

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
New York on December 13, 2006

COMMISSIONERS PRESENT:

Patricia L. Acampora, Chairwoman
Maureen F. Harris
Robert E. Curry, Jr.
Cheryl A. Buley

CASE 06-E-1203 - Petition of Steel Winds Project LLC and Steel
Winds LLC for a Declaratory Ruling Regarding
the Application of §2(2-b), (2-d) and (13) of
the Public Service Law.

DECLARATORY RULING ON
ELECTRIC CORPORATION JURISDICTION

(Issued and Effective December 13, 2006)

BY THE COMMISSION:

BACKGROUND

By petition filed October 5, 2006, Steel Winds Project LLC (SWP) and Steel Winds LLC (SW) (collectively Petitioners) seek a declaratory ruling that they, as well as Tecumseh Redevelopment, Inc. (Tecumseh), are not subject to jurisdiction under the Public Service Law (PSL) as electric corporations.¹ Petitioners served the petition on persons and organizations potentially interested in this proceeding, pursuant to 16 NYCRR §8.2(b). No responses to the petition were submitted in the 21-day period prescribed in 16 NYCRR §8.2(c).

¹ Petitioners state that they have discussed the petition with Tecumseh, and have provided Tecumseh with a copy of the petition as filed.

THE PETITION

SWP plans to generate electricity using eight wind turbines with a total generating capacity of 20 megawatts (MW), connected by 13.8 kV collection lines (the Project). According to Petitioners, SWP will deliver the electricity, through Substation 11A, to nearby 115 kV electric transmission lines nos. 149 and 150, owned and operated by Niagara Mohawk Power Corporation d/b/a National Grid (National Grid).² SW plans to own the Substation, purchasing it from Tecumseh before the Project begins operating. Petitioners state that they will not own any electric generation or distribution assets, other than the Project and Substation 11A.³

According to Petitioners, SWP has commenced construction of the Project, which will be located on land leased from Tecumseh.⁴ Petitioners state that SW has entered into a Small Generator Interconnection Agreement with National Grid for this project; the petition contains a station one-line diagram of the Project and Substation 11A.

Tecumseh, explain Petitioners, is the successor in ownership to over 1,300 acres of property that was, until 1983, the Bethlehem Steel Lackawanna Plant. As part of its steel-making infrastructure, Bethlehem Steel operated several substations and a network of electric lines connecting its various component operations. One of the substations is Substation 11A, which interconnects with the two National Grid transmission lines.

Currently, Petitioners note, electricity is delivered by National Grid to Substation 11A, a facility owned by the customer, Tecumseh, with billing meters at the high side of the

² The Substation is located about 4,500 feet from the nearest wind turbine.

³ Both SWP and SW are affiliates of BQ Energy, LLC; SWP is also an affiliate of UPC Wind Management, LLC.

⁴ The eight wind turbines will be located on about 31 acres at the western end of Tecumseh's property near Lake Erie.

transformers. From the substation, electricity is delivered through 13.8 kV electric distribution lines that are owned by Tecumseh or its affiliates to Tecumseh and several of its tenants, which are treated as a single customer of National Grid. Petitioners maintain that none of the electricity is distributed by Tecumseh for sale to others. They state that SW will allow Tecumseh to continue to take delivery of electricity through Substation 11A.

Petitioners opine that, while Tecumseh owns and operates electric plant (and will continue to do so), it is not an electric corporation because it is a customer of National Grid that does not generate electricity; rather, it distributes electricity from a single metering point to tenants on its property. SW is not an electric corporation, assert Petitioners, because, although it will operate electric plant when it purchases Substation 11A from Tecumseh, its distribution of electricity is solely from an alternate energy production facility to users located at or near the project site. Petitioners claim as well that, while SWP will own and operate electric plant, it is not an electric corporation because it will generate electricity solely from an alternate energy production facility.

Petitioners contend that the "related facilities" entitled to the PSL exemption from regulation when part of an alternate energy production facility include all associated infrastructure needed to operate the wind facility, to interconnect the wind generators to the electric grid, and to distribute electricity to users at or near the project site. They argue that the electric collection system connecting the wind turbines owned by SWP to Substation 11A, and Substation 11A itself, which interconnects to the transmission grid, are necessary to the operation of the Project. Petitioners also allege that, in the event that Tecumseh and its tenants at some point in the future purchase electricity from SWP, the distribution lines connecting Substation 11A to these users

would be related facilities because they conduct electricity to users located at or near the project site.⁵

DISCUSSION AND CONCLUSION

While Tecumseh, SWP and SW clearly own electric plant, as defined in PSL § 2(12), whether they are electric corporations subject to regulation under the PSL depends upon the application of the exemptions from regulation set forth in the PSL. Applying those exemptions requires interpretation of the statutory language and an analysis of the facts Petitioners have submitted.

PSL §2(13), provides, in pertinent part:

The term "electric corporation" when used in this chapter, includes every corporation ... owning, operating or managing any electric plant except where electricity is generated or distributed by the producer solely on or through private property ... for its own use or the use of its tenants and not for sale to others.

Applying the Statute first to Tecumseh, it is a producer of electricity to the extent it purchases electricity from others, and it distributes such electricity solely on its own property for its own use or the use of its tenants. It does not distribute electricity for sale to users located on property owned by others. We conclude, therefore, that Tecumseh is not an electric corporation within the meaning of PSL §2(13).

While SWP is exempt from electric corporation regulation in its ownership of the wind turbines, an "alternate energy production facility," its ownership of the collection lines raises issues of statutory interpretation. By contrast, if SW were not an affiliate of a producer of electricity from

⁵ The users are located within approximately 0.6 miles from the wind turbines and one mile from Substation 11A.

wind turbines, it would be an electric corporation, since it will own Substation 11A and could distribute electricity on property owned by Tecumseh to users that are not SW's tenants. Thus, the inquiry as to the status of SWP and SW must proceed further.

The statutory provisions applicable to SWP and SW, PSL §§2(2-b), (2-d), 2(4) and (13), were enacted or amended in two different years. Chapter 553 of the Laws of 1980, inter alia, amended PSL §2(13), to read in pertinent part:

The term "electric corporation," when used in this chapter, includes every ... company ... owning, operating or managing any electric plant... except where electricity is generated or distributed by the producer solely from one or more... alternate energy production facilities.

Chapter 553 of the Laws of 1980 also added subdivision (2-b) to PSL §2, which reads in pertinent part:

The term "alternate energy production facility", when used in this chapter, includes any wind turbine facility... together with any related facilities located at the same site, with an electric generating capacity of up to eighty megawatts.

Chapter 843 of the Laws of 1981, subsequently amended PSL §2(13), so that it now reads in pertinent part:

The term "electric corporation," when used in this chapter, includes every ... company ... owning, operating or managing any electric plant... except where electricity is generated by the producer solely from one or more... alternate energy production facilities or distributed solely from one or

more of such facilities to users located at or near a project site.⁶

Chapter 843 of the Laws of 1981 also amended PSL §2(2-b), so that it now reads in pertinent part:

The term "alternate energy production facility," when used in this chapter, includes any... wind turbine... facility, together with any related facilities located at the same project site, with an electric generating capacity of up to eighty megawatts.

In addition, Chapter 843 of the Laws of 1981 added subdivision (2-d) to PSL §2, reading in pertinent part:

The term "related facilities" shall mean any land, work, system, building, improvement, instrumentality or thing necessary or convenient to the construction, completion or operation of any... alternate energy production... facility and include also such transmission or distribution facilities as may be necessary to conduct electricity... to users located at or near a project site.

As a result of the 1980 legislation, the term "alternate energy production facility" was defined to include wind turbines with an electric generating capacity of up to 80 MW, together with related facilities located at the same site. The 1980 legislation also exempted from the definition of "electric corporation" producers that generate or distribute electricity from alternate energy production facilities. The 1981 legislation adding Subdivision (2-d) to PSL §2 clarified

⁶ Similarly, §2(4) excludes from the definition of persons subject to the PSL, except for the purposes of Article VII, entities "generating electricity ... from one or more alternate energy production facilities or distributing electricity ... from ... such facilities to users located at or near a project site."

the extent to which such producers could distribute electricity without becoming subject to our jurisdiction as electric corporations, by providing that the distribution could extend only to users located at or near the site of such facilities. Moreover, the addition of subdivision (2-d) to PSL §2 came with a definition of the term "related facilities" that was previously included in PSL §2(2-b).

In defining the "related facilities" terminology included in the scope of an "alternate energy production facility," the 1981 legislation changed the phrase "located at the same site" in PSL §2(2-b) to "located at the same project site" (emphasis added). While the 1981 enactments also expanded exemptions from our jurisdiction beyond the statutory provisions at issue here (e.g., by the addition of a small hydro facility exemption and the broadening of the co-generation facility exemption), nothing in the enactments or their legislative history indicates that the statutory provisions in question should be interpreted in a manner that contradicts their plain meaning.

The "related facilities" that are included in the definition of "alternate energy production facility" therefore denotes those necessary or convenient facilities that are located "at the same project site" as the alternate energy production facility, and those facilities "located at or near the project site" necessary for transmission or distribution of gas, electricity or steam to end users. As to the phrase, "located at the same project site," neither the statutes nor our prior rulings and orders define it.⁷ Nonetheless, under the facts presented here, we conclude that SWP's collection lines and SW's substation are located at the same project site as SWP's wind turbines. All of these facilities are situated on the property of a single lessor, and the lines and substation

⁷ While the Declaratory Ruling issued April 27, 1990 in Case 90-M-0128 might indicate to the contrary, we will not follow that decision, which did not explicitly apply the "same project site" terminology.

are within one mile of the wind turbines. This unity of property interests and proximity of generators and other electric equipment is consistent with a reasonable design for a small wind project and justifies the conclusion that all of the SWP and SW facilities are components of one project located at the same site. Therefore, SWP and SW do not become electric corporations as a result of their ownership of the collection lines and substation.⁸

As to the phrase "located at or near the project site," PSL §2(2-d) distinguishes those facilities necessary for transmission and distribution to users located at or near a project site from the "related facilities" located at the same project site. PSL §2(4) and (13) then provide that the transmission and distribution facilities so located and used are exempt from regulation.

In previous declaratory rulings, it was concluded that the phrase "located at or near a project site" included lines distributing steam to users extending up to 1.9 miles from the project site, primarily over property owned by such users, and so those lines were related facilities.⁹ We see no reason to alter the previous declaratory rulings. Therefore, the 13.8 kV lines on Tecumseh's property designed to conduct electricity to users are related facilities, in the event that generation from the wind turbines is conveyed over them to Tecumseh or its tenants.

⁸ Even if it were decided that SWP and SW would be electric corporations, the Public Utility Regulatory Policies Act of 1978, 16 U.S.C.A. §824a-3 et. seq., would preempt much of our jurisdiction, except for that over safety and reliability. See Case 90-E-0599 Cogen Technologies Linden Venture, L.P., Declaratory Ruling (issued November 15, 1990)

⁹ See, e.g., Case 89-E-148, Nassau District Energy Corporation, Declaratory Ruling (issued September 27, 1989); and Case 93-M-0564, Nissequogue Cogen Partners, Declaratory Ruling (issued November 19, 1993).

The Commission finds and declares:

1. Tecumseh Redevelopment, Inc. is not an electric corporation within the meaning of Public Service Law §2(13).
2. Steel Winds Project LLC and Steel Winds LLC are not electric corporations within the meaning of Public Service Law §2(13) and are not persons within the meaning of Public Service Law §2(4) (except for the purposes of Public Service Law Article VII).
3. This proceeding is closed.

By the Commission,

(SIGNED)

JACLYN A. BRILLING
Secretary