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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

VERIFIED JOINT PETITION OF DUKE ENERGY)
RENEWABLES WIND, LLC AND APEX WIND I,)
LLC FOR APPROVAL OF THE TRANSFER OF)
THE FRANCHISE, WORKS, OR SYSTEM OF THE)
SPARTAN WINDPOWER PROJECT TO APEX)
WIND I, LLC AND FOR CONTINUED)
DECLINATION OF THE COMMISSION'S)
JURISDICTION OVER THE SPARTAN WIND)
POWER PROJECT AND THE POWER)
GENERATING FACILITY TRANSFERRED TO)
APEX WIND I, LLC PURSUANT TO INDIANA)
CODE 8-1-2.5-5)

CAUSE NO. 44440

APPROVED:

JUN 18 2014

ORDER OF THE COMMISSION

Presiding Officers:

David E. Ziegner, Commissioner

Jeffery A. Earl, Administrative Law Judge

On December 30, 2013, Joint Petitioners, Duke Energy Renewables Wind, LLC f/k/a DEGS Wind I, LLC (“Duke Wind”) and Apex Wind I, LLC (“Apex Wind”) (collectively, “Joint Petitioners”) filed a Verified Joint Petition with the Commission. On February 11, 2014, Joint Petitioners filed the testimony and exhibits of Mark Goodwin, President and Chief Operating Officer of Apex Clean Energy Holdings, LLC, and Milton R. Howard from Duke Energy Renewables, Inc. On February 19, 2014, Joint Petitioners filed confidential information pursuant to the February 17, 2014 Docket Entry granting preliminary confidential treatment.

On March 4, 2014, the Indiana Office of Utility Consumer Counselor (“OUCC”) prefiled the direct testimony and exhibits of Ronald L. Keen, Senior Analyst in the OUCC’s Resource Planning and Communications Division.

The Commission held an evidentiary hearing in this Cause at 1:30 p.m. on March 17, 2014, in Hearing Room 224, 101 West Washington Street, Indianapolis, Indiana. Joint Petitioners and the OUCC appeared at and participated in the hearing. No members of the general public appeared at or sought to participate in the hearing.

Based upon the evidence presented and the applicable law, the Commission finds:

- 1. Notice and Commission Jurisdiction.** Notice of the hearing in this Cause was given and published by the Commission as required by law. Duke Wind is a public utility as that term is defined in Ind. Code § 8-1-2-1(a) and an energy utility as that term is defined in Ind. Code § 8-1-2.5.2. As discussed further below, Apex Wind is also a public utility as that term is

defined in Ind. Code § 8-1-2-1(a) and an energy utility as that term is defined in Ind. Code § 8-1-2.5-2. Joint Petitioners seek certain determinations concerning the applicability of Ind. Code ch. 8-1-8.5 and request the Commission decline to exercise its jurisdiction under Ind. Code § 8-1-2.5-5. Therefore, the Commission has jurisdiction over Joint Petitioners and the subject matter of this Cause.

2. Joint Petitioners’ Characteristics. Duke Wind is a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business at 550 South Tryon, Charlotte, North Carolina. Duke Wind is a wholly-owned subsidiary of Duke Energy Renewables, Inc. and Duke Energy is its ultimate parent company.

Apex Wind is a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business at 310 4th Street N.E., Suite 200, Charlottesville, Virginia. Apex Wind is a wholly owned subsidiary of Apex Clean Energy Holdings, LLC.

3. Background and Relief Requested. In the March 3, 2010 Order in Cause No. 43781 (“Declination Order”), the Commission declined jurisdiction and authorized DEGS Wind I, LLC (On October 16, 2013, DEGS Wind I, LLC changed its name to Duke Energy Renewables Wind, LLC) to construct and operate the Spartan Windpower Project in Newton County, Indiana. However, the Commission retained jurisdiction over any transfer of the franchise, works, or system.

Joint Petitioners request that the Commission: (1) approve the transfer of the Spartan Windpower Project assets to Apex Wind; (2) find that Apex Wind possesses the technical, managerial, and financial capability to construct, own, operate, and finance the Project and meets the criteria for declination of jurisdiction outlined in the Commission’s Final order in Cause No. 43781; (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 Order in Cause No. 43781, find that Apex Wind succeeds to all of the terms and conditions of the Commission’s previous declination of jurisdiction with respect to the Spartan Windpower Project, including the authority to construct, own, operate, and finance a wind generating facility.

4. Joint Petitioner’s Evidence.

A. Duke Wind. Mr. Howard testified that on December 30, 2013, Duke Wind transferred its interests in the real estate described in Joint Petitioners – Duke Exh. A to Apex Wind. The documents concerning the transfer of real estate included a provision that the transaction can be undone if the Commission does not approve of the transfer of assets from Duke Wind to Apex Wind. Mr. Howard testified that he understands that Apex Wind plans to continue to pursue the development of the Spartan Windpower Project. Finally, Mr. Howard testified that Apex Wind is requesting the same treatment related to this project that the Commission granted in the Declination Order. He also requested that Apex Wind retain the rights of a public utility to use the public right of way as set out in the Declination Order.

B. Apex Wind. Mr. Goodwin testified that upon approval of the proposed transfer, Apex Wind will create a special purpose limited liability company to serve as the project company holding all assets of the Spartan Windpower Project. The project company will be an indirect, wholly owned subsidiary of Apex Wind. Apex Wind will continue to develop Phase I and anticipates beginning commercial operation in the fourth quarter of 2016.

Mr. Goodwin testified that Apex Wind is one of the leading renewable energy developers in the United States. Apex Wind has completed the development and construction of a 300 MW project located in Oklahoma and owns several operating photovoltaic solar assets. Apex Wind's management team comprises experts from throughout the industry whose collective prior experience includes the development, financing, construction, and operation of approximately 9,660 MW in wind and solar energy facilities now in commercial operations in the United States.

Finally, Mr. Goodwin testified that Apex Wind agrees to abide by the terms of the Declination Order and requests the same treatment that the Commission granted to DEGS Wind I, LLC in the Phase I Declination Order. Mr. Goodwin agreed to notify the Commission if Apex Wind becomes an affiliate of a regulated Indiana retail utility. However, Mr. Goodwin testified that Apex Wind requested that it be allowed to keep its public utility records outside of the State of Indiana.

5. OUCC's Evidence. Mr. Keen testified that the OUCC recommends the Commission approve the Joint Petitioners' request to transfer of the assets of the Spartan Windpower Project from Duke Wind to Apex Wind. Mr. Keen testified that the Spartan Windpower Project is still a viable project. The OUCC believes that both Duke Wind and Apex Wind have met and will continue to satisfy the definition of "public utility" under Ind. Code § 8-1-8.5-1. However, the OUCC believes that it is in the public interest for the Commission to partially decline to exercise jurisdiction over Apex Wind because, based on its performance with regard to other energy projects, Apex Wind possesses the necessary technical, financial, and managerial capabilities to operate the Spartan Windpower Project. Mr. Keen also testified that there continues to be a need for additional electric generation capacity in Indiana.

6. Commission Discussion and Findings. In the Declination Order, we found that Duke Wind 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 Duke Wind with the exception of a few limited provisions that are detailed in the Declination Order. Among the exceptions was a paragraph titled "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."

With respect to financial ability, Mr. Goodwin testified that Apex Wind would seek project financing for the Spartan Windpower Project. Apex successfully financed its 300 MW Canadian Hills project in a similar manner, and is currently in the process of financing three

other projects of a similar scale. Mr. Goodwin also submitted confidential financial statements of Apex Clean Energy Holdings, LLC and related companies.

With respect to technical and managerial capability, Mr. Goodwin testified that Apex Wind has comprehensive in-house capabilities in all aspects of project development, construction, and operation, including meteorology, engineering, geographic information system analysis, procurement, legal, financial modeling, project finance, construction management, and asset management. In December 2012, Apex Wind completed the development and construction of the 300 MW Canadian Hills project in Oklahoma.

Finally, Mr. Goodwin testified that after the transfer, Apex Wind will continue to abide by the terms and conditions of the Order in Cause No. 43781.

Based on the evidence presented, we find that Apex Wind has the technical, financial, and managerial capability to own and operate the Spartan Windpower Project. In addition, Apex Wind has agreed to the same terms and conditions imposed on Duke Wind in the Declination Order. Therefore, we approve the transfer of the Spartan Windpower Project assets from Duke Wind to Apex Wind. Apex Wind may continue to operate under the declination of jurisdiction granted in the Order in Cause No. 43781. Apex Wind shall notify the Commission and provide the new name of the special purpose limited liability company to serve as the project company within 30 days of effective date of the establishment of the project company.

Finally, we approve Apex Wind's request to keep the location of its books and records outside of the State, on the condition that Apex Wind will make such books and records available to the Commission and the OUCG upon request.

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

1. Duke Energy Renewables Wind, LLC is authorized to transfer all of the assets of the Spartan Windpower Project to Apex Wind I, LLC.
2. Apex Wind shall succeed to all of the terms and conditions of the Declination Order.
3. Apex Wind may keep its public utility books and records outside of the State of Indiana provided such records are made available to the Commission and the OUCG upon request.
4. Apex Wind shall comply fully with the terms of this Order and submit to the Commission all information required by the terms of this Order; including the quarterly and annual reporting requirements set out in the Cause No. 43781 Order.
5. Apex Wind shall provide the name, address, and telephone number of a contact person within 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.

6. Apex Wind shall notify the Commission and provide the new name of the special purpose limited liability company to serve as the project company within 30 days of effective date of the establishment of the project company.
7. This Order shall be effective on and after the date of its approval.

STEPHAN, MAYS, AND ZIEGNER CONCUR; WEBER ABSENT:

APPROVED: JUN 18 2014

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



Brenda A. Howe
Secretary to the Commission