

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Ector County Energy Center LLC)	Docket No. EG14-__-000
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**NOTICE OF SELF-CERTIFICATION OF
EXEMPT WHOLESALE GENERATOR STATUS**

Pursuant to Section 366.7(a) of the Federal Energy Regulatory Commission's (the "Commission") rules¹ implementing the Public Utility Holding Company Act of 2005 ("PUHCA 2005"), enacted by the Energy Policy Act of 2005 §§ 1261 *et seq.*,² Ector County Energy Center LLC ("Ector") hereby submits this notice of self-certification that it is an exempt wholesale generator ("EWG") as defined in Section 366.1 of the Commission's rules.³

I. CORRESPONDENCE AND COMMUNICATIONS

All communications and correspondence regarding this notice should be sent to the following persons who are authorized to receive service:

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¹ 18 C.F.R. § 366.7(a).

² Pub. L. No. 109-58, 119 Stat. 594 (2005).

³ 18 C.F.R. § 366.1.

II. DESCRIPTION OF ECTOR

A. Ector's Ownership Structure

Ector is a Delaware limited liability company. It is an indirect subsidiary of Invenergy Investment Company LLC ("Invenergy Investment"), a Delaware limited liability company, which is in the business of developing or acquiring, through subsidiaries, electric generation facilities and related interconnection facilities.⁴

B. Ector's Proposed Activities

1. The Ector Project and Power Sales

Ector is developing and will construct, own and operate an approximately 350 MW natural gas electric generation project that will be located in Ector County, Texas (the "Ector Project"). The Ector Project plans to begin generating electricity in the future. Ector will sell electric energy and capacity produced from the Ector Project exclusively at wholesale.⁵

The Ector Project will be comprised of natural gas turbines and associated facilities and equipment necessary for the generation of power at wholesale. The Ector Project will also include radial electric interconnection facilities necessary to effectuate Ector's wholesale power sales from the Ector Project.⁶ The Ector Project will interconnect to the transmission system owned by Oncor Electric Delivery Company LLC ("Oncor"). The Ector Project, including the interconnection

⁴ Ector is currently an indirect partially-owned subsidiary of Invenergy Investment

⁵ Such sales will be made to third-parties through bilateral agreements or through a power exchange. The Commission has determined that sales through a power exchange are considered wholesale sales for EWG purposes. *See Southern California Edison Co.*, 80 FERC ¶ 61,262 (1997). Ector may also purchase power and resell it at wholesale to third parties. An EWG is permitted to resell at wholesale power that it has not generated. *See CNG Power Services Corp.*, 71 FERC ¶ 61,378 (1995).

⁶ Ector may occasionally obtain from third-parties back-up power that Ector may need for station power to operate its Ector Project when Ector is not self-supplying its station power load. Such back-up or station power would be delivered to the Ector Project over the interconnection facilities that Ector will own. EWGs may use their interconnection facilities to transmit back-up power to their generation facilities. *See Zond Systems, Inc.*, 81 FERC ¶61,001 (1997).

facilities, will be located on land that Ector owns or that is owned by third-parties but which Ector has rights to use pursuant to easements or other land use arrangements entered into with such third-parties.

2. Ector's Other Potential Incidental Activities

In connection with developing, owning and operating the Ector Project, Ector may also engage in the following incidental activities that the Commission has found to be permissible EWG activities:

- sell ancillary services available from the Ector Project which are incidental to, and by-products of, the Ector Project's operations as a wholesale power generator;⁷
- reassign excess transmission capacity consistent with the Commission's requirement that such reassignment of excess transmission capacity be limited to transmission capacity Ector originally obtained for the purpose of affecting a specific wholesale sale of electric energy;⁸
- purchase and sell congestion revenue rights that Ector needs for the Ector Project's power sale operations;⁹
- resell excess fuel supplies or assign its excess fuel transportation capacity provided that such sales be made only if such fuel supplies or transportation were originally contracted by Ector to operate the Ector Project;¹⁰
- trade emission allowances consistent with the Commission's limitation that an EWG may only engage in such trading so long as the emission allowances were originally obtained in the normal course of operating the Ector Project;¹¹

⁷ The ancillary services Ector may sell would include reactive power and voltage support, regulation and frequency response services, load following, energy balancing services, spinning and supplemental reserves, blackstart capability, and any other ancillary services consistent with the Commission's rules or as otherwise permitted by the Commission. *See, e.g., Duke Energy Oakland, LLC*, 83 FERC ¶ 61,304 (1998); *Sithe Framingham, LLC*, 83 FERC ¶ 61,106 (1998).

⁸ *See CNG Power Services Corp.*, 71 FERC ¶ 61,026, at 61,103-04 (1995).

⁹ *See Duquesne Power, LP*, 106 FERC ¶ 61,104 (2004).

¹⁰ *See Selkirk Cogen Partners, L.P.*, 69 FERC ¶ 61,037 at 61,168-69 (1994).

¹¹ *See UGI Development Co.*, 89 FERC ¶ 61,192 (1999).

- sell "green" power certificates or credits consistent with the Commission's limitation that an EWG may sell such certificates or credits where they are associated with power produced by the Ector Project;¹²
- lease or rent property to third parties but to the extent a lease arrangement is not reasonably necessary to Ector's generation business and a rental fee is received above a nominal amount, Ector will, consistent with EWG precedent, donate or transfer such rental revenues to a non-affiliated entity;¹³
- engage in project development activities associated with the Ector Project. Such project development activities may include, but are not necessarily limited to, the following activities: due diligence; site investigations; feasibility studies; preliminary design and engineering; licensing and permitting; negotiation of asset and land acquisitions; negotiation of contractual commitments with lenders, equity investors, governmental authorities and other project participants and such other activities as may be necessary to financially close on eligible facilities; negotiation of power sales contracts; equipment purchases; fuel supply; engineering, construction, interconnection, and related matters; preparation and submission of bid proposals; and development of financing programs related to owning or operating the Ector Project and/or additional electric generation facilities that satisfy the criteria for EWG status;¹⁴ and
- engage in other activities incidental to the sale of electric energy at wholesale that are consistent with the Commission's EWG precedent.

III. ECTOR'S REPRESENTATIONS REGARDING EXEMPT WHOLESALE GENERATOR STATUS

Ector makes the following representations in order to demonstrate that it meets the Commission's definition of an EWG under Section 366.1 of the Commission's regulations.

A. Ector will be engaged directly and exclusively in the business of owning and operating all or part of one or more Eligible Facilities¹⁵ and selling electric energy at wholesale.

¹² See *Madison Windpower, LLC*, 93 FERC ¶ 61,270 (2000).

¹³ See, e.g., *Duke Energy Hot Spring, LLC*, 98 FERC ¶61,287 (2002); *PSEG Fossil, LLC, et al.*, 95 FERC ¶ 61,405 (2001).

¹⁴ See, e.g., *Empresa Valley Hermoso, S.A.*, 72 FERC ¶ 61,306 at 62,288 (1995). Ector will, to the extent required by the Commission, file a new notification of EWG status if it acquires ownership and/or operating interests in any additional Eligible Facilities not described herein or EWGs.

¹⁵ Section 366.1 of the Commission's regulation adopts by reference Section 32(a)(2) of the Public Utility Holding Company Act of 1935 ("PUHCA 1935"), 15 U.S.C. § 79z-5a(a)(2), which defines the term eligible wholesale facilities ("Eligible Facilities"). Thus, the term Eligible Facilities as used herein has the meaning ascribed to it in Section 32(a)(2) of PUHCA 1935.

The Ector Project, including the interconnection facilities described in Section II.B.1 above, satisfy the definition of Eligible Facilities because they will be used for the generation of electric energy exclusively for sale at wholesale. Consistent with the Commission's EWG precedent, the activities described in Section II.B.2 above that Ector may engage in will be incidental to the wholesale generation business and will not violate the EWG exclusivity requirement.

B. Ector will not make any foreign sales of power at retail.

C. Through the interconnection facilities described in Section II.B.1 above, the Ector Project will be interconnected with transmission facilities owned by Oncor. Ector will own interconnection facilities that will be necessary to effectuate the Ector Project's wholesale power sales.

D. No rate or charge for, or in connection with, the construction of the Ector Project or for electric energy produced by the Ector Project was in effect under the laws of any state as of October 24, 1992. Accordingly, no state commission determinations pursuant to Section 32(e) of the Public Utility Holding Company Act of 1935 are required.

E. Except for other EWGs, no portion of the Ector Project will be owned or operated by an Electric Utility Company that is an Affiliate or Associate Company¹⁶ of Ector.¹⁷

¹⁶ The terms "Electric Utility Company," "Affiliate" and "Associate Company" have the meanings ascribed to them in Section 366.1 of the Commission's regulations.

¹⁷ See *Buffalo Gap 2, supra*, at P 13 (interpreting Section 32(d)(1) of PUHCA 1935, incorporated into the definition of "exempt wholesale generator" in Section 366.1 of the Commission's regulations, "as not precluding co-ownership (or joint operation) by affiliated EWGs".)

In accordance with Section 366.7(a) of the Commission's regulations,¹⁸ a copy of this notice of self-certification was concurrently served upon the Public Utility Commission of Texas.

IV. CONCLUSION

For the reasons set forth in this notice of self-certification, Ector satisfies the requirements for EWG status.

Dated: June 20, 2014

Respectfully submitted,

Name: _____
James T. Murphy
Title: Vice President of Ector County Energy
Center LLC

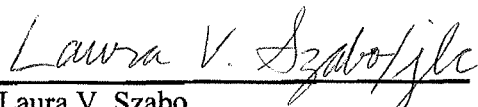


¹⁸ 18 C.F.R. §366.7(a).

CERTIFICATE OF SERVICE

I hereby certify that Ector County Energy Center LLC's foregoing Notice of Self-Certification of Exempt Wholesale Generator Status was served this 20th day of June, 2014, by first-class mail, postage prepaid, upon the following:

Public Utility Commission of Texas
1701 N. Congress Ave.
P.O. Box 13326
Austin, TX 78711-3326


Laura V. Szabo

Document Content(s)

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