

156 FERC ¶ 62,116

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Western Antelope Blue Sky Ranch B LLC

Docket No. EC16-142-000

ORDER AUTHORIZING DISPOSITION  
OF JURISDICTIONAL FACILITIES

(Issued August 11, 2016)

On July 7, 2016, Western Antelope Blue Sky Ranch B LLC (Western Antelope or 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 the acquisition by SPW Solar Holdings 3, LLC (SPW3) of 100 percent of the membership interests in Western Antelope. Western Antelope also seeks authorization to transfer to JPM Capital Corporation (JPM Capital) the non-managing, passive Class A Units in SPW3 (together, the Proposed Transaction). The jurisdictional facilities associated with the Proposed Transaction consist of Western Antelope's market-based rate tariff and rate schedules, limited interconnection facilities, power purchase agreement, and related books and records.

Western Antelope states that the Proposed Transaction may not require Commission approval under FPA section 203 (a)(1); it nevertheless ask the Commission to authorize the Proposed Transaction. This order authorizes the Proposed Transaction without making any determination of jurisdiction.<sup>2</sup>

Western Antelope is a limited liability company under the laws of Delaware and a wholly owned subsidiary of FTP Power LLC (FTP Power). It owns a 20 megawatt (MW) solar photovoltaic power project (WABSRB Project) located in the City of Lancaster, Los Angeles County, California within the California Independent System Operator Corp. (CAISO). Western Antelope states

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<sup>1</sup> 16 U.S.C. § 824b (2012).

<sup>2</sup> See *Ocean State Power*, 47 FERC ¶ 61,321 (1989).

that it expects to begin generating test power from the WABSRB Project in October 2016 and achieve commercial operation in November 2016. Western Antelope has committed to sell the entire output from the WABSRB Project under a 25-year power purchase agreement with a non-affiliate, the City of Palo Alto. Western Antelope states that its sole business is ownership and operation of the WABSRB Project. Western Antelope is an exempt wholesale generator, and has applied to the Commission for authorization to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates.<sup>3</sup> Western Antelope states that it will own no transmission facilities other than limited interconnection facilities needed to connect the WABSRB Project with the CAISO-controlled transmission system.

Western Antelope states that FTP Power's issued membership interest consist of Class A Units and Common Units. Western Antelope adds that C2E, LLC (C2E) owns 28.4 percent of FTP Power's Class A Units and 0.8 percent of FTP Power's Common Units. Western Antelope states that C2E is owned in equal parts by Creamer Group, LLC, and two individual investors. Western Antelope explains that Fir Tree Solar LLC owns 71.6 percent of FTP Power's Class A Units and 98.4 percent of FTP Power's Common Units. Western Antelope states that Martifer-Silverado Fund I, LLC (MS Fund) owns 0.8 percent of FTP Power's Common Units, and Silverado Power, LLC owns a 42 percent interest in MS Fund, and Martifer Solar, Inc., owns a 58 percent interest in MS Fund.

Western Antelope states that SPW3 is a limited liability company under the laws of Delaware and is an affiliate of Western Antelope. Through its subsidiaries, including Western Antelope, SPW3's principal business is indirectly owning and operating solar photovoltaic energy generation facilities in the United States.

Western Antelope states that SPW Solar Managing Member 3, LLC (SPWSMM3) is the Managing Member of SPW3 and will have the right to control SPW3 on a day-to-day basis following the closing of the Proposed Transaction. SPWSMM3 is a wholly owned subsidiary of sPower FinCo 4 LLC (FinCo 4). FinCo 4 is a wholly owned subsidiary of sPower Solar Holdings 4, LLC (Holdings), which in turn is a wholly owned subsidiary of Sustainable Power Group LLC (sPower). sPower is a wholly owned subsidiary of FTP Power.

Western Antelope states that JPM Capital is an indirect wholly owned subsidiary of JPMorgan Chase & Co. (JPMorgan Chase), an international financial services company. JPM Capital and JPMorgan Chase are not primarily engaged in

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<sup>3</sup> *Western Antelope Blue Sky Ranch B LLC*, Application for Order Accepting Market-Based Rate Tariff, Docket No. ER16-1973-000, filed June 21, 2016.

energy-related business activities and do not directly own or control any electric generation or transmission assets or generation output. Western Antelope states that none of JPMorgan Chase's affiliates own any electric transmission (other than limited interconnection facilities) or interstate natural gas pipeline facilities. Western Antelope further states that JPMorgan Chase does not control and is not affiliated with any entity that controls any essential inputs to generation in the CAISO market, including any intrastate pipeline facilities. Western Antelope states that through direct or indirect subsidiaries, JPMorgan Chase has a number of energy affiliates that engage in wholesale sales of electricity in the United States and that own various interests in electric generating facilities.

Western Antelope states that neither JPM Capital nor any subsidiary or affiliate or upstream owner of JPM Capital directly or indirectly owns or controls (1) any operational electric generation in the CAISO market; (2) any electric transmission or distribution facilities in the CAISO market; (3) any intrastate natural gas transportation, intrastate natural gas storage or distribution facilities; sites for generation capacity development; physical coal supply sources and ownership of or control over who may access transportation of coal supplies in the CAISO market, or (4) any franchised public utility in the United States.

Western Antelope also states that subsidiaries of JPMorgan Chase may be engaged in the management of mutual funds and/or other collective investment vehicles and separate accounts as a fiduciary on behalf of persons who hold interests in such funds or other investment vehicles, or separate accounts, and such funds, investment vehicles, or other accounts 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

According to the application, as a result of the Proposed Transaction, SPWSMM3 and JPM Capital will each acquire indirect interests in Western Antelope. Applicant explains that, subject to the provisions of a Limited Liability Company Agreement of SPW3, SPWSMM3, as Managing Member and owner of 100 percent of the Class B Units in SPW3, will have the right to control Western Antelope and the WABSRB Project on a day-to-day basis. Applicant adds that JPM Capital, as owner of 100 of the non-controlling passive Class A Units in SPW3, will have only limited rights with respect to the actions of SPW3 and Western Antelope, such as consent rights necessary for JPM Capital to protect its economic investment in SPW3. Applicant states that JPM Capital will not, by virtue of the Proposed Transaction or its ownership of SPW3's Class A Units, have the ability to manage Western Antelope or the WABSRB Project.

Applicant states that the Proposed Transaction is consistent with the public interest and will not adversely affect competition, rates or regulations. With

respect to competition, Applicant states that the Proposed Transaction does not raise any horizontal market power concerns in the CAISO market, the relevant market. Applicant states that the entire output from the WABSRB Project is committed to a non-affiliated purchaser under a long-term power purchase agreement. Applicant and their affiliates do not own any uncommitted capacity in the CAISO market. Applicant states that JPM Capital's ownership of the Class A Units in SPW3 will not result in a change in market share of JPM Capital or Western Antelope because JPM Capital will not gain control over Western Antelope or the WABSRB Project as a result of the Proposed Transaction. Applicant asserts that JPM Capital will not have voting control over Western Antelope's wholesale power sales or day-to-day operation of power generation or transmission facilities. Therefore, Applicant states that the Proposed Transaction presents no horizontal market power concerns.

Additionally, Applicant states that the Proposed Transaction does not raise any vertical market power concerns. Applicant states that Western Antelope will own no transmission facilities in any market other than those limited interconnection facilities necessary for connecting the WABSRB Project with the transmission system, nor will Western Antelope own or control other inputs to power production. Furthermore, as a result of the Proposed Transaction, Applicant states that, it will not become affiliated with any entity or person that owns, controls, or operates transmission facilities or other inputs to power production in the same market as the WABSRB Project. In addition, Applicant states that neither Western Antelope nor JPM Capital, or their affiliates, owns or controls sites for the development of new generation capacity in the United States that would prevent third parties from entering the relevant market. Therefore, Applicant asserts that the Proposed Transaction will have no adverse effect on vertical market power.

With respect to rates, Applicant states that the Proposed Transaction will not subject wholesale customers to increased rates. Applicant states that all sales from the WABSRB Project will be made at market-bases rates, and the Proposed Transaction will not alter the terms of Western Antelope's long-term power purchase agreement with the City of Palo Alto. According to Applicant, the Proposed Transaction will have no effect on rates.

With respect to regulation, Applicant states that the Proposed Transaction will not affect the extent to which the Commission may regulate it. Applicant further states that the Proposed Transaction is not subject to regulation by any state entity. Additionally, Applicant adds that the Proposed Transaction will not create a regulatory gap at the federal or state level or shift regulatory authority between the Commission and any state commission. According to Applicant, the Proposed Transaction will have no adverse effect on federal or state regulation.

Applicant states that the Proposed Transaction will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company. Applicant asserts that the Proposed Transaction falls within one of the “safe harbors” adopted by the Commission for which detailed explanation and evidentiary support to demonstrate a lack of cross-subsidization is not required. Applicant more specifically state that the Proposed Transaction does not involve franchised public utility with captive customers.

This filing was noticed on July 7, 2016 with comments, protests or interventions due on or before July 28, 2016. None was filed.

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

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>4</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.

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<sup>4</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).

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

- (1) The Proposed Transaction is authorized upon the terms and conditions and for the purposes set forth in the application;
- (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 Transaction 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 the Proposed Transaction results 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 Transaction; 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

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