

147 FERC ¶ 62,063
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Mesquite Solar 1, LLC

Docket No. EC14-71-000

ORDER AUTHORIZING DISPOSITION
OF JURISDICTIONAL FACILITIES

(Issued April 24, 2014)

On March 24, 2014, Mesquite Solar 1, LLC (Mesquite Solar) filed an application (Application) pursuant to section 203(a)(1)(A) of the Federal Power Act (FPA)¹ requesting authorization for the disposition of jurisdictional facilities associated with the transfer of an undivided interest in certain generation interconnection facilities (Interconnection Facilities) to its affiliate SEP II, LLC (SEP II) (Transaction).² According to Mesquite Solar, the jurisdictional facilities involved in the Transaction consist of the Interconnection Facilities.

Mesquite Solar is an exempt wholesale generator with market-based rate authority. Mesquite Solar is jointly owned in equal shares by subsidiaries of Sempra Energy and Consolidated Edison, Inc. Mesquite Solar owns and operates a solar photovoltaic electric generation facility (Mesquite Solar Facility) located near Arlington, Arizona with a capacity of 165 megawatts (MW). The output of the Mesquite Solar Facility is fully committed under a long-term power purchase agreement with Pacific Gas and Electric Company. According to the Application, the Mesquite Solar Facility is the first phase of a larger solar photovoltaic development with a full capacity of 700 MW, planned near Tonopah, Arizona by subsidiaries of Sempra Energy. The remaining 535 MW portion of the solar development (i.e., the full capacity of the development of 700 MW less the 165-MW capacity of the Mesquite Solar Facility) is referred to as the Future Phases. The Mesquite Solar Facility is interconnected to the grid at the Hassayampa Switchyard by means of its collector substation and a 230 kV generation-tie line approximately four

¹ 16 U.S.C. § 824b (2012).

² According to the Application, the Transaction does not require separate approval under section 203(a)(2) of the FPA, because it is structured as an asset transfer that does not involve the acquisition of securities of, or merger or consolidation with, a transmitting utility, an electric utility company, or a holding company by another holding company within the meaning of section 203(a)(2).

miles in length (Mesquite Solar Generator-tie Facilities), which in turn connect to certain shared interconnection facilities (Shared Switchyard Facilities)³ that Mesquite Solar owns as a tenant-in common with its affiliate Mesquite Power, LLC (Mesquite Power), and with The Salt River Project Agricultural and Improvement District (SRP). The Shared Switchyard Facilities serve as the connection to the Hassayampa Switchyard.⁴ The Mesquite Solar Facility is thus interconnected to the grid via the Mesquite Solar Generator-tie Facilities and the Shared Switchyard Facilities, which together constitute the Interconnection Facilities. The Mesquite Solar Facility is located in the California Independent System Operator Corporation (CAISO) market.⁵

SEP II is a wholly owned indirect subsidiary of Sempra Energy. SEP II will develop the Future Phases, but it does not currently own or control transmission or generating facilities. SEP II is the owner of certain real estate interests and holds permits associated with the Future Phases. The Transaction will enable SEP II to own a share of the Interconnection Facilities for the purpose of developing and interconnecting one or more Future Phases to the Hassayampa Switchyard, thereby eliminating the need to build costly and redundant interconnection facilities to accomplish the same purpose.

Mesquite Solar states that, at present, the Shared Switchyard Facilities are owned 35.90 percent by Mesquite Solar, 32.05 percent by Mesquite Power and 32.05 percent by SRP as tenants-in-common. Mesquite Solar currently owns 100 percent of the Mesquite Solar Generator-tie Facilities. After the consummation of the Transaction, the Shared Switchyard Facilities will be owned 8.46 percent by Mesquite Solar, 32.05 percent by Mesquite Power, 32.05 percent by SRP and 27.44 percent by SEP II as tenants-in-common. In addition, after the Transaction, the Mesquite Solar Generator-tie Facilities will be owned 23.57 percent by Mesquite Solar and 76.43 percent by SEP II as tenants-in-common.

According to the Application, agreements memorializing the terms and conditions under which Mesquite Solar, Mesquite Power, SRP, and SEP II will own their respective

³ The Shared Switchyard Facilities consist of: (i) a 230 kV bus, (2) two 230 kV lines each terminating at individual three-phase autotransformer banks, (iii) two 230/500 kV three-phase autotransformer banks, (iv) two 500 kV lines approximately 0.3 miles in length connecting each autotransformer bank to the Hassayampa Switchyard, and (v) interconnection facilities in bays 5 and 8 of the Hassayampa Switchyard.

⁴ See Hassayampa Switchyard Interconnection Agreement (HIA), Docket No. ER11-3667-002 (2011).

⁵ On September 30, 2013, the CAISO filed with the Commission an executed large generator interconnection agreement with Mesquite Solar (CAISO LGIA). See LGIA, Docket No. ER13-2489-000 (2013).

interests in the Interconnection Facilities as tenants-in-common are referred to as the Cotenancy Agreements. Under the Cotenancy Agreements, each of Mesquite Solar, Mesquite Power, SRP, and SEP II will have the right to use the Interconnection Facilities to interconnect its generating facility to the Hassayampa Switchyard. Mesquite Solar states that it will complete the Transaction by transferring an undivided pro rata interest in the Interconnection Facilities directly to SEP II, with the result that SEP II will own an undivided interest of 27.44 percent in the Shared Switchyard Facilities and an undivided interest of 76.43 percent interest in the Mesquite Solar Generator-tie Facilities. The Transaction does not affect the ownership interests in the Shared Switchyard Facilities held by Mesquite Power or SRP.

Mesquite Solar states that the Transaction will not have an adverse effect on competition, rates, and regulation, and will not raise any issues with respect to cross-subsidization. Mesquite Solar states that the Transaction does not raise competitive concerns because the transfer does not involve generating facilities, and the Transaction will not result in a change in control over generation or a change in market concentration. According to Mesquite Solar, the Transaction will raise no horizontal market power concerns.

Mesquite Solar states that the Transaction does not raise any vertical market power concerns because the Transaction consists only in the transfer of an undivided interest in limited interconnection facilities to be used solely to interconnect generating facilities to the grid. According to Mesquite Solar, the Interconnection Facilities were designed and constructed to serve as an interconnection facility and not as a networked transmission facility. Mesquite Solar also states that the Transaction will not have any effect on the ability of transmission customers to take transmission service. Mesquite Solar adds that the Transaction will not cause any vertical market power concerns because it will not gain the ability or incentive to affect prices or outputs in the downstream electricity markets or to discourage entry by new generators. According to Mesquite Solar, the Transaction will raise no vertical market power concerns.

Mesquite Solar states that the Transaction will have no adverse effect on rates. Mesquite Solar states that it will continue to sell the energy output of its generating facilities to customers pursuant to power sale agreements at market based rates. In addition, Mesquite Solar does not serve transmission customers, thus the Transaction will not have any effect on Mesquite Solar's rates for transmission service. According to Mesquite Solar, the Transaction will not have any effect on wholesale ratepayers or transmission customers.

Mesquite Solar states that the Transaction will have no adverse effect on regulation because, after the Transaction closes, Mesquite Solar will remain subject to the Commission's regulations. Mesquite Solar states that it will continue to be a public utility and will maintain its market-based rate tariff on file with the Commission and will

continue to operate and serve its customers. Mesquite Solar states that it has no retail customers thus the Transaction will not adversely affect the authority or ability of states regulators to regulate the sale of power to retail customers. Therefore, according to Mesquite Solar, the Transaction will not impair federal or state jurisdiction.

Mesquite Solar states that the Transaction will not result in the cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company. Mesquite Solar asserts that because the Transaction does not involve a franchised public utility with captive customers, there is no potential for harm to customers and does not raise any issue with respect to cross-subsidization. In addition, Mesquite Solar represents that, based on facts and circumstances known to it or that are reasonably foreseeable, that the Transaction will not result in, at the time of the Transaction or in the future: (1) any transfer of facilities between a traditional 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 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 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 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 25, 2014, with comments, protests or interventions were due on or before April 14, 2014. None was received. Notices of intervention and unopposed timely filed motions to intervene are granted pursuant to the operation of Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214) (2013). Any opposed or untimely filed motion to intervene is governed by the provisions of Rule 214.

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.

Information and/or systems connected to the bulk power system involved in this

transaction 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.

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.⁶ The foregoing authorization may result in a change in status. Accordingly, Mesquite Solar is advised to make a change in status filing as required by Order No. 652, if necessary. In addition, Mesquite Solar shall make appropriate filings under section 205 of the FPA, as necessary, to implement the Transaction.

After consideration, it is concluded that the Transaction is consistent with the public interest and is authorized, subject to the following conditions:

- (1) The Transaction is authorized upon the terms and conditions and for the purposes set forth in the Application;
- (2) 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 determinations of cost, or any other matter whatsoever now pending or which may become before the Commission;
- (3) 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;
- (4) The Commission retains authority under sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate;

⁶ *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).

- (5) If the Transaction results in changes in the status or the upstream ownership of Mesquite Solar's affiliated qualifying facilities, if any, an appropriate filing for recertification pursuant to 18 C.F.R. § 292.207(2013) shall be made;
- (6) Mesquite Solar shall make the appropriate filings under section 205 of the FPA, as necessary, to implement the Transaction;
- (7) Mesquite Solar must inform the Commission of any change in circumstances that would reflect a departure from the facts the Commission relied upon in authorizing the Transaction; and
- (8) Mesquite Solar shall notify the Commission within 10 days of the date that the disposition of jurisdictional facilities under the Transaction 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 (2013). 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 (2013).

Steve P. Rodgers
Director
Division of Electric Power Regulation - West

Document Content(s)

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