

**UNITED STATES OF AMERICA 105 FERC ¶ 63,011
FEDERAL ENERGY REGULATORY COMMISSION**

Investigation of Certain Enron-Affiliated QFs	Docket Nos.	EL03-47-001
Painted Hills Wind Developers		QF85-738-001
Zond Systems, Inc.		QF83-48-001
Zond Systems, Inc.		QF84-283-001
Victory Garden Power Partners I LLC		QF99-92-003

INITIAL DECISION GRANTING SUMMARY DISPOSITION

(Issued November 4, 2003)

APPEARANCES

Catherine McCarthy, Esq., on behalf of Enron Wind, LLC; Painted Hills Wind Developers; Zond Systems, Inc.; and Victory Garden Power Partners I, LLC.

Joseph E. Stubbs, Esq., on behalf of Southern California Edison Company.

Virginia Strasser, Esq., on behalf of the Federal Energy Regulatory Commission.

David I. Harfeld, Presiding Administrative Law Judge

INTRODUCTION

1. On October 24, 2002 the Federal Energy Regulatory Commission (“Commission”) initiated an investigation into Enron Corporation and its ownership of three small power production facilities which claimed qualifying facility (“QF”) status, in Docket No. EL03-17-000, *Investigation of Certain Enron-Affiliated QFs*, 101 FERC ¶61,076 (2002) (“October 24 Order”). In the October 24 Order, the Commission set for hearing the issue of whether certain Enron-Affiliated wind facilities satisfied the criteria for QF status under the statutory and regulatory requirements of Sections 3(17)(C)(ii) and (18)(B)(ii) of the Federal Power Act, 16 U.S.C. §§796(17)(C)(ii) and (18)(B)(ii) (2000) and 18 CFR §292.206 or under Section 210 of the Public Utility Regulatory Policies Act of 1978 (“PURPA”), 16 U.S.C. §825a-3.¹

¹ Specifically, in the October 24 Order, the Commission set for hearing the issue of whether Zond Windsystems Holding Company, Victory Garden Phase IV Partnership, and Sky River Partnership failed to conform with the representations presented in their 1997 application for re-certification as QFs. 101 FERC ¶61,076 (2003).

2. On May 2, 2003, the Commission initiated an investigation and hearing into the ownership of New Jersey QFs, Docket No. EL03-117-000, *et al.*, *Investigation of Certain Enron Affiliated QFs*, 103 FERC ¶61,122 (2003) (“May 2 Order”). In the May 2 Order, the Commission established hearing procedures and consolidated with Docket No. EL03-47-000, *et al.*, to determine whether any other Enron-Affiliated QF violated the ownership criteria for QF status following Enron’s acquisition of Portland General Electric Company. The Commission ordered Enron to provide all parties, and Commission Trial Staff, a list of all QFs in which Enron, or any of its affiliates, has held an ownership interest following its acquisition of Portland General Electric Company.

3. In accordance with the Commission’s May 2 Order, on June 3, 2003, Enron submitted information identifying thirteen additional facilities in which it has held an ownership interest. The submittal included information about a QF owned by Painted Hills Wind Developers (“Painted Hills”), Docket No. QF85-738-001, and two QFs owned by Enron Wind Systems, LLC, formerly known as Zond Systems, Inc., Docket Nos. QF83-48-001 and QF84-283-001. On July 8, 2003 Enron informed the Commission of an additional QF, owned by Victory Garden Power Partners I, LLC (“VGI”), in which Enron held an ownership interest, Docket No. QF99-92-003. In total, seventeen QFs were identified by Enron. On July 8, 2003 Trial Staff challenged the status of all seventeen QFs in a motion to join the 17 QFs to the consolidated proceedings.

BACKGROUND

4. On July 17, 2003, the parties, in consolidated Docket No. EL03-47-000, attended a prehearing conference before the Presiding Administrative Law Judge. During the prehearing conference the parties unanimously requested that the seventeen QF proceeding be separated into three distinct groups and that settlement judge procedures be instituted for each of the groups.

5. On July 22, 2003, the Chief Administrative Law Judge issued an order establishing settlement judge procedures and assigning Settlement Judge Joseph R. Nacy for certain QFs under the *Investigation of Certain Enron-Affiliated QFs*, Docket No. EL03-47-001, specifically, the Green Power Partners I LLC, QF00-96-001, Painted Hills Wind Developers, QF85-738-001, Zond-PanAero Windsystem Partners I, QF84-422-002, Zond-PanAero Windsystem Partners II, QF85-263-002, Zond Systems, Inc., QF83-48-001, Zond Systems, Inc., QF84-283-001, Zond Windsystem Partners, Ltd., Series 85-C, QF86-159-001, and Victory Garden Power Partners I, LLC, QF99-92-003.

6. On July 25, 2003 the Commission approved two settlement agreements resolving issues related to the QF status of Enron’s wind projects, Docket No. EL03-17-000, *et al.*, in the *Investigation of Certain Enron-Affiliated QFs*, 104 FERC ¶61,126 (2003) (“July 25 Order”).

7. As a result of the Commission's July 25 Order, on October 17, 2003, respondents Enron Wind, LLC, Painted Hills Wind Developers, Victory Garden Power Partners I, LLC, and the Commission Trial Staff ("Trial Staff"), with the support of intervenor Southern California Edison Company ("Edison") ("sponsoring parties"), filed a Joint Motion for Summary Disposition in Docket Nos. EL03-47-001, QF85-738-001, QF83-48-001, QF84-283-001, and QF99-92-003 ("Joint Motion") as relating to the QF status of Enron-Affiliated wind projects. In the Joint Motion, the sponsoring parties indicated that the issues relating to Enron-Affiliated wind projects' QF status were resolved by an earlier settlement agreement between Enron Wind, certain Enron Wind's affiliates, and Edison.

DISCUSSION

8. Pursuant to Rule 217(b) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.217(b) (2003), if the "decisional authority determines that there is no genuine issue of fact material to the decision of a proceeding or part of a proceeding, the decisional authority may summarily dispose of all or part of the proceeding." Rule 217(a) provides that the summary disposition provisions apply both when the Commission is acting as the decisional authority and when a proceeding is set for hearing, 18 C.F.R. § 385.217(a) (2003).

9. The threshold question in determining whether a decisional authority may summarily dispose all or part of a proceeding is to consider whether there is any material issue of fact in dispute, 18 C.F.R. § 385.217(b) (2003).

10. On January 31, 2003, Enron Wind, certain of Enron Wind's affiliates, and Edison filed with the Commission a Master Definitive Agreement (the "Edison Agreement"), which resolved disputes relating to compliance with PURPA ownership requirements, as well as other issues between Edison and Enron Wind. Both Enron Wind, the successor to the Zond Systems, and Painted Hills were parties to the Edison Agreement. Additionally, the Edison Agreement was also drafted to cover each Enron-Affiliated QF that sold to Edison pursuant to a contract that required the project to be a QF, including the above-captioned QFs.

CONCLUSION

11. In making a summary disposition determination, "[t]he Presiding Judge inquires into whether, on this record, the facts are so clearly one-sided as to entitle Movant to judgment as a matter of law." *Pacific Gas and Electric Co.*, 72 FERC ¶63,011, at 65,143 (1995). The Joint Movants have demonstrated that the facts entitle them to judgment as a matter of law.

12. The sponsoring parties agree that the four above-captioned QFs are encompassed under the Edison Agreement. Additionally, the sponsoring parties agree that the Edison Agreement resolved all issues relating to the QF status of each of the above-captioned facilities. Both Trial Staff and Edison received documentation from Enron Wind regarding the relationship between the Edison Agreement and these four QFs.

13. As there are no genuine issues of material fact, summary disposition is hereby **granted** in favor of the Joint Movants. No oppositions were filed in response to the Joint Motion for Summary Disposition. QF issues with respect to these four QFs have been resolved by the Edison Agreement and accordingly, no concerns remain with respect to the ownership of these four QFs during the relevant period.

14. This ruling serves the public interest as it resolves the issues set for hearing in the *Investigation of Certain Enron-Affiliated QFs*, Docket No. EL03-47-001 as it relates to the QF status of Docket Nos. QF85-738-001, QF83-48-001, QF84-283-001 and QF99-92-003.

SO ORDERED

David I. Harfeld
Presiding Administrative Law Judge