

CONFIDENTIAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

VERIFIED JOINT PETITION OF BP WIND)
ENERGY NORTH AMERICA INC., AND)
DOMINION FOWLER RIDGE WIND II, LLC)
FOR APPROVAL OF THE TRANSFER OF)
DOMINION FOWLER RIDGE WIND II, LLC'S)
FRANCHISE, WORKS, OR SYSTEM TO BP)
WIND ENERGY NORTH AMERICA INC.)
PURSUANT TO PARAGRAPH 7(C) OF THE)
FINAL ORDER IN CAUSE NO. 43443 AND FOR)
CONTINUED DECLINATION OF THE)
COMMISSION'S JURISDICTION OVER)
DOMINION FOWLER RIDGE WIND II, LLC)
AND THE PORTIONS OF THE POWER)
GENERATING FACILITY TRANSFERRED TO)
BP WIND ENERGY NORTH AMERICA INC.)
PURSUANT TO INDIANA CODE 8-1-2.5-5)

CAUSE NO. 43986

APPROVED: MAR 17 2011

BY THE COMMISSION:

Carolene Mays, Commissioner
Lorraine L. Seyfried, Administrative Law Judge

On January 13, 2011, Joint Petitioners, BP Wind Energy North America Inc. ("BPWENA") and Dominion Fowler Ridge Wind II, LLC ("Dominion Fowler II") (together, "Joint Petitioners") filed a Verified Joint Petition with the Indiana Utility Regulatory Commission ("Commission") initiating this Cause.

Pursuant to notice as provided by law, an Evidentiary Hearing in this Cause was held on March 7, 2011 at 9:30 a.m., in Room 222 of PNC Center, 101 West Washington Street, Indianapolis, Indiana. Joint Petitioners and the Indiana Office of Utility Consumer Counselor ("OUCC") appeared and presented their evidence at the Evidentiary Hearing. No members 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. Joint Petitioners' Characteristics. BPWENA is a corporation organized and existing under the laws of the Commonwealth of Virginia. BPWENA's principal place of business is 700 Louisiana Street, 33rd Floor, Houston, Texas 77002. BPWENA is an indirect, wholly-owned subsidiary of BP p.l.c. ("BP"), a company organized under the laws of England and Wales with its international headquarters in London, UK and its U.S. headquarters in Houston, Texas.

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. (“Dominion”).

2. The Fowler Ridge Wind Farm. In 2007, Fowler Ridge Wind Farm LLC (“Fowler Ridge”) was proposing to develop a wind-powered energy project in Benton County, Indiana (“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, an indirect, wholly-owned subsidiary of Dominion. The Commission, in the November 20, 2007 Order in Cause No. 43338 (“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 BPWENA and Dominion, or their respective affiliates, would jointly develop Phase I and Phase II and that BPWENA would develop Phase III. Upon the joint petition of Fowler Ridge and Fowler Ridge II Wind Farm LLC (“Fowler Ridge II”), the Commission in its June 4, 2008 Order in Cause No. 43443 (“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.

In Cause No. 43747 (“Phase IIB Declination Order”), Fowler Ridge II transferred to Dominion Fowler II the assets and interests of 150 MW of Phase II (“Phase IIB”). The Petition indicates that the Parties agreed to refer publicly to these phases as Fowler II (BPWENA’s remaining 200 MW) and Fowler IV (Dominion’s 150 MW). In addition, certain Phase IIB facilities were to be operated and maintained by AE Power Services LLC (“AE Power”), a limited liability company duly organized under the laws of the Commonwealth of Virginia and an affiliate of BPWENA and Fowler Ridge II, because AE Power has expertise in the management, operation, and maintenance of wind farms.

3. 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 8-1-8.5-1 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, including Paragraph 7(c) of the Phase II Declination Order which provides in pertinent part that a third-party owner and operator may succeed to Fowler Ridge II’s declination of jurisdiction, provided: (1) the Commission determines that the successor has the necessary technical, financial and managerial capability to own and operate Phase II; and (2) the successor satisfies the same terms and conditions imposed on Fowler Ridge II as set forth in the Phase II Declination Order. The Commission has jurisdiction over Joint Petitioners and the subject matter of this Cause.

4. **Relief Requested.** Joint Petitioners request the Commission: (1) approve the transfer of the limited liability company (“LLC”) membership interests owned by Dominion Wind Projects, Inc. (“Dominion Wind”) in Dominion Fowler II to BPWENA; (2) find that the new project company to be owned and operated by BPWENA (“Project Company”) possesses the technical, managerial, and financial capability to construct, own, operate and finance Phase IIB of the Fowler Ridge Wind Farm and thus meets the criteria of declination of jurisdiction outlined in the Commission’s Orders in Cause Nos. 43338, 43443 and 43747; (3) decline to exercise jurisdiction with respect to the requirement found in Ind. Code § 8-1-2-15 and 170 IAC 4-1-3 that records be kept within the State at the principal place of business of the public utility (or alternatively, approve keeping such records outside of the State); and (4) pursuant to Ind. Code § 8-1-2.5-5 and the Commission’s Orders in Cause Nos. 43338, 43443, and 43747, find that the Project Company will continue to meet the criteria for succeeding to, and succeeds to, all of the terms and conditions of the Commission’s previous declination of jurisdiction with respect to Phase IIB, including but not limited to the authority to construct, own, operate and finance a wind generating facility.

5. **Joint Petitioner’s Evidence.** The Joint Petitioners submitted the prefiled testimony of Emil Avram, the Director of Business Development for the electric generation business unit of Dominion. The Joint Petitioners also submitted the prefiled testimony of Robert Myer, the Director of Asset Management for BPWENA.

A. **Dominion Fowler II’s Evidence.** Mr. Avram explained Dominion Wind’s decision to transfer its LLC interests in Dominion Fowler II to BPWENA. Mr. Avram testified that Dominion Fowler II has continued to preserve the development status of Phase IIB. He testified that Dominion Fowler II was granted an extension of the conditional use permit issued by the Benton County Board of Zoning Appeals. He also testified that Dominion has maintained the wind energy easement agreements and other land rights and permits for the project, and has filed reports with the Commission. Finally, Mr. Avram testified to the reasoning behind its sale of Phase IIB of the Wind Farm, indicating that Dominion recently made a broader corporate decision to shift its focus to traditional regulated utility business.

B. **BPWENA’s Evidence.** Mr. Myer testified that the Joint Petitioners are seeking an order from the Commission approving the transfer of the LLC membership interests in Dominion Fowler II to BPWENA. He testified that the Project Company will become a wholly-owned subsidiary of BPWENA. After the transaction closes, BPWENA will rename the Project Company. At such time, BPWENA agreed to notify the Commission of the change in name. Mr. Myer testified that BPWENA currently anticipates commercial operation for Phase IIB in the fourth quarter of 2013.

Mr. Myer testified that BPWENA has an ownership interest in 1,330 MW of wind energy and is currently operating over 1,029 MW of wind energy facilities in the United States. Mr. Myer testified that BPWENA, through its other Fowler Ridge project companies, is operating approximately 600 MW of wind energy projects in Indiana. Mr. Myer described BPWENA’s ability to finance Phase IIB 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 \$145 billion as of January 6, 2011.

Mr. Myer testified that AE Power will continue to operate the common facilities for Phase IIA and Phase IIB. Mr. Myer testified that the Commission approved this agreement in Cause No. 43747. As a part of the purchase in this Cause, Mr. Myer testified that BPWENA is assuming the AE Power contract.

Finally, Mr. Myer testified that BPWENA and the Project Company agree to abide by the terms of the Phase II Declination Order and the Phase IIB Declination Order. He testified that BPWENA and the Project Company request the same treatment that the Commission granted to Fowler Ridge II in the Phase II Declination Order and to Dominion Fowler II in the Phase IIB Declination Order. Mr. Myer agreed to notify the Commission and the OUCC if the Project Company becomes an affiliate of a regulated Indiana retail utility. He also requested that the Project Company retain its right to use abandoned railroad rights-of-way and to use the public right-of-way as set out in the Phase IIB Declination Order. Mr. Myer testified that BPWENA was requesting that it be allowed to keep its public utility records outside of the State of Indiana.

6. Office of Utility Consumer Counselor. The prefiled testimony of Mr. Ronald Keen, a Senior Analyst within the Resource Planning and Communications Division was submitted on behalf of the OUCC. Mr. Keen's testimony briefly described the Joint Petitioners and their request to transfer certain assets and liabilities relating to Phase IIB of the Wind Farm from Dominion Fowler II to BPWENA. Mr. Keen testified in support of Joint Petitioners' request that the Commission allow the transfer of the LLC membership interests in Dominion Fowler II to BPWENA.

Mr. Keen testified that the Wind Farm is still a viable project and that there continues to be a need for additional electric generation capacity in Indiana. He indicated that according to the State Utility Forecasting Group at Purdue University, Indiana will have a need for an additional 480 MW of peaking, 300 MW of cycling, and 540 MW of baseload resources by 2015. 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. However, pursuant to Ind. Code § 8-1-2.5-5, we also determined that it was in the public interest to decline to exercise our jurisdiction over Fowler Ridge II with a few exceptions that are detailed in the Order. One of the exceptions included transfers of ownership. In the Phase II Declination Order, we stated "a third-party owner and operator may succeed to Fowler Ridge II's declination of jurisdiction, provided: (1) the Commission determines that the successor has the necessary technical, financial, and managerial capability to own and operate Phase II; and (2) the successor agrees to the same terms and conditions imposed on Fowler Ridge II as set forth in this Order." *Id.* at 6.

We first examine the technical, financial, and managerial capability of BPWENA. Based on the evidence presented, we find that BPWENA has the requisite technical, financial, and managerial capability to operate Phase IIB of the Wind Farm. In his testimony, Mr. Myer explained that the Project Company will be operated in essentially the same manner after the transfer of assets and liabilities from Dominion Fowler II to BPWENA. Mr. Myer described

BPWENA's technical and managerial experience in operating electrical generation facilities, including wind facilities. Additionally, he provided a copy of the BP's Annual Report that demonstrates the financial abilities of BP and its subsidiary, BPWENA. Therefore, we find that BPWENA possesses the necessary technical, financial, and managerial capability to own and operate Phase IIB of the Wind Farm.

In addition, we find that AE Power, the operator of the Phase IIA and Phase IIB common facilities, possesses the requisite expertise in the management, operation, and maintenance of wind farms and has the expertise to operate the common facilities. Accordingly, we approve the continued operation and maintenance of such common facilities by AE Power.

Mr. Myer also stipulated that, after the transfer to BPWENA, it will continue to abide by the terms and conditions of the Order in Cause Nos. 43443 and 43747. Therefore, the Commission finds that the transfer proposed herein should be approved and that BPWENA should be permitted to continue to operate under the declination of jurisdiction granted in the Orders in Cause Nos. 43338, 43443 and 43747. We further find that nothing in the Joint Petition in this Cause alters the declination granted to Fowler I in Cause No. 43338 or Fowler II in Cause No. 43443. Furthermore, BPWENA shall notify the Commission and provide the new name of the Project Company within thirty (30) days of effective date of the name change.

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

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

1. Dominion Wind Projects, Inc. is authorized to transfer all of its LLC membership interests in Dominion Fowler Ridge Wind II, LLC, and the associated privileges, construction, operating and financing authority and reporting obligations related to Phase IIB under the Phase II Declination Order to BPWENA.

2. BPWENA has the technical, managerial, and financial capability to construct, own, operate and finance the Phase IIB Wind Farm and meets 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 LLC membership interests, BPWENA shall succeed to all of the terms and conditions of the Declination Order, the Phase II Declination Order, and the Phase IIB Declination Order as they pertain to Phase IIB.

4. The Commission approves the contract for continued operation and maintenance of certain common facilities by AE Power.

5. The Commission approves the keeping of BPWENA's public utility books and records outside of the State provided such records are made available to the Commission and the

OUCG within a reasonable time upon request.

6. BPWENA shall file under this Cause the new name of the Project Company within thirty (30) days of the effective date of the name change.

7. BPWENA shall comply fully with the terms of this Order and submit to the Commission all information required by the terms of this Order.

8. The Commission finds that Joint Petitioner BPWENA shall file under this Cause 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.

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

ATTERHOLT, LANDIS, MAYS AND ZIEGNER CONCUR; BENNETT NOT PARTICIPATING:

APPROVED: MAR 17 2011

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


Brenda A. Howe,
Secretary to the Commission