

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on May 16, 2007

COMMISSIONERS PRESENT:

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

CASE 07-E-0212 - Noble Ellenburg Wind Park LLC and Noble Clinton  
Wind Park I LLC - Petition For a Declaratory  
Ruling or, In the Alternative, Petition For  
Approval of Transfer of Property Interests.

DECLARATORY RULING ON REVIEW  
OF EASEMENT TRANSACTIONS

(Issued and Effective May 22, 2007)

BY THE COMMISSION:

BACKGROUND

In a petition filed on February 16, 2007, Noble  
Ellenburg Wind Park LLC (Noble Ellenburg) and Noble Clinton Wind  
Park I LLC (Noble Clinton)(collectively, the Noble Subsidiaries)  
request issuance of a Declaratory Ruling finding that the  
transfers of easements between them need not be approved under  
Public Service Law (PSL) §70. No responses to the petition were  
received within the 21-day period prescribed under the Rules of  
Procedure, 16 NYCRR §8.2(c), which expired on March 9, 2007.

THE PETITION

The Noble Subsidiaries describe themselves as limited  
liability companies wholly owned by Noble Environmental Power  
2006 Hold Co. LLC, which is in turn wholly owned by Noble

Environmental Power LLC (Noble Power). The Noble Subsidiaries relate that they have obtained certification to build and operate the wind generation projects under PSL §68,<sup>1</sup> and have also been authorized to finance the construction of the projects under PSL §69.<sup>2</sup>

The Noble Subsidiaries report that they have obtained tax exemptions and other benefits from the Clinton County Industrial Development Agency (CCIDA) for the two projects, which are located in adjacent Towns within Clinton County. CCIDA, however, required that Noble Clinton own all of the properties located in the Town of Clinton, and Noble Ellenburg own all of the properties located in the Town of Ellenburg, at the time the benefits were awarded. Included among those properties, the Noble Subsidiaries state, are easements situated within the respective Towns. Some of the easements Noble Clinton currently owns, however, are needed by Noble Ellenburg to site the delivery line for transmitting electricity from its wind generators to the utility grid. Similarly, other easements currently held by one of the Noble Subsidiaries are needed by the other to fulfill its purposes.

As a result, the Noble Subsidiaries assert that ownership of these easements must be transferred to the subsidiary that requires them in order to meet the certification obligation imposed in its CPCN Order and to operate its wind project. The Noble Subsidiaries also claim the easement

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<sup>1</sup> Case 05-E-1634, Noble Clinton Wind Park I LLC, Order Granting Certificate of Public Convenience and Necessity and Providing For Lightened Regulation (issued October 19, 2006); Case 05-E-1633, Noble Ellenburg Wind Park LLC, Order Granting Certificate of Public Convenience and Necessity and Providing For Lightened Regulation (issued November 9, 2006) (CPCN Orders).

<sup>2</sup> Case 06-E-0843, Noble Clinton Wind Park I LLC, et al., Order Approving Financings Subject to a Condition (issued September 25, 2006).

transactions will facilitate the construction and operation of their wind projects, which are the type of renewable generation resources New York needs.

The easement transfer transactions, the Noble Subsidiaries contend, fall outside the scope of PSL §70. They argue that no transfer reviewable under that statute occurs here, because, notwithstanding the easement transactions, Noble Power remains the ultimate owner of both Noble Clinton and Noble Ellenburg, and their easements. As a result, they ask that it be decided that the easement transactions will not be reviewed under the PSL.

#### DISCUSSION AND CONCLUSION

Noble Power is the sole owner of all interests in its Noble Clinton and Noble Ellenburg subsidiaries. Given this unity of ownership interests in the two lightly-regulated subsidiaries, a transfer of property between the subsidiaries does not work a change in the ultimate ownership of that property, which remains in the hands of Noble Power. As a result, the easement transactions are purely an intra-corporate rearrangement of property interests.

It has been decided that the intra-corporate arrangements lightly-regulated entities make for the ownership and operation of generation facilities are not subject to review under PSL §70.<sup>3</sup> So long as the Noble Subsidiaries are entirely owned by Noble Power, all of the subsidiaries' easements are in effect entirely owned by that single entity. There is no change in the identity of that ultimate owner of the easements upon a

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<sup>3</sup> Case 06-E-1106, PPM Energy, Inc., et al., Declaratory Ruling on Regulation of Intra-Corporate and Other Transactions (issued October 19, 2006); Case 06-E-0006, Horizon Wind Energy LLC, Declaratory Ruling on Review of an Intra-Corporate Restructuring Transaction (issued February 14, 2006).

transaction between the two wholly-owned and lightly-regulated subsidiaries, and so the easement transactions are not transfers for the purposes of PSL §70. Therefore, we find and declare that we will not review under PSL §70 the easement transactions Noble Clinton and Noble Ellenburg propose.

The easement transactions are intended in part to assist the Noble Subsidiaries in meeting the certification requirements imposed in the CPCN Orders. The Noble Subsidiaries remain obligated to comply with those Orders. Nothing in this Ruling shall be interpreted as precluding or hindering enforcement of the requirements of the CPCN Orders, including any requirements that might pertain to ownership or use of the easements described in the Petition here.

The Commission finds and declares:

1. No further review will be conducted under Public Service Law §70 of the easement transfer transactions described in the Petition filed in this proceeding.
2. This proceeding is closed.

By the Commission,

(SIGNED)

JACLYN A. BRILLING  
Secretary