECLINATION OF)
JURISDICTION OVER THE OPERATION)
AND MAINTENANCE OF CERTAIN)
COMMON FACILITIES BY A THIRD)
PARTY)

CAUSE NO. 43747

APPROVED: NOV 24 2009

BY THE COMMISSION:

James D. Atterholt, Commissioner
David E. Veleta, Administrative Law Judge

On July 23, 2009, Fowler Ridge II Wind Farm LLC ("Fowler Ridge II") and Dominion Fowler Ridge Wind II, LLC ("Dominion Fowler II") (together, the "Joint Petitioners") filed a Verified Joint Petition with the Indiana Utility Regulatory Commission ("Commission") requesting that the Commission approve the transfer of certain assets and liabilities relating to a portion of Phase II of the Fowler Ridge Wind Farm ("Wind Farm") from Fowler Ridge II to Dominion Fowler II, determine that Dominion Fowler II will continue to meet the criteria described in its November 20, 2007 Order in Cause No. 43338 ("Declination Order") and its June 4, 2008 Order in Cause No. 43443 ("Phase II Declination Order") for continued declination of jurisdiction over the transferred portion of Phase II of the Wind Farm, and either approve or decline to exercise jurisdiction over the operation and maintenance of certain Wind Farm common facilities by a third party.

Pursuant to notice as provided by law, proof of which was incorporated into the record, an evidentiary hearing in this Cause was held in Room 224 of the National City Center, 101 West Washington Street, Indianapolis, Indiana, at 10:00 a.m. on October 5, 2009. Joint

Petitioners and the Indiana Office of Utility Consumer Counselor (“OUCC”) appeared and participated at the hearing. No member of the general public appeared.

Based upon the evidence and applicable law, and being duly advised in the premises, the Commission now finds as follows:

1. **Commission Jurisdiction.** Due, legal, and proper notice of the public hearing in this Cause was given and published by the Commission as required by law. In the Phase II Declination Order, the Commission determined that Fowler Ridge II was a “public utility” under Ind. Code §§ 8-1-2-1 and 8-1-2.5-1 and an “energy utility” under Ind. Code § 8-1-2.5.2. However, pursuant to Ind. Code § 8-1-2.5-5, the Commission determined that it was in the public interest to decline to exercise its jurisdiction over Fowler Ridge II, with the exception of a few limited provisions that are detailed in the Phase II Declination Order. The Commission has jurisdiction over Joint Petitioners and the subject matter of this Cause.

2. **Joint Petitioners' Characteristics.** Fowler Ridge II is a limited liability company duly organized and existing under the laws of the State of Delaware. Fowler Ridge II's principal place of business is 4101 Winfield Road, Warrenville, IL 60555. Fowler Ridge II is an affiliate of Fowler Ridge, and its sole member is Fowler II Holdings LLC, a limited liability company existing under the laws of the State of Delaware with its principal place of business at 4101 Winfield Road, Warrenville, IL 60555. Fowler Ridge II and Fowler II Holdings are indirect, wholly-owned subsidiaries of BP Wind Energy North America, Inc. (“BPWENA”). BP America, Inc. (“BP”) is the ultimate parent corporation of BPWENA.

Dominion Fowler II is a limited liability company duly organized and existing under the laws of the Commonwealth of Virginia with its principal place of business at 120 Tredegar Street, Richmond, Virginia. Dominion Fowler II is an indirect, wholly owned subsidiary of Dominion Resources, Inc. (“DRI” or “Dominion”).

3. **The Fowler Ridge Wind Farm.** Originally, Fowler Ridge Wind Farm LLC (“Fowler Ridge”) proposed to develop a wind energy project in Benton County, Indiana (the “Wind Farm”). The sole member of Fowler Ridge is Fowler I Holdings LLC (“Fowler I Holdings”). Fowler I Holdings is owned 50% by Fowler Ridge Holdings LLC, a wholly-owned subsidiary of BPWENA and 50% by Dominion Fowler Ridge Wind, LLC (“Dominion Fowler Ridge Wind”), an indirect, wholly-owned subsidiary of Dominion. The Commission, in the Declination Order, declined jurisdiction and authorized Fowler Ridge to construct and operate the Wind Farm. The Wind Farm was to be developed in three phases: approximately 300 MW (“Phase I”), approximately 350 MW (“Phase II”), and approximately 100 MW (“Phase III”). Initially, it was expected that BP and Dominion, or their respective affiliates, would jointly develop Phase I and Phase II and that BP would develop Phase III. Upon the joint petition of Fowler Ridge and Fowler Ridge II, the Commission in its Phase II Declination Order approved the transfer of Phase II assets to Fowler Ridge II and ordered that Fowler Ridge II succeed to the declination of jurisdiction granted Fowler Ridge in the Declination Order.

4. **Relief Requested.** Joint Petitioners request that the Commission: (1) approve the transfer of certain assets and liabilities relating to a portion of Phase II of the Wind Farm from

Fowler Ridge II to Dominion Fowler II; (2) affirm that Dominion Fowler II will generally succeed to the Commission's declination of jurisdiction described in the Declination Order and the Phase II Declination Order in a manner that complies with all conditions set forth in both orders, after transfer of certain assets and liabilities relating to Phase IIB of the Wind Farm from Fowler Ridge II to Dominion Fowler II;¹ (3) approve or decline to exercise jurisdiction over the operation and maintenance of certain Wind Farm common facilities by a third party; (4) approve or decline to exercise jurisdiction over the location of Dominion Fowler II's books and records outside of the State; and (5) confirm that the Commission's declination of jurisdiction described in the Declination Order and the Phase II Declination Order will continue to apply to Fowler Ridge II, consistent with the conditions set forth in such orders.

5. Joint Petitioner's Evidence. The Joint Petitioners submitted the prefiled testimony of Emil Avram, the Director of Business Development for Dominion Resources Services, Inc. ("DRS"), the electric Generation Business Unit of Dominion Resources, Inc. ("DRI" or "Dominion").² The Joint Petitioners also prefiled testimony of Robert Myer, the Director of Asset Management for BPWENA.

A. Dominion Fowler II's Evidence

Mr. Avram described the Wind Farm as a wind energy project in Benton County, Indiana, developed through a joint venture between subsidiaries of BP and Dominion. He explained that the Wind Farm was to be developed in three phases: Phase I, consisting of approximately 300 MW; Phase II, consisting of approximately 350 MW; and Phase III, consisting of approximately 100 MW. Mr. Avram testified that BP and Dominion, or their respective affiliates, planned to jointly develop Phase I and Phase II, and that BP intended to develop Phase III on its own.

Mr. Avram testified that Fowler Ridge II and Dominion Fowler II are now proposing to divide the assets and interests of Phase II into two sub-phases, one, approximately 200 MW, to be developed by BP through Fowler Ridge II ("Phase IIA"), and one, approximately 150 MW, to be developed by Dominion through Dominion Fowler II ("Phase IIB"). Mr. Avram explained that the reason for the division of Phase II was because the companies have different timelines for the construction and operation of the 350 MW Phase II portion of the Wind Farm. He explained that the separation of Phase II into sub-phases will allow BP and Dominion Fowler II to develop their respective portions of Phase II according to their own needs and timelines. Mr. Avram emphasized that dividing Phase II into sub-phases IIA and IIB will not affect the ownership or operation of Phase I of the Wind Farm, and that the land rights as well as the Interconnection Service Agreement and any applicable permits, etc., will be similarly split. Mr. Avram further testified that closing on the division of development assets is expected to take place in the fourth quarter of 2009 after which time each entity will own, develop and operate its own Phase II wind facility, and there will be no longer be common ownership for Phase II other

¹ Dominion Fowler II is requesting that the Commission reserve the right to terminate the declination of jurisdiction if Dominion Fowler II suspends the project and does not reinstate it by February 2013 (instead of the 3-year suspension/reinstatement period prescribed in Cause No. 43338).

² DRS is a wholly-owned subsidiary of DRI as is Joint Petitioner, Dominion Fowler Ridge Wind II, LLC ("Dominion Fowler II"), which is an indirect, wholly-owned subsidiary of DRI.

than the joint ownership of certain common facilities shared between two or more of the Fowler Ridge phases as outlined below.

Mr. Avram testified that construction was completed on Phase I which achieved commercial operation in March 2009. Mr. Myer testified that Phase III began commercial operation in March 2009 and that BP has begun construction and intends to continue development and construction of 200 MW of Phase IIA with an estimated commercial operation date in the first quarter 2010. Mr. Avram explained that Dominion Fowler II will continue development of the remaining 150 MW of Phase IIB, which has an estimated commercial operation date no earlier than the fourth quarter 2011 or first quarter 2012.

Mr. Avram also described the proposed transfer of certain assets and liabilities relating to "Phase IIB" to Dominion Fowler II. Specifically, Mr. Avram testified that the Phase IIB assets to be transferred from Fowler Ridge II to Dominion Fowler II are defined in an Asset Purchase Agreement between the parties and include: wind energy easement agreements related to Phase IIB; transmission agreements (easements and warranty deeds) related to Phase IIB; an undivided share of the common facilities applicable to Phase IIB; various permits and notices relating to Phase IIB; various environmental site assessments, site characterization reports, etc., relating to Phase IIB; various pole lines, and conditional use permits and local county council resolutions relating to Phase IIB. The liabilities to be assumed by Dominion Fowler II are likewise defined in the Asset Purchase Agreement and generally include: losses related to Phase IIB or the Phase IIB assets arising on or after the closing date; and losses arising prior to, on or after the closing date resulting from violations of any hazardous substances laws or environmental laws with respect to Phase IIB or the Phase IIB assets (except to the extent caused by the action or inaction of BP or its affiliates).

Mr. Avram testified that Dominion Fowler II and Fowler Ridge II plan to use or procure and construct certain electrical transmission, operations and maintenance, communications and other facilities for common use by several phases of the Wind Farm. He explained that the commonly-owned facilities will include a substation, switchyard facilities, transmission lines, isolation equipment, a spare transformer, communication assets, and certain related real property and easements. Mr. Avram testified that AE Power Services LLC ("AE Power"), an affiliate of BP, will operate and maintain these common facilities pursuant to a "Shared Assets Operation and Maintenance Management Agreement," in accordance with prudent wind energy practices, the requirements of any financing agreements, and all applicable laws. Mr. Avram opined that Dominion Fowler II, in conjunction with AE Power, has the necessary technical, financial and managerial capability to construct, own, operate and finance Phase IIB of the Wind Farm.

With regard to Dominion Fowler II's technical, financial, and managerial capability to construct, own, operate, and finance Phase IIB of the Wind Farm, Mr. Avram explained that Dominion (the ultimate parent company of Dominion Fowler II) and its affiliates own and operate more than 27,400 megawatts of generating assets, in both regulated and non-regulated environments. He described Dominion's generating assets and noted that they consist of coal-fired, nuclear, natural gas-fired, oil-fired, hydro, biomass, and wind energy facilities. In addition to the development of the Fowler Ridge Wind Farm in Indiana, Mr. Avram stated that Dominion has a 50% interest in the 264 MW NedPower Mount Storm wind energy facility in West

Virginia, which is fully operational. He emphasized that Dominion's broad operations and asset management experience and its proven track record of exceptional operating performance across all these technologies, including wind energy, will be utilized in the development, construction, and operation of Phase IIB. He further stated that Dominion and its affiliates have approximately 18,000 employees and through DRS, which is Dominion's shared services company, Dominion Fowler II will have access to Dominion's vast network of experienced and technically proficient employees. Mr. Avram testified that Dominion will provide Dominion Fowler II with necessary financial, technical and managerial expertise required to construct and operate Phase IIB of the Fowler Ridge Wind Farm, and Dominion Fowler II will operate Phase IIB in a commercially reasonable manner in accordance with good utility practice.

With regard to Dominion Fowler II's financial capability, Mr. Avram explained that through Dominion, Dominion Fowler II has the ability to finance Phase IIB of the Fowler Ridge Wind Farm. Dominion is a publicly traded company listed on the New York Stock Exchange with a market capitalization of approximately \$20 billion (as of June 30, 2009) and total assets of approximately \$42 billion (as of the end of 2008). Dominion's credit quality is strong: its senior unsecured credit is currently rated "A-" by Standard & Poor's, "Baa2" by Moody's, and "BBB+" by Fitch Ratings, all with "stable" outlooks.

Mr. Avram testified that Dominion Fowler II and BP have requested that PJM split the Interconnection Agreement into two separate Interconnection Agreements, one for Phase IIA and one for Phase IIB. He explained that the forms of the new Interconnection Agreements for Phase IIA and Phase IIB are currently being negotiated with PJM and that Dominion anticipates having the process complete by approximately October 15, 2009. Mr. Avram stated that the Improvement Location Permit ("ILP") for the Wind Farm is valid until March 1, 2011 and as it applies to Phase IIB, will be among the assets transferred to Dominion Fowler II. He explained that the transmission route, which is already in place, will remain the same as for Phase I and Phase II. Mr. Avram testified that the electrical system for Phase IIB turbines will connect into the existing transmission route utilized for Phase I and III. Mr. Avram testified that Dominion is not affiliated with any Indiana retail electric utilities but that a Dominion affiliate owns and operates the State Line electric generating facility in northern Indiana, which does not sell retail electricity in Indiana.

Mr. Avram also testified about the background of this Cause and described the Commission's November 20, 2007 Order in Cause No. 43338 in which the Commission partially declined to exercise its jurisdiction over the Fowler Ridge Wind Farm, LLC and its construction, operating and financing of the Wind Farm. He also explained the Commission's June 4, 2008 Orders in Cause Nos. 43443 and 43444, in which the Commission approved the transfer of certain assets from Fowler Ridge to Fowler Ridge II and Fowler Ridge III Wind Farm LLC ("Fowler Ridge IIP") so as to allow Phases I, II, and III to be constructed by separate entities. He explained that in so doing, the Commission determined that the same provisions of declination of jurisdiction as contained in the November 20, 2007 Order in Cause No. 43338 should be provided to Fowler Ridge II and Fowler Ridge III. In his testimony, Mr. Avram requested that the same declination of jurisdiction be granted to Dominion Fowler II with one small change. Because the current interconnection agreement with PJM extends through February 2013, Mr. Avram requested on behalf of Dominion Fowler II that the Commission reserve the right to

terminate the declination of jurisdiction if Dominion Fowler II were to suspend the project and not reinstate it by February 2013 (instead of a 3-year suspension/reinstatement period prescribed in Cause No. 43338).

Finally, Mr. Avram committed that Dominion Fowler II will abide by the terms and conditions of the previous Commission orders relating to the Wind Farm.

B. Fowler Ridge II's Evidence

Mr. Myer testified that Fowler Ridge II will continue to have the requisite technical, financial and managerial capability to construct, own, operate and finance Phase IIA of the Wind Farm without Dominion ownership. He stated that the parent companies of Fowler Ridge II have both constructed and operated electric generating facilities powered by wind. BPWENA has an ownership interest in 1000 MW of wind energy and is currently operating over 750 MW of wind energy facilities in the United States. Mr. Myer described Fowler Ridge II's ability to finance Phase IIA based on the fact that BP is the ultimate parent corporation of BPWENA. BP is a publicly traded company listed on the New York Stock Exchange with a market capitalization of approximately \$157 billion as of August 14, 2009.

Mr. Myer testified that AE Power will operate the common facilities and that AE Power has the requisite expertise in the management, operation, and maintenance of wind farms and has the expertise to operate the common facilities. Mr. Myer explained that the AE Power facility manager is an Electrical Engineer with 27 years experience in power generation and has managed large power facilities for GE, Duke Energy and Southern Company. The AE Power Senior Technician that oversees the majority of the common facilities has 10 years power experience and is a Mechanical Engineer. AE Power has three additional Senior Technicians supporting the team, each with significant wind experience. Mr. Myer also explained that as an affiliate of Fowler Ridge II, AE Power has all of the capabilities that Fowler Ridge II possesses to operate the Facility, specifically the common facilities for Phase IIA and Phase IIB.

6. **OUCC's Evidence.** Mr. Ronald Keen, a Senior Analyst within the Resource Planning, Emerging Technologies, and Telecommunications Division (RPETT) briefly described the Joint Petitioners and their request to transfer certain assets and liabilities relating to Phase II of the Wind Farm from Fowler Ridge II to Dominion Fowler II. Mr. Keen testified in support of the Joint Petitioners' request that the Commission allow the transfer of some of the assets and liabilities relating to Phase II of the Wind Farm.

Mr. Keen testified that the OUCC believes the Commission should not exercise jurisdiction because the Commission found that Fowler Ridge II had the requisite technical, financial, and managerial capabilities to manage the Facility in IURC Docket No. 43443 and that AE Power, as an affiliate of Fowler Ridge II, should also possess the necessary technical, financial, and managerial capabilities to operate the common facilities for Phase IIA and IIB.

Mr. Keen testified that the Wind Farm serves the public interest because it will offer the consumer a renewable, emission-free resource which will have a positive impact on the state's

economy through job creation and boosts to the local economy. Finally, Mr. Keen testified that the OUCC recommends the Commission approve the Joint Petitioners' request.

7. **Commission Discussion and Findings.** In the Phase II Declination Order, we found that Fowler Ridge II was a "public utility" within the meaning of Ind. Code § 8-1-2-1, but, pursuant to Ind. Code § 8-1-2.5-5, determined that it was in the public interest to decline to exercise our jurisdiction over Fowler Ridge II with the exception of a few limited provisions that are detailed in the Order. Among the exceptions was a paragraph entitled "Transfers of Ownership." In that paragraph we stated "a third-party owner and operator may succeed to Petitioner's declination of jurisdiction, provided: (1) the Commission determines that the successor has the necessary technical, financial, and managerial capability to own and operate the Facility; and (2) the successor agrees to the same terms and conditions imposed on Petitioner as set forth in this Order."

We first examine the technical, financial, and managerial capability of Dominion Fowler II after the transfer. We find that Dominion Fowler II as a subsidiary of DRI has the requisite technical, financial, and managerial capability to operate a portion of Phase II of the Wind Farm. In his testimony, Mr. Avram explains that Dominion Fowler II will be operated in essentially the same manner after the transfer of assets and liabilities from Fowler Ridge II to Dominion Fowler II. Mr. Avram described DRI's extensive technical and managerial experience in operating electrical generation facilities. Additionally, he provided a copy of the DRI's Annual Report that demonstrates the financial abilities of DRI and its subsidiary, Dominion Fowler II. Therefore, we find that Dominion Fowler II possesses the necessary technical, financial, and managerial capability to own and operate Phase IIB of the Wind Farm.

Mr. Avram also explained that, after the transfer of certain assets related to a portion of Phase II to Dominion Fowler II, Dominion Fowler II will abide by the terms and conditions of the Phase II Declination Order. However, because the current interconnection agreement with PJM Interconnection L.L.C. extends through February 2013, Dominion Fowler II requests that, instead of the 3-year suspension/reinstatement period prescribed in the Phase II Declination Order, the Commission reserve the right to terminate the declination of jurisdiction if Dominion Fowler II were to suspend the project and not reinstate it by February 2013. Based on the evidence presented, the Commission finds that the transfer proposed herein should be approved and that Dominion Fowler II should be permitted to operate under the declination of jurisdiction granted in the Declination Order and the Phase II Declination Order. Dominion Fowler II shall be bound by the terms and conditions set out in the Declination Order and Phase II Declination Order, except with respect to the suspension/reinstatement period, which is extended to February 2013.

In addition, we find that AE Power, the proposed operator of the common facilities, possesses the requisite expertise in the management, operation, and maintenance of wind farms and has the expertise to operate the common facilities. In addition to the specific expertise outlined by Mr. Myer, as an affiliate of Fowler Ridge II, AE Power has all of the capabilities that Fowler Ridge II possesses to operate the Facility. A copy of the Shared Assets Operation and Maintenance Management Agreement was offered into evidence. Accordingly, we approve the operation and maintenance of such common facilities by AE Power.

Finally, we approve Dominion Fowler II's request to keep the location of its books and records outside of the State, on the condition that Dominion Fowler II will make such books and records available to the Commission and the Office of the Utility Consumer Counselor within a reasonable time should such be necessary in the future.

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. Fowler Ridge II is authorized to transfer all of its franchise, works or system related to Phase IIB, including but not limited to, assets related to Phase IIB and the privileges, construction, operating and financing authority and reporting obligations related to Phase IIB under the Phase II Declination Order to Dominion Fowler II. Fowler Ridge II shall maintain its declination of jurisdiction with respect to Phase IIA. Fowler Ridge II shall continue its reporting and other obligations with respect to Phase IIA as required by the Declination Order.
2. Dominion Fowler II has the technical, managerial, and financial capability to construct, own, operate and finance the Phase IIB Wind Farm and complies, or shall comply, with the criteria described in the Phase II Declination Order for continued declination of jurisdiction over Phase IIB;
3. Upon completion of the transfer of the Phase IIB assets, Dominion Fowler II shall succeed to all of the terms and conditions of the Declination Order and Phase II Declination Order as they pertain to Phase IIB, with the modification of the suspension/reinstatement period to February 2013, as set forth in Finding Paragraph No. 7 above;
4. The Commission approves the contract for operation and maintenance of certain common facilities by AE Power;
5. The Commission approves the keeping of Dominion Fowler II's public utility books and records outside of the State provided such records are made available to the Commission and the OUCC within a reasonable time upon request;
6. Dominion Fowler II shall comply fully with the terms of this Order and submit to the Commission all information required by the terms of this Order.
7. The Commission finds that the Joint Petitioners shall provide the name, address, and telephone number of a contact person within ten (10) days of this Order, and ensure that such contact information is updated as necessary. This information shall be provided to the Commission's Electricity Division.

8. This Order shall be effective on and after the date of its approval.

HARDY, ATTERHOLT, GOLC, LANDIS AND ZIEGNER CONCUR:

APPROVED: NOV 24 2009

**I hereby certify that the above is a true
and correct copy of the Order as approved.**

A handwritten signature in cursive script that reads "Brenda A. Howe". The signature is written in black ink and is positioned above the printed name and title.

**Brenda A. Howe
Secretary to the Commission**