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-Accession No.: 202308255228  
-Docket(s) No.: **EG23-264-000**  
-Filed By: North Bend Wind Project, LLC  
-Signed By: Cathy McCarthy, Josh Robichaud  
-Filing Type: Exempt Wholesale Generator Request  
-Filing Desc: North Bend Wind Project, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status under EG23-264.  
-Submission Date/Time: 8/25/2023 4:53:29 PM  
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AUG 31 2023

SOUTH DAKOTA PUBLIC  
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**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

North Bend Wind Project, LLC

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Docket No. EG23-\_\_\_\_-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, North Bend Wind Project, LLC (“North Bend Wind”) 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, Suite 900  
Washington, DC 20036  
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Cathy.McCarthy@bracewell.com

Jane A. Pearson  
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ENGIE North America Inc.  
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(713) 636-1035  
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North Bend Wind requests that the foregoing persons be placed on the official service list for this proceeding.

<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

North Bend Wind's principal office is:

North Bend Wind Project, LLC  
c/o ENGIE North America Inc.  
1360 Post Oak Blvd, Ste. 400  
Houston, TX 77056

## III. DESCRIPTION OF THE APPLICANT AND THE FACILITY

North Bend Wind is a Delaware limited liability company that has been formed for the purpose of developing, owning, and operating the North Bend Wind Project, an approximately 200 MW wind generation facility and associated interconnection facilities being constructed in Hughes County, South Dakota (the "Eligible Facility"). The Eligible Facility began construction in 2023 and has an expected in-service date in 2023. The Eligible Facility will be interconnected with the electric transmission system of Western Area Power Administration, within the Southwest Power Pool, Inc. ("SPP") balancing authority area.

North Bend Wind 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.<sup>3</sup> 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-

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<sup>3</sup> The French Republic (France) owns stock in ENGIE representing 23.64% of the share capital and 33.41% of the share voting rights. No other shareholder owns or controls a 10% or greater voting interest in ENGIE.

related subsidiaries operate in Europe, North America, South America, Africa, Asia, Australia, and the Middle East.

Once operational, North Bend Wind will sell the electrical output of the Eligible Facility exclusively at wholesale and currently has a long-term power sales agreement in place. North Bend Wind's sole business is owning and operating the Eligible Facility.

#### **IV. REPRESENTATIONS**

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

1. North Bend Wind 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.
2. The wind facility being developed by North Bend Wind will be an "eligible facility" because (i) it is used for the generation of electric energy exclusively for sale at wholesale;<sup>4</sup> and (ii) it includes only those limited and discrete interconnecting transmission facilities that are necessary to effect a sale of electric energy, capacity, or ancillary services, as applicable, at wholesale.
3. All of the electric energy discharged from the Eligible Facility will be sold within the United States exclusively at wholesale. North Bend Wind will not make domestic or foreign sales at retail.
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. North Bend Wind 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 North Bend Wind, as those terms are defined in Section 366.1 of FERC's regulations, 18 C.F.R. § 366.1.

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<sup>4</sup> North Bend Wind 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).

7. There are 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 North Bend Wind.
9. North Bend Wind will not sell electric capacity or energy to an affiliated electric utility company.
10. North Bend Wind 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 North Bend Wind has not generated;<sup>5</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 2005;<sup>6</sup>
  - c. entering into contracts for transmission capacity solely to the extent necessary to effect sales at wholesale of electricity generated by North Bend Wind or others;<sup>7</sup>
  - d. reselling or reassigning excess transmission capacity originally obtained to effect a wholesale sale of electric energy;<sup>8</sup>
  - e. the purchase and sale of congestion revenue rights that North Bend Wind needs for the Eligible Facility’s power sale operations;<sup>9</sup>
  - f. entering into financial contracts, consistent with FERC EWG precedent;<sup>10</sup>
  - g. trading environmental attributes associated with the normal operations of the Eligible Facility;<sup>11</sup>
  - h. 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 North Bend Wind’s needs;<sup>12</sup>

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<sup>5</sup> See, e.g., *Energy Power Mktg. Corp.*, 73 FERC ¶ 61,063 (1995); *LG&E Power Mktg., Inc.*, 67 FERC ¶ 61,083 (1994).

<sup>6</sup> See, e.g., *Duke Energy Oakland LLC*, 83 FERC ¶ 61,304 (1998); *Sithe Framingham, LLC, et al.*, 83 FERC ¶ 61,106.

<sup>7</sup> See *CNG Power Serv. Corp.*, 71 FERC ¶ 61,026, at pp. 61,103-104 (1995).

<sup>8</sup> See e.g., *id.* and *Compañía Hidroeléctrica Doña Julia S. De R.L.*, 85 FERC ¶ 61,336 (1998).

<sup>9</sup> See *Duquesne Power, L.P.*, 106 FERC ¶ 61,104 (2004).

<sup>10</sup> Consistent with EWG precedent, North Bend Wind has entered into a power purchase agreement with an unaffiliated third party that corresponds to the full output of the facility. See *Sithe/Independence Power Partners, L.P.*, 101 FERC ¶ 61,287 (2002).

<sup>11</sup> See *UGI Dev. Co.*, 89 FERC ¶ 61,192 (1999).

<sup>12</sup> See e.g., *Blue Spruce Energy Ctr., LLC*, 105 FERC ¶ 61,059 (2003).

- i. engaging in development activities, such as developing and constructing additional generating facilities;<sup>13</sup>
  - j. leasing or renting property to third parties, provided that all revenues from such activity not reasonably incidental to the ownership or operation of the Eligible Facility and sales of electric energy at wholesale are at a nominal amount or no compensation;<sup>14</sup>
  - k. 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>
  - l. entering into agreements related to real property for purposes of using that real property to construct and operate the Eligible Facility;<sup>16</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. North Bend Wind 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 served, 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>13</sup> See, e.g., *Empresa Valle Hermoso, S.A.*, 72 FERC ¶ 61,306 at p. 62,288 (1995).

<sup>14</sup> See, e.g., *Duke Energy Hot Spring, LLC*, 98 FERC ¶ 61,287 (2002); *PSEG Fossil, LLC*, 95 FERC ¶ 61,405 (2001).

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

<sup>16</sup> See *DTE Pontiac*, 121 FERC ¶ 61,037, at P 7 n. 6.

**VI. CONCLUSION**

For the foregoing reasons, North Bend Wind 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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Josh.Robichaud@bracewell.com

*Counsel for North Bend Wind Project, LLC*

Dated: August 25, 2023

**CERTIFICATE OF SERVICE**

I hereby certify that I have, on this day, caused the foregoing document to be served upon  
the South Dakota Public Utilities Commission.

Patricia Van Gerpen, Executive Director  
Capitol Building, 1st Floor  
500 E. Capitol Ave.  
Pierre, SD 57501-5070

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Dated: August 25, 2023