

**Zak, Alexandra**

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-Accession No.: 202003165045  
-Docket(s) No.: EG20-99-000  
-Filed By: Dakota Range III, LLC  
-Signed By: Catherine McCarthy, Josh Robichaud  
-Filing Type: Exempt Wholesale Generator Request  
-Filing Desc: Notice of Self-Certification of Exempt Wholesale Generator Status of Dakota Range III, LLC under EG20-99.  
-Submission Date/Time: 3/16/2020 11:51:09 AM  
-Filed Date: 3/16/2020 11:51:09 AM

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**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

Dakota Range III, LLC

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Docket No. EG20-\_\_\_\_-000

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

Pursuant to the Public Utility Holding Company Act of 2005 (“PUHCA 2005”),<sup>1</sup> as enacted in the Energy Policy Act of 2005<sup>2</sup> and Section 366.7 of the regulations of the Federal Energy Regulatory Commission (“FERC” or the “Commission”), 18 C.F.R. § 366.7, Dakota Range III, LLC (“Dakota Range”) hereby submits this Notice of Self-Certification as an Exempt Wholesale Generator (“EWG”) (“Notice”), as defined in Section 366.1 of the Commission’s regulations, 18 C.F.R. § 366.1.

**I. COMMUNICATIONS**

Please direct all correspondence and communications regarding this Notice to the individuals indicated below:

Catherine P. McCarthy  
Partner  
Bracewell LLP  
2001 M Street NW, Ste. 900  
Washington, DC 20036  
(202) 828-5839  
Cathy.McCarthy@bracewell.com

Jane A. Pearson  
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ENGIE North America Inc.  
1360 Post Oak Blvd, Ste. 400  
Houston, TX 77056  
(713) 636-1035  
Jane.Pearson@engie.com

Dakota Range requests that the foregoing persons be placed on the official service list for this proceeding.

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<sup>1</sup> 42 U.S.C. §§ 16451 *et seq.* (2018).

<sup>2</sup> Pub. L. No. 109-58, 119 Stat. 594 (2005).

## **II. PRINCIPAL PLACE OF BUSINESS**

Dakota Range's principal office is:

Dakota Range III, LLC  
c/o ENGIE North America Inc.  
1360 Post Oak Blvd, Ste. 400  
Houston, TX 77056

## **III. DESCRIPTION OF THE APPLICANT AND THE FACILITY**

Dakota Range is a Delaware limited liability company that has been formed for the purpose of developing, owning and operating the Dakota Range Wind Project, a 151.2 MW wind generation facility and associated interconnection facilities being constructed in Grant and Roberts Counties, South Dakota (the "Eligible Facility"). The Eligible Facility is under construction and has an expected in-service date of December 2020. The Eligible Facility is interconnected with the electric transmission system of Otter Tail Power Company within the Midcontinent Independent System Operator, Inc. ("MISO") balancing authority area ("BAA"). The Eligible Facility includes a 345 kV transmission line running from the project substation to the point of interconnection (the "Transmission Interconnection Facilities"). The Transmission Interconnection Facilities are necessary to deliver electric energy from the Eligible Facility to the MISO transmission system.

Dakota Range is an indirect subsidiary of ENGIE Renewables NA LLC. ENGIE Renewables NA LLC is a direct subsidiary of ENGIE North America Inc. ENGIE North America Inc. is a direct subsidiary of ENGIE Holdings Inc., which is a direct subsidiary of ENGIE Énergie Services International S.A., which in turn is a direct subsidiary of ENGIE S.A. ("ENGIE"). ENGIE is a French *société anonyme* listed on the Brussels and Paris stock exchanges. Among other things, ENGIE holds ownership interests in a number of energy-related subsidiaries which, internationally,

engage in: the production, transmission, and distribution of electricity; power marketing; production, transportation and distribution of natural gas; the transport and distribution of liquefied natural gas; and the development and ownership of energy projects. ENGIE's energy-related subsidiaries operate in Europe, North America, South America, Africa, Asia, Australia, and the Middle East.

Once operational, Dakota Range will sell the electrical output of the Eligible Facility exclusively at wholesale pursuant to a long-term power purchase agreement with all sales being made at wholesale into the markets administered by MISO. Dakota Range's sole business is owning and operating the Eligible Facility.

#### **IV. REPRESENTATIONS**

Pursuant to Section 366.1 of the Commission's regulations, Dakota Range makes the following representations in support of its notice of self-certification of EWG status:

1. Dakota Range represents that it will be engaged directly, and exclusively, in the business of owning and having operational control of the Eligible Facility and selling, at wholesale, electric energy and other power services the Eligible Facility is capable of producing.<sup>3</sup>
2. The Dakota Range wind generation facility is an "eligible facility" as that term is defined in Section 32(a)(2) of PUHCA 2005, which is incorporated by reference into Section 366.1 of FERC's regulations.
3. All of the electric energy generation from the Eligible Facility will be sold within the United States exclusively at wholesale. Dakota Range will not make domestic or foreign sales at retail.

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<sup>3</sup> Dakota Range may engage in the sale of ancillary services as a by-product that is incidental to the wholesale electric energy sales from the Eligible Facility, as permitted by the Commission. *See, e.g., DTE Pontiac N. LLC*, 121 FERC ¶ 61,037 (2007); *see also, Sithe Framingham, LLC, et al.*, 83 FERC ¶ 61,106 (1998).

4. No rate or charge for, in connection with, the construction of the Eligible Facility, or for electric energy produced by the Eligible Facility, was in effect under the laws of the State of South Dakota, or any other State, on October 24, 1992. Therefore, no determinations are required to be made by any state commission prior to this self-certification of exempt wholesale generator status becoming effective.
5. The Eligible Facility does not include transmission or distribution facilities other than those interconnection facilities necessary to permit the Eligible Facility to connect to the existing transmission grid.
6. Dakota Range does not own or operate any portion of a facility that is partially owned or operated by an "electric utility company" that is an "affiliate" or "associate company" of Dakota Range, as those terms are defined in Section 366.1 of FERC's regulations, 18 C.F.R. § 366.1.
7. There are no leasing arrangements involving Dakota Range, including no leasing arrangements of any kind involving a public-utility company or an affiliate or associate company of a public-utility company.
8. Sales of electric energy generated and other power services the Eligible Facility is capable of producing will be consistent with the instant self-certification of EWG status sought by Dakota Range.
9. Dakota Range will not sell electric capacity or energy to an affiliated electric utility company.
10. Dakota Range 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 Dakota Range has not generated;<sup>4</sup>
- b. selling or reselling ancillary services and interconnected operations services at wholesale, such as operating reserves (spinning and supplemental reserves), reactive supply and voltage control, regulation and frequency response, energy imbalance, real power loss service, backup supply service, and restoration service, consistent with Commission precedent construing the exclusivity requirements of Section 32 of PUHCA;<sup>5</sup>
- c. the sale of the byproducts of the generation of electric energy;<sup>6</sup>
- d. delivering fuel to third parties to generate electric power to be delivered by that third party to Dakota Range for sale at wholesale;<sup>7</sup>
- e. entering into contracts for transmission capacity solely to the extent necessary to effect sales at wholesale of electricity generated by Dakota Range or others;<sup>8</sup>
- f. reselling or reassigning excess transmission capacity originally obtained to effect a wholesale sale of electric energy;<sup>9</sup>
- g. the purchase and sale of congestion revenue rights that Dakota Range needs for the Eligible Facility's power sale operations;<sup>10</sup>

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<sup>4</sup> See, e.g., *Entergy Power Mktg. Corp.*, 73 FERC ¶ 61,063 (1995); *LG&E Power Mktg., Inc.*, 67 FERC ¶ 61,083 (1994).

<sup>5</sup> See, e.g., *Duke Energy Oakland LLC*, 83 FERC ¶ 61,304 (1998); *Sithe Framingham, LLC, et al.*, 83 FERC ¶ 61,106 (1998).

<sup>6</sup> See *Richmond Power Enter., L.P. et al.*, 62 FERC ¶ 61,157 (1993).

<sup>7</sup> See *CNG Power Serv. Corp.*, 71 FERC ¶ 61,378 (1995); *Southern Energy Mktg., Inc.*, 71 FERC ¶ 1,376 (1995).

<sup>8</sup> See *CNG Power Serv. Corp.*, 71 FERC ¶ 61,026, at pp. 61,103-104 (1995).

<sup>9</sup> See e.g., *id.* and *Compañía Hidroeléctrica Doña Julia S. De R.L.*, 85 FERC ¶ 61,336 (1998).

<sup>10</sup> See *Duquesne Power, L.P.*, 106 FERC ¶ 61,104 (2004).

- h. entering into financial contracts, consistent with FERC EWG precedent;<sup>11</sup>
- i. trading environmental attributes associated with the normal operations of the Eligible Facility;<sup>12</sup>
- j. 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 Dakota Range's needs;<sup>13</sup>
- k. engaging in development activities, such as developing and constructing additional generating facilities;<sup>14</sup>
- l. 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;<sup>15</sup> and
- m. such other activities incidental to the sale of electric energy at wholesale that are consistent with the Commission's EWG precedent.

11. Dakota Range will notify the Commission of any material change in facts that may affect its eligibility for EWG status in accordance with the procedures set forth in 18 C.F.R. § 366.7(c).

## **V. SERVICE**

A copy of this Notice has been mailed, on this day, to the South Dakota Public Utilities Commission, the state regulatory authority in the state in which the Eligible Facility is located.

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<sup>11</sup> See *Sithe/Independence Power Partners, L.P.*, 101 FERC ¶ 61,287 (2002).

<sup>12</sup> See *UGI Dev. Co.*, 89 FERC ¶ 61,192 (1999).

<sup>13</sup> See e.g., *Blue Spruce Energy Ctr., LLC*, 105 FERC ¶ 61,059 (2003).

<sup>14</sup> See, e.g., *Empresa Valle Hermoso, S.A.*, 72 FERC ¶ 61,306 at p. 62,288 (1995).

<sup>15</sup> See *Hardee Power Partners, Ltd.*, 104 FERC ¶ 61,327 at P 11 (2003).

**VI. CONCLUSION**

For the foregoing reasons, Dakota Range respectfully requests that the Commission accept this Notice of Self-Certification as an Exempt Wholesale Generator.

Respectfully submitted,

/s/ Jane A. Pearson

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*Counsel for Dakota Range III, LLC*

Dated: March 16, 2020



**CERTIFICATE OF SERVICE**

I hereby certify that I have, on this day, caused the foregoing document to be served by first-class mail, postage prepaid, upon the following:

Secretary to the Commission  
South Dakota Public Utilities Commission  
Capitol Building, 1st floor  
500 E. Capitol Ave.  
Pierre, SD 57501-5070

/s/ Catherine P. McCarthy  
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Dated: March 16, 2020