

**155 FERC ¶ 62,055**  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Comanche Solar PV, LLC

Docket No. EC16-85-000

ORDER AUTHORIZING DISPOSITION  
OF JURISDICTIONAL FACILITIES

(Issued April 21, 2016)

On March 1, 2016, Comanche Solar PV, LLC (Applicant) filed an application pursuant to section 203(a)(1) of the Federal Power Act (FPA)<sup>1</sup> requesting authorization for the disposition of jurisdictional facilities resulting from one of the following alternative transaction structures:

1. TF Comanche Holdings LLC (TF Comanche) will purchase indirect, upstream membership interests in Applicant. TF Comanche is a wholly owned subsidiary of (a) TerraForm Comanche Managing Member LLC (a wholly owned subsidiary of TerraForm Power, Inc.), as Class B member, and (b) Wells Fargo Wind Holdings LLC (Wells Fargo Wind), as the Class A member (TerraForm Transaction); or
2. TF Comanche or a newly formed special purpose entity (NewCo) will purchase indirect, upstream membership interests in Applicant. The purchaser will be a wholly owned subsidiary of (a) Terra Nova Renewable Partners, LLC (Renewable Partners) as Class B member (which is an indirect subsidiary of IIF US Holding 2 LP (IIF 2 LP) (99 percent) and SunEdison (1 percent)), and (b) Wells Fargo Wind, as Class A member (Terra Nova Transaction); or
3. TF Comanche or NewCo will buy indirect ownership interests in Applicant. The purchaser will be a subsidiary of (a) a wholly owned subsidiary of IIF 2 LP, as Class B member, and (b) Wells Fargo Wind as Class A member (IIF Transaction, and collectively with the Terra

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<sup>1</sup> 16 U.S.C. § 824b (2012).

Nova Transaction and the TerraForm Transaction, Proposed Transactions).

The jurisdictional facilities involved in the Proposed Transactions consist of interconnection facilities, wholesale power sales contracts, and related books and records.

Applicant is constructing and will own and operate a 120 megawatt (MW) solar-powered electric generating facility to be located in Pueblo, Colorado (Facility), and connected to transmission facilities owned by Public Service Company of Colorado (PS Colorado). According to Applicant, the PS Colorado balancing authority area (PS Colorado BAA) is the relevant market. Applicant states that PS Colorado will purchase the entire output of the Facility under a 25-year contract.

Comanche Solar Holdings directly and wholly owns Applicant. Warehouse Intermediate Holdings, LLC directly owns Comanche Solar Holdings. In turn, FR Warehouse II LLC (FR Warehouse) directly wholly owns Warehouse Intermediate Holdings, LLC. SE Warehouse 1, LLC, (SE Warehouse I) directly owns 100 percent of the Class A membership interests in FR Warehouse. SunEdison LLC wholly and directly owns SE Warehouse I. In turn SunEdison Holdings Corporation wholly and directly owns SunEdison LLC, and SunEdison, Inc. (SunEdison) wholly and directly owns SunEdison Holdings Corporation.

Applicant states that SunEdison is a publicly traded company that develops wind and solar energy projects and sells photovoltaic energy solutions. SunEdison, through its wholly owned subsidiary, SunEdison Holdings Corporation, owns all of the Class B common stock of TerraForm Power, Inc. (TerraForm Inc.), which confers on SunEdison an 84 percent voting interest. TerraForm Inc. is a publicly traded company. TerraForm Inc. holds 100 percent of the voting interests in and is the sole managing member of TerraForm Power, LLC. (TerraForm LLC). TerraForm LLC owns a portfolio of utility-scale wind and solar projects and behind-the-meter solar projects throughout the United States.

Through SunEdison, Applicant is affiliated with an aggregate of 17.5 MW of generation capacity from qualifying small power production facilities located in the PS Colorado BAA. Neither Applicant nor any of its affiliates through SunEdison own, operate, or control any electric transmission facilities other than limited interconnection facilities associated with individual generation facilities.

Applicant states that FREIF II Bravo AIV, L.P. (FREIF) and FREIF II Warehouse Co-Investment, L.P. (together, First Reserve) indirectly own all of the

Class B membership interests in FR Warehouse. Applicant states that, once any of the Proposed Transactions are consummated, First Reserve will no longer have any ownership interest in Applicant.

Novatus Energy, LLC, owns 99 percent of Renewable Partners. Novatus Energy Holdings wholly and directly owns Novatus Energy LLC. Further, IIF 2 LP wholly and directly owns Novatus Energy Holdings. Applicant states that IIF 2 LP is an infrastructure investment fund managed and controlled by its general partner, IIF US Holding 2 GP, LLC (IIF 2 GP). Applicant states that IIF 2 GP is owned by three individuals, none of whom is engaged in the energy business in the United States other than through IIF 2 LP and IIF US Holding LP (IIF LP).

According to Applicant, IIF 2 LP currently does not own or control any electric generation capacity located in the PS Colorado BAA. Applicant states that IIF 2 LP is affiliated with IIF LP, another infrastructure fund that invests in electric generation facilities. IIF LP owns or controls approximately 450 MW of generation capacity associated with SWG Arapahoe, LLC (Arapahoe), Fountain Valley Power, LLC (Fountain Valley), and SWG Colorado, LLC, all of which own generation capacity located in the PS Colorado BAA. According to Applicant, the entire output of the Arapahoe and Fountain Valley facilities is fully committed to PS Colorado under long-term contracts through 2023 and 2032, respectively.

According to Applicant, none of IIF 2 LP, IIF LP, or any of their respective affiliates own, operate, or control any electric transmission facilities in the United States other than limited and discrete interconnection facilities associated with individual generation facilities. IIF 2 LP is affiliated with entities that own or control gas distribution facilities in Colorado, Missouri, and Maine. Applicant states that, other than these gas distribution facilities, none of IIF 2 LP, IIF LP, or any of their respective affiliates own or control, directly or indirectly, ten percent or more of the voting securities of any company that owns or controls inputs to electric generation, such as fuel supplies or fuel delivery systems.

Applicant states that Wells Fargo Wind is a wholly owned, indirect subsidiary of Wells Fargo & Company (WF Company), which is a publicly traded, financial holding company regulated by the Federal Reserve under the Bank Holding Company Act of 1956. WF Company's principal business is to act as the holding company for its various subsidiaries. According to Applicant, WF Company is not primarily engaged in energy-related business activities and does not directly own or control any electric generating, transmission, or distribution assets, or otherwise have contractual rights to control the electrical output of any generating facilities.

Applicant submits that WF Company and its subsidiaries (WF Affiliates)

may hold other debt and equity positions from time to time in energy companies in connection with their broker/dealer, financial trading, or banking activities. Applicant states that these are non-controlling, passive interests that do not give WF Company any discretion as to how and when power may be sold. WF Affiliates also may be engaged in the management of mutual funds and/or other collective investment vehicles as a fiduciary on behalf of persons who hold interests in such funds or other investment vehicles, and such funds or other investment vehicles may buy and sell securities of public utilities and other companies engaged in energy-related activities, without exercising control over such public utilities or other companies.

Applicant states that the relevant parties have not determined which one of the Proposed Transactions will go forward. According to Applicant, whichever of the Proposed Transactions goes forward will be effectuated pursuant to one or more agreements entered into by the parties to that transaction. Applicant states that the Terra Nova Transaction and the IIF Transaction will conform to the description contained in their Application in all material respects. As noted previously, only one of either the Terra Form Transaction, the Terra Nova Transaction, or the IIF Transaction will occur.

Applicant states that the Proposed Transactions are consistent with the public interest and will not adversely affect competition, rates or regulation. Applicant states that none of the Proposed Transactions will have an adverse impact on horizontal competition in the PS Colorado BAA because all of Applicant's capacity is fully committed under long-term contract with PS Colorado. Applicant states that the Commission has previously found no adverse effect on horizontal competition when a proposed transaction involves a change in upstream ownership of a facility where the output of the facility is fully committed under long-term agreements.<sup>2</sup>

Applicant states that the Proposed Transactions present no vertical market power concerns. Applicant submits that the Proposed Transactions do not involve transmission facilities (other than limited interconnection facilities that Applicant will construct). Applicant states that it will not be able to use the natural gas distribution facilities in Colorado affiliated with IIF 2 LP to favor its own generation, raise rivals' costs, or otherwise disadvantage rivals, because the generation that Applicant owns or controls in the PS Colorado BAA will be solar powered. Therefore, Applicant will not take delivery of natural gas. Likewise, WF Company's interests in railroad cars and barges do not cause vertical market power concerns because Applicant will not take delivery of coal. Accordingly, Applicant submits that the Proposed Transactions do not raise any concerns with

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<sup>2</sup> Application at 17, citing *Osage Wind, LLC*, 145 FERC ¶ 61,212 (2013), at P 15.

respect to vertical market power.

Applicant states that the Proposed Transactions will have no adverse effect on rates. According to Applicant, the Proposed Transactions each involve a change in the upstream ownership of Applicant. The change resulting from any of the Proposed Transactions will not affect any such wholesale sales or the terms and conditions of Applicant's long-term power sales contract with the PS Colorado BAA. Moreover, Applicant does not have captive wholesale customers or transmission customers. Therefore, Applicant states that none of the Proposed Transactions will adversely affect rates.

Applicant states that the Proposed Transactions will not have an adverse impact on regulation. After any of the TerraForm Transaction, the Terra Nova Transaction, or the IIF Transaction is consummated, Applicant will continue to be regulated by the Commission under the FPA to the same degree as before the Proposed Transactions. Applicant states that the Proposed Transactions will not have an adverse impact on state regulation because Applicant does not make, or, after its Facility goes into operation, will not make any retail sales subject to the ratemaking jurisdiction of a state commission. Accordingly, Applicant states that the Proposed Transactions will not affect or impair regulation.

With respect to cross-subsidization, Applicant asserts that the Proposed Transactions fall within the "safe harbor" adopted by the Commission for transactions that do not involve a franchised public utility with captive customers.

Additionally, Applicant verifies that, based on the facts and circumstances known to it or that are reasonably foreseeable, the Proposed Transactions will not result in, at the time of the Proposed Transactions nor in the future cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company, including: (1) any transfer of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company; (2) any new issuance of securities by a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; (3) any new pledge or encumbrance of assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; or (4) any new affiliate contract between a non-utility associate company and a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, other than non-power goods and services agreements subject to review under Sections 205 and 206 of the FPA.

This filing was noticed on March 2, 2016, with comments, protests or interventions due on or before March 22, 2016. None were received.

Information and/or systems connected to the bulk power system involved in the Proposed Transactions may be subject to reliability and cybersecurity standards approved by the Commission pursuant to FPA section 215. Compliance with these standards is mandatory and enforceable regardless of the physical location of the affiliates or investors, information databases, and operating systems. If affiliates, personnel or investors are not authorized for access to such information and/or systems connected to the bulk power system, a public utility is obligated to take the appropriate measures to deny access to this information and/or the equipment/software connected to the bulk power system. The mechanisms that deny access to information, procedures, software, equipment, etc., must comply with all applicable reliability and cybersecurity standards. The Commission, NERC or the relevant regional entity may audit compliance with reliability and cybersecurity standards.

When a controlling interest in a public utility is acquired by another company, whether a domestic company or a foreign company, the Commission's ability to adequately protect public utility customers against inappropriate cross-subsidization may be impaired absent access to the parent company's books and records. Section 301 (c) of the FPA gives the Commission authority to examine the books and records of any person who controls, directly or indirectly, a jurisdictional public utility insofar as the books and records relate to transactions with or the business of such public utility. The approval of the transaction is based on such examination ability.

Order No. 652 requires that sellers with market-based rate authority timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.<sup>3</sup> To the extent that a transaction authorized under FPA section 203 results in a change in status, sellers that have market-based rates are advised that they must comply with the requirements of Order No. 652.

After consideration, it is concluded that any one of the Proposed Transactions are consistent with the public interest and any one of them are hereby authorized, subject to the following conditions:

- (1) The Proposed Transactions are authorized upon the terms and conditions and for the purposes set forth in the application;

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<sup>3</sup> *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 70 Fed. Reg. 8,253 (Feb. 18, 2005), FERC Stats. & Regs. ¶ 31,175, order on reh'g, 111 FERC ¶ 61,413 (2005).

- (2) Applicant must inform the Commission of any material change in circumstances that departs from the facts or representations that the Commission relied upon in authorizing the Proposed Transactions within 30 days of the date of the material change in circumstances;
- (3) The foregoing authorization is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determination of cost or any other matter whatsoever now pending or which may come before the Commission;
- (4) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted;
- (5) If any of the Proposed Transactions result in changes in the status or the upstream ownership of Applicant's affiliated Qualifying Facilities, if any, an appropriate filing for recertification pursuant to 18 C.F.R. § 292.207 (2015) shall be made;
- (6) The Commission retains authority under sections 203(b) and 309 of the FPA, to issue supplemental orders as appropriate;
- (7) Applicant shall make appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transactions; and
- (8) Applicant shall notify the Commission within 10 days of the date that the disposition of jurisdictional facilities has been consummated.

This action is taken pursuant to the authority delegated to the Director, Division of Electric Power Regulation – West under 18 C.F.R. § 375.307 (2015). This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order pursuant to 18 C.F.R. § 385.713 (2015).

Steve P. Rodgers, Director  
Division of Electric Power  
Regulation – West