

PUC DOCKET NO. _____

APPLICATION OF ALAMO 6 SOLAR § BEFORE THE
HOLDINGS, LLC PURSUANT TO §
SECTION 39.158 OF THE § PUBLIC UTILITY COMMISSION
PUBLIC UTILITY REGULATORY ACT §
§ OF TEXAS

**APPLICATION OF ALAMO 6 SOLAR HOLDINGS, LLC PURSUANT TO
SECTION 39.158 OF THE PUBLIC UTILITY REGULATORY ACT**

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**APPLICATION OF ALAMO 6 SOLAR HOLDINGS, LLC PURSUANT TO
SECTION 39.158 OF THE PUBLIC UTILITY REGULATORY ACT**

TO THE HONORABLE PUBLIC UTILITY COMMISSION OF TEXAS:

Pursuant to Sections 39.158 and 39.154 of the Public Utility Regulatory Act (“PURA”),¹ Alamo 6 Solar Holdings, LLC (“Alamo 6 Solar Holdings” or “Applicant”) submits this application for approval of the purchase of 100% of the membership interests in OCI Solar San Antonio 6 LLC (“OCI Solar San Antonio 6”), and therefore indirectly 100% of the membership interests in its wholly-owned subsidiary, OCI Alamo 6 LLC (“OCI Alamo 6”), which is developing a solar generation project that will be interconnected into the Electric Reliability Council of Texas (“ERCOT”) (the acquisition hereinafter referred to as the “Transaction”).

As noted below, Alamo 6 Solar Holdings is respectfully requesting expedited consideration of this Application, pursuant to a proposed procedural schedule that would allow for approval by the Commission at its December 16, 2016 Open Meeting. Alamo 6 Solar Holdings requests expedited consideration to allow the Transaction to close by year end 2016.

I. Introduction

OCI Alamo 6 is developing a 110.2 MW solar powered electric generation project in Pecos County, Texas (“the Project”). The Project will be interconnected into ERCOT with LCRA Transmission Services Corporation LP (“LCRA”) as its transmission service provider. The Project is projected to commence commercial operation by December 31, 2016 and after closing of the Transaction. OCI Solar Power LLC (“OCI Solar Power” or “Seller”) owns 100% of the membership interests in OCI Solar San Antonio 6, which owns 100% of the membership interests in OCI Alamo 6. Pursuant to the terms of a Membership Interest Purchase Agreement

¹ Tex. Util. Code §§ 11.001-66.017 (“PURA”).

(“MIPA”), Seller intends to sell 100% of the membership interests in OCI Solar San Antonio 6, and thereby 100% of the membership interests in OCI Alamo 6, to Alamo 6 Solar Holdings, the Applicant. The Applicant is a direct, wholly-owned subsidiary of BHE Solar, LLC, which is a direct, wholly-owned subsidiary of BHE Renewables, LLC. BHE Renewables, LLC is a direct, wholly-owned subsidiary of Berkshire Hathaway Energy Company, which is a consolidated subsidiary of Berkshire Hathaway Inc.

Applicant respectfully requests that the Commission consider and approve this Application on an expedited basis since the proposed Transaction clearly fulfills the requirements of PURA §§ 39.158 and 39.154. Approval from the Commission is the longest lead time approval required to close the Transaction. The Applicant and Seller intend to close the Transaction promptly upon receiving approval from the Commission.

Applicant therefore respectfully requests that the Commission approve the Transaction in accordance with the proposed procedural schedule set forth herein consistent with the limited inquiry mandated by PURA §§ 39.158 and 39.154.

II. Statement of Jurisdiction

The Commission’s jurisdiction over sales, mergers, consolidations and affiliations is defined in PURA §§ 39.158 and 39.154. Section 39.158 requires that owners of electric generation facilities that offer electricity for sale in this state obtain the approval of the Commission before closing any proposed merger, consolidation or affiliation with another owner of electric generation facilities if the electricity offered in Texas by the merged, consolidated or affiliated company will exceed one percent of the total electricity offered for sale in the applicable power region. That section further provides that the Commission *shall* approve the transaction unless the Commission finds that the transaction results in a violation of PURA § 39.154. Section 39.154 prohibits a power generation company and any affiliate of the power generation company within the power region, beginning on the date of the introduction of customer choice, from owning and controlling more than 20% of the installed capacity located in, or capable of delivering electricity to, the power region. Thus, if the generation ownership of the merged, consolidated or affiliated entity is at or below 20% of the installed capacity located in, or capable of delivering electricity to, ERCOT, the Commission must approve the transaction.

III. Statement of Facts

OCI Alamo 6 is developing a new 110.2 MW solar powered electricity generation facility in Pecos County, Texas. The Project will be interconnected into the ERCOT electric transmission system and will sell its output into the ERCOT market. LCRA will be the transmission service provider for the Project.

OCI Alamo 6 does not own any generation assets other than the Project. Following the Transaction, OCI Alamo 6 will be affiliated with Applicant and its affiliates and will no longer be affiliated with Seller and its affiliates.² Applicant and its affiliates own active and passive equity interests in generation facilities in ERCOT, including: (i) Power Resources, a 227.0 MW natural gas fired facility located in Howard County; (ii) Jumbo Road Wind, a 299.7 MW wind generation facility in Deaf Smith County; (iii) a tax equity interest in Shannon Wind, a 200 MW wind generation facility in Clay County; (iv) a tax equity interest in South Plains II, a 300 MW wind generation facility in Floyd County; and (v) a tax equity interest in Mariah del Norte (Mariah Wind B), a 230 MW wind generation facility in Parmer County.³ Following the closing of the Transaction, Applicant and its affiliates will directly or indirectly own interests in generation assets in ERCOT totaling 460.8 MW. Applicant and its affiliates also own active and passive equity interests in generation facilities in adjacent power regions to ERCOT that theoretically could be delivered over the DC ties into ERCOT. Applicant's affiliates own interests in generation assets in the Southwest Power Pool ("SPP") and the Midcontinent Independent System Operator ("MISO") exceeding 820.0 MW, which is the maximum import capability of the DC ties.⁴

Attachment 1 shows the generation calculations for the Applicant and its affiliates following the Transaction. The capacity numbers shown on Attachment 1 were calculated using the methodology used by the Commission Staff in its calculation of the installed generation

² Following the consummation of the Transaction, OCI Alamo 6 will no longer be owned by, or affiliated with, OCI Solar Power and its affiliates.

³ Capacities for generation facilities are from the Commission Staff's Estimate of Installed Generation Capacity in ERCOT filed in Project No. 39870, dated February 17, 2016. Public Utility Commission of Texas Staff, Memorandum re: Project No. 39870 – Estimate of Installed Generation Capacity in ERCOT, at 6, 11, 19 (Feb. 17, 2016) ("*Commission Staff Estimate of Installed Capacity in ERCOT*").

⁴ The ERCOT Import Capability over the DC ties is reported in the *Commission Staff Estimate of Installed Generation Capacity in ERCOT*, Project No. 39870, at 22 (Feb. 17, 2016).

capacity in ERCOT that was filed in Project No. 39870 to be used for purposes of calculating capacity ownership for purposes of PURA § 39.158.⁵

Total installed generation capacity in ERCOT is 90,765 MW.⁶ Taken together, the combined generation capacity ownership of OCI Alamo 6, Applicant and their affiliates located in or capable of delivery into ERCOT following the Transaction totals 1,280.8 MW or 1.4% of the total generation capacity in ERCOT. This percentage is far below the 20% limitation in PURA § 39.154.

IV. Parties and Procedures

A. The Parties

Applicant's representatives in this proceeding are:

Katie Coleman
Thompson & Knight LLP
98 San Jacinto Boulevard
Suite 1900
Austin, Texas 78701
Telephone: (512) 404-6705
Facsimile: (512) 482-5089
Email: Katie.Coleman@tklaw.com

William R. Hollaway Ph.D
Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5306
Telephone: (202) 955.8592
Facsimile: (202) 530.9654
Email: whollaway@gibsondunn.com

Applicant's principal executive offices are located at:

Alamo 6 Solar Holdings, LLC
1850 North Central Avenue, Suite 1025
Phoenix, Arizona 85004
Attention: Richard G. Weech
Telephone: (602) 271-5656

⁵ See Commission Staff Estimate of Installed Generation Capacity in ERCOT, Project No. 39870 (Feb. 17, 2016).

⁶ See Commission Staff Estimate of Installed Generation Capacity in ERCOT, Project No. 39870, at 4 (Feb. 17, 2016).

Facsimile: (602) 271-5659
Email: rweech@bherenewables.com

B. Notice

The only other person affected by this application is the Seller. Applicant is providing a copy of this application to the Seller contemporaneously with the filing of this application. A copy of the proposed public notice regarding this application for publication in the *Texas Register* is attached as Attachment 3.

C. Procedural Schedule

Applicant and Seller anticipate closing the Transaction prior to the date the Project achieves commercial operation, which currently is anticipated to be by December 31, 2016. Given this and due to the limited scope of review, Alamo 6 Solar Holdings respectfully requests that this application be processed under the following expedited schedule.

October 24, 2016	Commission Staff comments on sufficiency of Application and Notice
October 28, 2016	Notice published in <i>Texas Register</i>
November 16, 2016	Deadline for motions to intervene, intervenor comments and intervenors requests for a hearing.
November 21, 2016	Deadline for Commission Staff's recommendation or request for a hearing
November 28, 2016	Deadline for Applicant responses, if any, to intervenor comments, and Commission Staff recommendation
December 2, 2016	Deadline for Joint Proposed Order, including findings of facts, conclusions of law, and ordering paragraphs
December 9, 2016	Proposed Order to be issued
December 16, 2016	Open meeting to approve Final Order

This schedule is expedited, but allows sufficient time for notice, intervention (if any), and Staff review of the calculations. Based upon the fact that the Project is fast approaching readiness for commercial operation, and the fact that there are no intervenors in most, if not all, applications for approval pursuant to PURA § 39.158, and the combined generation owned by

Applicant and its affiliates following the Transaction will be only 1.4% of the total generation in ERCOT, Applicant respectfully requests that the intervention time be shortened to 30 days as shown in the proposed schedule above. The Commission has adopted this intervention period for other PURA Sec. 39.158 applications.⁷

V. Requested Relief

Applicant respectfully seeks prompt approval of the Transaction. As shown in Attachment 1, Applicant has demonstrated that, after the Transaction, the generation capacity located in and capable of delivery to ERCOT owned by Applicant and its affiliates following the Transaction will not exceed the 20% limitation in PURA § 39.154. Attachment 1 is supported by the attached Affidavits from the Applicant and Seller in Attachment 2. Attachment 1 incorporates all of the criteria prescribed in PURA § 39.154 and PUC Substantive Rules 25.91 and 25.401 for calculating the percentage of installed capacity located in, or capable of delivering electricity to, ERCOT. Attachment 1 demonstrates that, under even the most generous assumptions, the amount of installed generation capacity that will be owned and controlled in, or capable of delivery to, ERCOT by the Applicant and its affiliates following the Transaction is far below the 20% limitation required by § 39.154. Under §§ 39.158 and 39.154, no other factual inquiry is required.

WHEREFORE, PREMISES CONSIDERED, Applicant respectfully requests that the Commission approve the Transaction pursuant to PURA § 39.158.

⁷ See, e.g., *Application of Koch Power Solutions, LLC Pursuant to Section 39.158 of the Public Utility Regulatory Act*, Docket No. 41955, Order No. 2 (Nov. 6, 2013).

Respectfully submitted,

THOMPSON & KNIGHT LLP



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98 San Jacinto Boulevard, Suite 1900
Austin, Texas 78701
(512) 404-6705
(512) 482-5089 FAX

ATTORNEY FOR ALAMO 6
SOLAR HOLDINGS, LLC

Dated: October 17, 2016

CERTIFICATE OF SERVICE

I, Katherine L. Coleman, Attorney for Alamo 6 Solar Holdings, LLC, hereby certify that a copy of this document was served on all parties of interest on this 17th day of October, 2016 by hand-delivery, facsimile, electronic mail and/or First Class, U.S. Mail, Postage Prepaid.



Katherine L. Coleman

ATTACHMENT 1

**PERCENTAGE OF INSTALLED CAPACITY IN AND CAPABLE OF DELIVERY TO
ERCOT OF ALAMO 6 SOLAR HOLDINGS AND ITS AFFILIATES
FOLLOWING THE TRANSACTION⁸**

Total Installed Generation Capacity Located in, or Capable of Delivering Electricity to, ERCOT of Alamo 6 Solar Holdings and its affiliates following the Transaction:

Facility – ERCOT	Nameplate Capacity (MW)	Capacity (MW)
Alamo 6 (Solar)	110.2	110.2
Power Resources (Gas)	227.0	227.0
Jumbo Road Wind (Wind)	299.7	36.0
Shannon Wind (Wind)	200.0	24.0 ⁹
South Plains II (Wind)	300.0	36.0 ¹⁰
Mariah del Norte (Wind)	230.0	27.6 ¹¹
<u>Facility – SPP and MISO</u>		Exceeds 820.0 MW

⁸ Capacity calculations for Applicant and its affiliates are from the *Commission Staff Estimate of Installed Generation Capacity in ERCOT*, Project No. 39870 (Feb. 17, 2016) and reflect changes adopted by ERCOT in NPRR 611. As noted in the Staff's spreadsheet, wind generation capacity is calculated by applying a 12% capacity factor to the nameplate capacity of non-coastal wind generation and a 56% capacity factor to coastal wind generation. Thermal and solar generation capacity is listed at the summer net dependable capacity. Solar generation capacity is listed as nameplate capacity. The capacity numbers shown above reflect one hundred percent of the equity interests in each project (which in some cases overstates the total equity percentage ownership in these projects since these percentages do not take into account the equity interests held by non-affiliated parties).

⁹ This is a tax equity investment. Ownership of 100% is used as a simplifying assumption; use of the actual percentage would reduce capacity in ERCOT.

¹⁰ This is a tax equity investment. Ownership of 100% is used as a simplifying assumption; use of the actual percentage would reduce capacity in ERCOT.

¹¹ This is a tax equity investment. Ownership of 100% is used as a simplifying assumption; use of the actual percentage would reduce capacity in ERCOT.

Combined Total of Applicant and Affiliates Generation Capacity in ERCOT:	460.8 MW
Combined Total of Applicant and Affiliates Generation Capacity Over DC ties	820.0 MW
ERCOT Generation Capacity owned by Applicant and Affiliates in ERCOT and Generation Capacity Over DC Ties:	1,280.8 MW
Total Installed Generation Capacity Located in, or Capable of Delivering Electricity to, ERCOT:	90,765 MW
Combined Percentage Share of Installed Generation Capacity in, or Capable of Delivering Electricity to, ERCOT:	1.4 %

ATTACHMENT 2

AFFIDAVITS

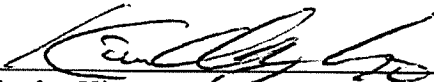
STATE OF TEXAS
COUNTY OF BEXAR

§
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AFFIDAVIT OF CHARLES KIM

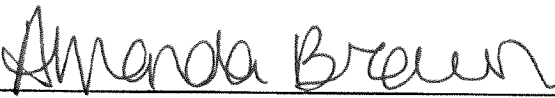
BEFORE ME, the undersigned authority, on this day personally appeared Charles Kim, who, after being duly sworn, stated that he is entitled to make this affidavit, and that the statements contained below are true and correct the best of his information, knowledge and belief.

1. My name is Charles Kim. My business address is 300 Convent Street, Suite 1900, San Antonio, Texas 78205. I am the Chief Financial Officer of OCI Solar Power LLC. All statements made herein are based on my personal knowledge gained in the course of my employment.
2. I am familiar with the foregoing Application of Alamo 6 Solar Holdings, LLC pursuant to Section 39.158 of the Public Utility Regulatory Act. To the best of my information, knowledge and belief, the factual statements contained therein, including the attachments thereto, with respect to OCI Alamo 6 LLC are true and correct. The opinions expressed therein, based upon my professional knowledge and judgment, also are true and correct to the best of my information, knowledge and belief.

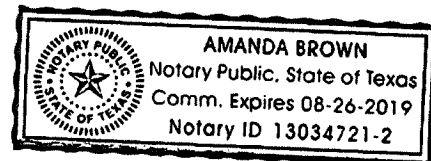


Charles Kim
Chief Financial Officer
OCI Solar Power LLC

Subscribed and sworn before me on this 14 day of October, 2016



Notary Public in and for Texas
My commission expires: 08-26-2019




STATE OF ARIZONA
COUNTY OF MARICOPA

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AFFIDAVIT OF RICHARD G. WEECH

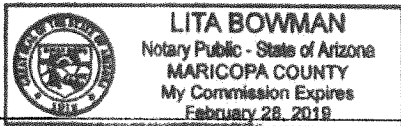
BEFORE ME, the undersigned authority, on this day personally appeared Richard G. Weech, who, after being duly sworn, stated that he is entitled to make this affidavit, and that the statements contained below are true and correct the best of his information, knowledge and belief.

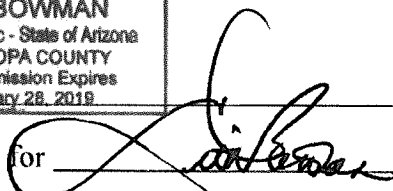
1. My name is Richard G. Weech. My business address is 1850 North Central Avenue, Suite 1025, Phoenix, Arizona 85004. I am the Chief Financial Officer and Senior Vice President of BHE Solar LLC, which is the owner of Alamo 6 Solar Holdings, LLC, the Applicant in the foregoing application. All statements made herein are based on my personal knowledge gained in the course of my employment.
2. I am familiar with the foregoing Application of Alamo 6 Solar Holdings, LLC pursuant to Section 39.158 of the Public Utility Regulatory Act. To the best of my information, knowledge and belief, the factual statements contained therein, including the attachments thereto, with respect to Applicant and its affiliates are true and correct. The opinions expressed therein, based upon my professional knowledge and judgment, also are true and correct to the best of my information, knowledge and belief.



Richard G. Weech
Chief Financial Officer and Senior Vice President
BHE Solar LLC

Subscribed and sworn before me on this 17 day of October, 2016



Notary Public in and for  _____
My commission expires: 2-28-2019

ATTACHMENT 3

PUBLIC UTILITY COMMISSION OF TEXAS NOTICE OF APPLICATION FOR SALE, TRANSFER OR MERGER

Notice is given to the public of an application for sale, transfer or merger filed with the Public Utility Commission of Texas on October 17, 2016, pursuant to the Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 14.101, 39.154, and 39.158 (West 2015) (“PURA”).

Docket Style and Number: Application of Alamo 6 Solar Holdings, LLC Pursuant to § 39.158 of the Public Utility Regulatory Act, Docket No. _____.

The Application: OCI Alamo 6 LLC (“OCI Alamo 6”) is developing a nameplate 110.2 MW solar generation project located in Pecos County, Texas, and interconnected into ERCOT (the “Project”). OCI Solar San Antonio 6 LLC (“OCI Solar San Antonio 6”) directly owns 100% of the membership interests in Applicant. OCI Solar Power LLC (“OCI Solar Power”) currently directly owns 100% of the membership interests in OCI Solar San Antonio 6. OCI Solar San Antonio 6 owns no generation other than the interest in the Project held through its affiliate, OCI Alamo 6.

Pursuant to the terms of a Membership Interest Purchase Agreement (“MIPA”), OCI Solar Power intends to sell 100% of the membership interests in OCI Solar San Antonio 6, and therefore 100% of the membership interests in OCI Alamo 6, to Alamo 6 Solar Holdings, LLC (“Alamo 6 Solar Holdings” or the “Applicant”) (the “Transaction”). Applicant and its affiliates also own equity interests in generation facilities in ERCOT and capable of delivery into ERCOT. Applicant is required to obtain Commission approval before closing the Transaction if the electricity to be offered for sale in ERCOT by Applicant and its affiliates following the Transaction will exceed one percent of the total electricity for sale in ERCOT. The Commission shall approve the Transaction unless the Commission finds that the Transaction results in violation of PURA § 39.154. Under § 39.154, a power generation company may not own and control more than 20% of the installed generation capacity located in, or capable of delivering electricity to ERCOT.

Applicant states that following the consummation of the Transaction, the aggregate direct and indirect generation interests in or capable of delivery into ERCOT owned by the Applicant and its affiliates, subject to assumptions with regard to delivery capacity and generation calculations consistent with PUC policy, will not be more than 1,280.8 MW, which is approximately 1.4 % of the installed generation capacity within ERCOT, and which does not exceed the 20% threshold in Section 39.154 of PURA.

Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the Commission’s Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the Commission at (512) 936-7136 or use Relay Texas (toll free) 1-800-735-2989. All correspondence should refer to Docket Number _____.