

May 6, 2025

Steve Kahl
Executive Director
North Dakota Public Service Commission
600 E. Boulevard Ave., Dept. 408
Bismarck, ND 58505

Re: Service of Notice of Exempt Wholesale Generator Status

Dear Executive Director Kahl:

Please find enclosed a copy of the Notice of Self-Certification of Exempt Wholesale Generator Status, filed today with the Federal Energy Regulatory Commission in Docket No. EG25-313-000 on behalf of Badger Wind, LLC

Respectfully submitted,

/s/ J. Porter Wiseman

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Counsel for Badger Wind, LLC

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

Badger Wind, LLC

)

Docket No. EG25-____-000

**NOTICE OF SELF-CERTIFICATION OF EXEMPT
WHOLESALE GENERATOR STATUS OF BADGER WIND, LLC**

Pursuant to the Public Utility Holding Company Act of 2005 (“PUHCA 2005”)¹ and Section 366.7(a) of the regulations of the Federal Energy Regulatory Commission (the “Commission”),² Badger Wind, LLC (“Badger Wind”) submits this notice of self-certification (“Notice”) of its status as an “exempt wholesale generator” (“EWG”) as defined in Section 366.1 of the Commission’s regulations.³

I. CORRESPONDENCE, COMMUNICATIONS, AND SERVICE

Badger Wind requests that all correspondence, communications, and service concerning this filing be directed to the following persons:

M. Hope Whitfield
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Orsted Onshore North America, LLC
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II. DESCRIPTION OF BADGER WIND AND THE PROJECT

Badger Wind is a Delaware limited liability company that is or will be engaged in the business of developing, constructing, owning, operating, maintaining, and/or selling electric

¹ 42 U.S.C. §§ 16451-16463 (2018); Pub. L. No. 109-58, §§ 1261-77, 119 Stat. 594, 972-78 (2005).

² 18 C.F.R. § 366.7(a) (2025).

³ *Id.* § 366.1.

energy capacity, and ancillary services from an approximately 250 MW wind powered generation facility and associated infrastructure (the “Project”) in Logan and Macintosh Counties, North Dakota, in the Midcontinent Independent System Operator, Inc. region, and to engage in all other lawful businesses activities consistent with EWG status. Badger Wind has filed a request for market-based rate authorization.⁴ The Project is currently expected to commence commercial operation by October 2025.

Badger Wind is a wholly-owned, direct subsidiary of Orsted Onshore North America, LLC. (“Orsted Onshore”), which is a wholly-owned direct subsidiary of Orsted Renewables N.A., LLC (“Orsted North America”). Orsted North America is a wholly-owned direct subsidiary of Orsted Holdings N.A., Inc. (“Orsted HoldCo”). Orsted HoldCo is a wholly-owned, direct subsidiary of Ørsted North America Holding A/S (“Orsted NA”), which in turn is a wholly-owned, direct subsidiary of Ørsted Wind Power Holding A/S (“Orsted Wind Power Holding”). Orsted Wind Power Holding is a wholly-owned, direct subsidiary of Ørsted A/S (“OAS”), a publicly listed Danish Company and a global developer of renewable energy projects. No entity holds a 10% or greater voting interest in OAS.

On April 16, 2025, Badger Wind and Montana-Dakota Utilities Co. (“MDU”) submitted an application pursuant to Section 203 of the Federal Power Act seeking Commission authorization for a transaction (the “Transaction”) pursuant to which MDU will acquire a 49% undivided ownership interest in the Project and Badger Wind will continue to hold a 51% undivided ownership interests in the Project.⁵ Badger Wind and MDU will also enter into a Co-Tenancy

⁴ See Application for Market-Based Rate Authorization and Requests for Certain Waivers, Blanket Authorizations, and Designation of Category 2 Status in the Central Region and Category 1 Status in All Other Regions, Docket No. ER25-1976-000 (filed April 16, 2025).

⁵ See Joint Application for Authorization under Section 203 of the Federal Power Act and Request for Waivers of the Part 33 Requirements and Expedited Consideration, Docket No. EC25-80-000 (April 24, 2025).

Agreement that sets forth their respective rights and obligations with respect to, among other things, the construction, co-ownership, and operation of the Project. Pursuant to the Co-Tenancy Agreement, Badger Wind and MDU will each have the right to use the interconnection facilities associated with the Project up to its respective undivided ownership interest (i.e., 51% for Badger Wind and 49% for MDU). The Transaction is anticipated to close upon commercial operation of the Project.

MDU is not an EWG. The Commission has on numerous occasions affirmed that an EWG can own a partial interest in a generating facility while the remainder is owned by a non-EWG. In such cases, only the portion of the facilities owned by the EWG constitute eligible facilities. For example, the Commission has allowed an eligible facility to consist of an undivided 50% interest in a steam-electric generating unit to be owned by an EWG, while the other 50% interest in the unit was owned by a traditional utility.⁶

III. REPRESENTATIONS REGARDING 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.⁷ Pursuant to Section 366.7(a) of the Commission's regulations, Badger Wind makes the following representations to demonstrate that it satisfies the requirements for EWG status:

1. Badger Wind represents that it will be engaged directly and exclusively, both prior to and after the Transaction, in the business of owning and operating the Project and selling electric

⁶ *FTM Energy, Inc.*, 74 FERC ¶ 61,312 (1996). See also *King Mt. Upton Wind, LLC*, 180 FERC ¶ 61,029 (2022).

⁷ See 18 C.F.R. § 366.1, which 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 purposes of establishing or determining whether an entity qualifies for EWG status.

energy at wholesale, except to the extent that Badger Wind may engage in certain activities incidental to the wholesale sale of electric energy that the Commission has determined do not violate the exclusivity requirement for EWG status. Such incidental activities might include, but are not necessarily limited to:

- the sale of ancillary services;⁸
- the resale or reassignment of excess transmission capacity;⁹
- the purchase and sale of congestion revenue rights needed to operate the Project;¹⁰
- certain project development and financing activities associated with the Project;¹¹
- the sale of “green” power certificates or credits consistent with the Commission’s limitation that an EWG may sell such certificates or credits where they are associated with power produced by the facility;¹²
- leasing or renting property to third parties, provided that all revenues above a nominal amount from activities not reasonably incidental to the ownership or operation of the Project and sales of electric energy at wholesale are donated to charity or transferred to a non-affiliate;¹³ and
- such other activities incidental to the sale of electric energy at wholesale that are consistent with the Commission’s EWG precedent.

2. Badger Wind represents that the Project will be, both before and after the Transaction, an “eligible facility,” as defined in Section 32(a)(2) of PUHCA 1935, as incorporated by reference in Section 1262(6) of PUHCA 2005,¹⁴ and Section 366.1 of the Commission’s

⁸ See, e.g., *Duke Energy Oakland LLC*, 83 FERC ¶ 61,304 (1998); *Sithe Framingham LLC*, 83 FERC ¶ 61,106 (1998).

⁹ See, e.g., *Compañia Hidroeléctrica Doña Julia S. De R.L.*, 85 FERC ¶ 61,336 (1998).

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

¹¹ See, e.g., *KeySpan-Ravenswood, Inc.*, 88 FERC ¶ 62,073 (1999); *AEP Res. Project Mgmt. Co.*, 74 FERC ¶ 61,202 (1996); *S. Elec. Wholesale Generators, Inc.*, 66 FERC ¶ 61,264 (1994).

¹² See *Madison Windpower, LLC*, 93 FERC ¶ 61,270 (2000).

¹³ See, e.g., *Duke Energy Hot Spring, LLC*, 98 FERC ¶ 61,287 (2002).

¹⁴ 42 U.S.C. § 16451(6).

regulations,¹⁵ because the Project will be used for the generation of electric energy exclusively for sale at wholesale.¹⁶

3. Badger Wind represents that, both before and after the Transaction, the Project will not include any transmission or distribution facilities other than those limited interconnection facilities necessary to interconnect the Project to the transmission grid and to permit the sale of the output of the Project at wholesale.

4. Badger Wind represents that it is not currently engaged in, and has no plans to engage in, any sales of power at retail. Both before and after the Transaction, all of the electric energy generated by the Project will be sold exclusively at wholesale.

5. Badger Wind represents that no portion of the Project is or will be owned or operated by an “electric utility company” that is an “affiliate” or “associate company” of Badger Wind, as such terms are defined in Section 366.1 of the Commission’s regulations.¹⁷

6. Badger Wind represents that there are no existing leasing arrangements involving the Project under which Badger Wind is the lessor.

7. Badger Wind represents that no rate or charge for, or in connection with, the construction of the Project, or for electric energy to be produced by the Project, was in effect under the laws of any state as of October 24, 1992. As such, no determination or certification by a state commission is necessary prior to certification of Badger Wind as an EWG.

¹⁵ 18 C.F.R. § 366.1.

¹⁶ In addition to generating facilities, “eligible facilities” include “interconnecting transmission facilities necessary to effect a sale of electric energy at wholesale.” 15 U.S.C. § 79z-5a(a)(2) (2000).

¹⁷ 18 C.F.R. § 366.1.

IV. SERVICE

Pursuant to Section 366.7(a) of the Commission's regulations,¹⁸ Badger Wind is serving a copy of this Notice on the North Dakota Public Service Commission, the state regulatory authority of the state in which the Project is located.

V. CONCLUSION

Based on the foregoing facts, statements, and representations, Badger Wind satisfies the requirements for EWG status.

Sincerely,

/s/ Chip Cannon

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Counsel for Badger Wind, LLC

May 6, 2025

¹⁸ *Id.* § 366.7(a).

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing *Notice of Self-Certification of Exempt Wholesale Generator Status of Badger Wind, LLC* on the North Dakota Public Service Commission.

Dated at Washington, D.C., this 6th day of May 2025.

/s/ Porter Wiseman

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