

BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

CLERK'S OFFICE - OKC
CORPORATION COMMISSION
OF OKLAHOMA

**IN RE: INQUIRY OF THE OKLAHOMA)
CORPORATION COMMISSION TO IDENTIFY)
AND RESOLVE ISSUES RELATED TO THE)
DEVELOPMENT AND USE OF WIND ENERGY)**

Cause No. PUD 201400232

Responsive Comments of Enel Green Power North America, Inc.

I. Introduction

Enel Green Power North America, Inc. ("EGP-NA") is submitting these comments as a part of the Oklahoma Corporation Commission's ("Commission") Notice of Inquiry ("NOI"), Cause No. PUD 201400232. This filing is intended to be responsive to comments that have been submitted which mention EGP-NA's Osage Wind project located in Osage County, Oklahoma. This filing is also made in affirmation to the written and oral comments submitted in this NOI by the Wind Coalition.

II. Overview of Enel Green Power

Enel Green Power is a global renewable energy company dedicated to the development and management of power generation from renewable resources around the world. As an industry leader, Enel Green Power has a total installed capacity of over 9,400 MW (9.4 GW) and supplies enough power to meet the energy needs of more than 10 million households.

EGP-NA, a part of Enel Green Power, is a leading owner and operator of renewable energy projects throughout the United States. EGP-NA owns and operates over 90 projects, with an installed capacity of almost 2.1 GW powered by renewable hydropower, geothermal, solar, and wind energy. EGP-NA currently has 12 operating wind farms in North America, with over 1.6 GW in its wind portfolio.

III. EGP-NA In Oklahoma

EGP-NA has an ownership interest in, and operates, three wind projects in Oklahoma. One project is under construction and two are in the development stage.

The first project is a 150 MW wind farm named Rocky Ridge ("Rocky Ridge"). Rocky Ridge is located in north-central Kiowa and south-central Washita Counties. The project became operational in June 2012. The project is comprised of 93 turbines which generate over 600 million kWh per year, enough renewable electricity to power approximately 45 thousand U.S. households. Rocky Ridge helps avoid the emission of more than 450 thousand tons of CO₂ into the atmosphere annually.

The second project is a 235 MW wind farm called Chisholm View (“Chisholm View”). Chisholm View is located in Grant and Garfield Counties, approximately 15 miles northeast of Enid and directly adjacent to Hunter, Oklahoma. This project became operational in December 2012, and is the second largest single-phase operating wind project in the state. It is comprised of 140 turbines that generate over 867 million kWh per year, enough renewable electricity to power approximately 80 thousand U.S. households and avoid the emission of approximately 520 thousand tons of CO₂ into the atmosphere annually. For reference, The Enid Regional Development Alliance has filed comments in this NOI. These comment discuss the benefits of Chisholm View to the City of Enid and Garfield County.

Additionally, the Origin Wind Project (“Origin”) is a 150 MW wind farm that just completed construction in Murray and Carter Counties. The plant is projected to generate about 650 GWh per year, avoiding the annual emission of approximately 700 thousand tons of CO₂ into the atmosphere.

Also, EGP-NA’s 200 MW Goodwell Wind Project (“Goodwell”) and 74 MW Little Elk Wind Project (“Little Elk”) will begin construction in the fourth quarter of 2014 and in the first half of 2015, respectively, and are expected to be completed by December 2015. Goodwell is located in Texas County, Oklahoma, and Little Elk is located in Washita and Kiowa Counties.

Last, and as will be discussed in more detail, the 150 MW Osage Wind Project (“Osage Wind”) is currently undergoing construction in Osage County, Oklahoma near the City of Pawhuska.

Following is a chart setting forth status of each of these projects:

Project	Nameplate	Status
Rocky Ridge	150 MW	June 2012
Chisholm View	235 MW	Dec. 2012
Origin	150 MW	Commissioning
Osage	150 MW	Construction
Goodwell	200 MW	Development
Little Elk	74 MW	Development
Total	959 MW	

To date, EGP-NA has developed projects in Oklahoma that represent a total investment of \$1.5 billion. At the height of construction activities, EGP-NA has employed approximately 1000 individuals at Chisholm View, Ricky Ridge, Origin and Osage. In Oklahoma, EGP-NA's wind projects provide power to almost 125,000 households and offset about 970,000 tons of CO₂ annually. By the end of 2013, EGP-NA had paid close to \$3.5 million in lease payments to landowners. By the close of 2015, out of EGP-NA's 2.1 GW portfolio, close to 1 GW, or almost half, will be located in Oklahoma.

IV. Osage Wind

EGP-NA is currently constructing Osage Wind, a state-of-the-art 150 MW wind farm. Comprised of 84 turbines and encompassing 8,500 acres, Osage Wind will represent hundreds of millions of dollars of investments in Osage County and the State of Oklahoma. Osage Wind is expected to be fully operational at or near the second quarter of 2015.

Osage Wind has never conducted mining activities

A number of written comments have been submitted as a part of this NOI alleging, indirectly, that Osage Wind and EGP-NA have been illegally conducting mining activities in relationship to the construction of the Osage Wind farm. These comments have asserted that Osage Wind and EGP-NA have been stealing minerals from the mineral estate that was reserved to the Osage Nation. These comments contain misinformation and mischaracterize the factual construction and excavation activities that are occurring or have occurred as a part of the development of Osage Wind.

The government of the Osage Nation (the "Nation") has previously filed lawsuits in opposition to the development of Osage Wind. The Nation alleged in Federal Court that the wind farm would interfere with its ownership interests in the mineral estate of Osage County. The Federal Court held that development of Osage Wind would not unreasonably interfere with the Nation's mineral estate. Further, the Federal Court determined that the fee owners of the subject land have the right to lease the land for development of Osage Wind.

Additionally, the Nation appealed the issuance of the Conditional Use Permit that Osage Wind obtained from the Pawhuska-Osage County Planning Commission. In this case, the Osage County District Court determined that the Conditional Use Permit was properly obtained.

When Oklahoma became a state in 1907, the Nation's reservation was incorporated into the state as Osage County, as provided for in the Oklahoma Enabling Act. *See* Act of June 16, 1906, ch. 3335, 34 Stat. 267, §§ 2, 21; *see also* Okla. Const., art. XVII, § 8 ("The Osage Indian Reservation with its present boundaries is hereby constituted one county to be known as Osage County.") Contemporaneous to passing the Oklahoma Enabling Act, Congress enacted the Osage Allotment Act. *See* Act of June 28, 1906, ch. 3572, 34 Stat. 539. The 1906 Osage Allotment Act severed the

mineral estate from the surface estate of the reservation and placed it in trust for the Nation. *Id.* at §§ 2–3.

The form of administration of the mineral estate by the Osage Nation has changed over time. Today, the mineral estate is managed by the Osage Nation’s Mineral Council, under the jurisdiction of the Bureau of Indian Affairs. *See generally* Jean Dennison, *Colonial Entanglement Constituting a Twenty-First-Century Osage Nation* 16-46 (2012). Mining activities in Osage County are regulated by 25 C.F.R. Part 214, which address “Leasing of Osage Reservation Lands, Oklahoma, For Mining, Except Oil and Gas.” *See* 25 C.F.R. §§ 214.13(a), 214.14(a), 214.15, & 214.29. However, neither EGP-NA, nor its affiliates, has conducted any mining operations in connection with the development of Osage Wind.

Osage Wind holds leases with fee surface estate owners in Osage County, Oklahoma (the “Property”). Osage Wind has leased the Property for the construction and operation of a wind farm facility. Osage Wind has been engaged in the excavation and construction of foundations for the wind turbines and associated buildings and structures and trenching for cables.

The excavations for the turbine foundations are the largest excavations and measure approximately 10 feet deep and between 50 and 60 feet in diameter. The materials that have been excavated have included sand, soil of various types, and rock encountered in place.

Rock from the excavations and trenching comes out in pieces of varying size and shapes. To return the rock to the excavation as backfill, the rock is crushed and placed immediately next to the site from which it was excavated. This is a customary and standard construction practice which has been employed around the country and at other projects in Oklahoma. Once the foundations have been poured and have cured, the crushed rock, sand and soil from the specific excavation are pushed back into the excavated site as backfill.

None of the rock, sand or soil excavated for any foundation or trench is moved to or used at another location within the wind farm project or outside of the project area. No rock, sand or soil from any excavation is used for any purpose other than to backfill the excavation from which it came.

No excavated rock or sand is used in the mixing or preparing the concrete for any foundations. All sand, aggregate and concrete needed for the project is instead purchased from third party vendors located outside the project area and is delivered by truck to the project site. The isolated sand or rock at the various wind tower locations could not be part of a commercially viable mining or quarrying operation.

An Osage County fee surface owner or its lessee has a right to use material from the mineral estate for purposes consistent with the surface use, without being considered to have engaged in mining, but the surface owner may not engage in commercial extraction of minerals or related activities. EGP-NA, through its lease agreements for the Property, has only engaged in regular construction and excavation activities consistent with the rights afforded to a surface owner.

EGP-NA has worked very closely with and remains committed to working with the Bureau of Indian Affairs to resolve any possible ongoing issues specific to the Osage Nation's mineral estate. In addition, EGP-NA continues to make overtures to the leadership of the Osage Nation throughout its development process. To date, EGPNA has not been able to schedule a meeting though there is a request pending.

Osage Wind has obtained all necessary permits and conducted considerable environmental studies and initiated consultations with the Osage Nation and other appropriate local, State, and Federal agencies connected to the development of the wind farm

The Osage Wind Project has been in development since 2008, with environmental studies starting in 2009. Initial studies evaluated flora and fauna resources to identify key issues for the project and further recommendations for site specific studies. These project specific wildlife studies were performed over several years and presented to the United States Fish and Wildlife Service and the Oklahoma Department of Wildlife. In summary, these wildlife studies consisted of preconstruction avian surveys, greater prairie chicken and whooping crane habitat studies, American Burying Beetle presence and absence surveys, raptor behavior studies and nest surveys. These studies demonstrated that no threatened or endangered species would be impacted by the construction and operation of the Osage Wind Project.

During avian point count surveys a limited number of adult bald eagles were observed onsite during limited winter months. As a conservative approach, the developer of Osage Wind prepared an Eagle Conservation Plan ("ECP") and sought an Incidental Bald Eagle take permit. During October 2010 through October 2012, the USFWS Southwest Region's Division of Migratory Birds and Ecological Services and the Oklahoma Ecological Field Office collectively attended, in person or via conference call, at least 15 consultation meetings with Osage Wind and commented on two drafts of the ECP. This consultation is ongoing as the Osage Wind project continues to work proactively with the wildlife agencies.

With regard to wildlife, the Wind Coalition has demonstrated through the submission of its filings, avoidance rates of 95% or higher have been shown as to many avian species under most circumstances. Madders and Whitfield (in 2006) reported 98% to 100% turbine avoidance rates for diurnal raptors.

Oklahoma has been generating wind energy since 2003. Since that time the Bald Eagle population has grown, and no fatalities have been reported. In 2003 there were 176 MW of wind generation and 42 eagle pairs. In 2010 that number had grown to 1482 MW and 90 breeding pairs.

In addition as typical for EGPNA development wetland studies, extensive cultural resource studies were performed, consultations with respect to cultural resources were initiated, and a Phase I recognized environmental condition assessment was performed, to support the responsible development of the site and to minimize and avoid resource impacts.

Osage Wind also obtained a Conditional Use Permit from the Pawhuska-Osage County Planning Commission on August 11, 2011.

V. Conclusion

EGP-NA is committed to doing business in Oklahoma. EGP-NA's corporate stewardship compels the company to be a good steward of the communities where it lives and operates. This means that EGP-NA endeavors to go above and beyond what is required by law.

EGP-NA is a part of a global renewable energy company with developments all over the world. Oklahoma, as a pioneer of energy development, has embraced an all of the above energy approach. This has caused Oklahoma to emerge as a national and international leader in energy. To accomplish this, Oklahoma has implemented policies that invite global investments. Most importantly, these policies have helped keep the cost of developing energy, and therefore the cost to Oklahoma customers, low. As a consequence, EGP-NA and wind developers are able to offer some of the most competitive and affordable energy prices in the marketplace, resulting in direct and significant customers benefits, and making Oklahoma one of the best places in the world to do business.



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