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UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Timbermill Wind, LLC

)

Docket No. EG24-___-000

**NOTICE OF SELF-CERTIFICATION OF
EXEMPT WHOLESALE GENERATOR STATUS**

Pursuant to the Public Utility Holding Company Act of 2005 (“PUHCA 2005”), enacted as part of the Energy Policy Act of 2005,¹ and Section 366.7 of the Rules and Regulations of the Federal Energy Regulatory Commission (the “Commission”),² Timbermill Wind, LLC (“Applicant”) hereby submits this Notice of Self-Certification of Exempt Wholesale Generator (“EWG”) Status. The Applicant is developing and will own an electric generating facility with a nameplate capacity of approximately 189 MW (AC) located in Chowan County, North Carolina (the “Eligible Facility”).

I. CORRESPONDENCE AND COMMUNICATIONS

All communications and correspondence regarding this Notice shall be directed to:

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II. DESCRIPTION OF APPLICANT

Applicant is the direct owner of the Eligible Facility, a new approximately 189 MW (AC) wind generation facility located in Chowan County, North Carolina. The Eligible Facility will be interconnected to the transmission facilities controlled by Virginia Electric and Power Company within the PJM Interconnection LLC (“PJM”) balancing authority area.³ Applicant estimates that

¹ EPAAct 2005, Pub. L. No. 109-58, 1261-80, 119 Stat. 594 (2005).

² 18 C.F.R. § 366.7.

³ Pursuant to 18 C.F.R. Part 35 Subpart H, the Applicant will submit the required relational database entry and e-tariff with an effective date prior to its initial jurisdictional power sale.

the plant will become operational during the fourth quarter of 2024. The Applicant is indirectly owned by vehicles managed under the control of Ares Management Corporation.

III. SELF CERTIFICATION OF EWG STATUS

The Commission's regulations require that an EWG be engaged directly, or indirectly through one or more affiliates, and exclusively in the business of owning and/or operating one or more eligible facilities and selling electric energy at wholesale.⁴ Consistent with the Commission's regulations, Applicant makes the following representations to certify that it will satisfy the requirements for EWG status:

1. Applicant will be engaged directly and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more "eligible facilities" and selling electric energy at wholesale, and the Eligible Facility will satisfy the definition of an "eligible facility" because it will be used for the generation of electric energy exclusively for sale at wholesale.

2. Applicant will not own any transmission facilities other than those interconnection facilities that are necessary to effect the wholesale sale of electric energy from the Eligible Facility, consistent with Commission precedent construing the definition of "eligible facility" under Section 32(a)(2) of PUHCA 1935.

3. No rate or charge for, or in connection with, the construction of the Eligible Facility, or for electric energy produced thereby, was in effect under the laws of any State on October 24, 1992 and, therefore, no State determination is required with respect to this filing.

4. There are no lease arrangements through which Applicant will lease the Eligible Facility to a public utility company or any other party.

5. Applicant does not sell electricity at retail to any customer. Accordingly, the Eligible Facility does not rely on the exception provided by Section 32(b) of PUHCA 1935 regarding foreign sales of power at retail.

⁴ See 18 C.F.R. §§ 366.7 and 366.1. Section 366.1 incorporates Sections 32(a)(2) through (4), and Sections 32(b) through (d) of the Public Utility Holding Company Act of 1935, 15 U.S.C. §§ 79z-5a(a)(2)-(4), 79z-5b(b)-(d) ("PUHCA 1935"), for the purposes of establishing or determining whether an entity qualifies for EWG status.

6. No portion of the Eligible Facility will be owned or operated by an “electric utility company” that is an “affiliate” or “associate company” of Applicant.

7. Applicant may engage in activities the Commission has previously determined to be “incidental” to an EWG’s primary business of owning and operating eligible facilities and selling electric energy exclusively at wholesale, including, but not necessarily limited to:

a. Wholesale marketing and brokering of electric energy that Applicant has not itself generated;⁵

b. Selling or reselling ancillary services and interconnected operations services at wholesale consistent with Commission precedent construing the exclusivity requirements of Section 32 of PUHCA;⁶

c. Risk management and hedging activities that are a necessary incident to participation in the energy markets (e.g., financial swap arrangements to cover price fluctuations associated with Applicant’s physical exposure of its wholesale sales of electric energy in the energy markets);⁷

d. The sale of byproducts of the generation of electric energy;⁸

e. Entering into contracts for transmission capacity solely to the extent necessary to effect sales at wholesale of electricity generated by Applicant or others;⁹

f. Reselling or reassigning excess transmission capacity originally obtained to effect a wholesale sale of electric energy;¹⁰

g. The purchase and sale of congestion revenue rights that Applicant needs for the Eligible Facility’s power sale operations;¹¹

⁵ See, e.g., Entergy Power Mktg. Corp., 73 FERC ¶ 61,063 (1995) and LG&E Power Mktg., Inc., 67 FERC ¶ 61,083 (1994).

⁶ See, e.g., Duke Energy Oakland, LLC, 83 FERC ¶ 61,304 (1998) and Sithe Framingham LLC, et al., 83 FERC ¶ 61,106 (1998).

⁷ See e.g., Sithe/Indep. Power Partners, L.P., 101 FERC ¶ 61,287, at P 6 n.4 (2002) (citing TXU (No. 5) Pty. Ltd., 92 FERC ¶ 61,170 (2000)).

⁸ See Richmond Power Enter., L.P. et al., 62 FERC ¶ 61,157 (1993).

⁹ See CNG Power Serv. Corp., 71 FERC ¶ 61,026, at pp. 61,103-104 (1995).

¹⁰ See e.g., id. and Compañía Hidroeléctrica Doña Julia S. De R.L., 85 FERC ¶ 61,336 (1998).

¹¹ See Duquesne Power, L.P., 106 FERC ¶ 61,104 (2004).

- h. Delivering fuel to third parties to generate electric power to be delivered by that third party to Applicant for sale at wholesale;¹²
- i. Trading emission allowances associated with the normal operations of the Eligible Facility;¹³
- j. The sale of “green” power certificates or credits associated with power produced by the Eligible Facility or other eligible facilities owned and/or operated by Applicant;¹⁴
- k. Sales of spare parts and/or equipment originally acquired in connection with the ownership and operation of the Eligible Facility when such spare parts and/or equipment have become excess to Applicant’s needs;¹⁵
- l. Engaging in certain project development and financing activities associated with the Eligible Facility, such as developing and constructing the Eligible Facility and additional generating facilities and other activities that may be required to achieve financial closing on an eligible facility or an EWG;¹⁶
- m. Leasing or renting property to third parties, provided that all revenues above one dollar (a nominal amount) from activities not reasonably incidental to the ownership or operation of the Eligible Facility and sales of electric energy at wholesale are donated to charity or transferred to a non-affiliate;¹⁷
- n. Entering into agreements relating to facilities to be shared with other entities and used in the operation of eligible facilities, as consistent with FERC EWG precedent;¹⁸ and
- o. Such other activities incidental to the sale of electric energy at wholesale that are consistent with the Commission’s EWG precedent.

¹² See CNG Power Serv. Corp., 71 FERC ¶ 61,378 (1995) and Southern Energy Mktg., Inc., 71 FERC ¶ 61,376 (1995).

¹³ See UGI Dev. Co., 89 FERC ¶ 61,192 (1999).

¹⁴ See Madison Windpower, LLC, 93 FERC ¶ 61,270 (2000).

¹⁵ See e.g., Blue Spruce Energy Ctr., LLC, 105 FERC ¶ 61,059 (2003).

¹⁶ See e.g., AEP Res., Project Mgmt. Co., 74 FERC ¶ 61,202 (1996); Southern Elec. Wholesale Generators, Inc., 66 FERC ¶ 61,264 (1994) and Empresa Valle Hermoso, S.A., 72 FERC ¶ 61,306 at p. 62,288 (1995).

¹⁷ See, e.g., Duke Energy Hot Spring, LLC, 98 FERC ¶ 61,287 (2002).

¹⁸ See Hardee Power Partners, Ltd., 104 FERC ¶ 61,327 at P 11 (2003).

In accordance with Section 366.7(a) of the Commission's regulations, a copy of this Notice is concurrently being served upon the North Carolina Utilities Commission.

III. CONCLUSION

For the foregoing reasons, Applicant respectfully requests that the Commission accept this Notice of Self-Certification of EWG Status.

Respectfully submitted,
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Dated: May 24, 2024

CC: North Carolina Utilities Commission