

156 FERC ¶ 62,135

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Elevation Solar C LLC

Docket No. EC16-141-000

ORDER AUTHORIZING ACQUISITION
OF JURISDICTIONAL FACILITIES

(Issued August 19, 2016)

On July 7, 2016, Elevation Solar C LLC (Elevation) filed an application under section 203(a)(1) of the Federal Power Act (FPA)¹ requesting authorization for the acquisition of jurisdictional facilities. Specifically, JPM Capital Corporation (JPM Capital) will acquire an indirect passive interest in Elevation (Proposed Transaction). The affected jurisdictional facilities consist of a market-based rate tariff and rate schedules, a power purchase agreement, interconnection facilities, and associated books and records.

Elevation states that the Proposed Transaction may not require Commission approval under section 203(a)(1); however, out of an abundance of caution, it nevertheless asks the Commission to authorize the Proposed Transaction. This order authorizes the Proposed Transaction without making any determination of jurisdiction.²

Elevation is an exempt wholesale generator with market-based rate authority.³ Elevation owns an approximately 40 megawatt photovoltaic (PV) power project located in the City of Lancaster, Los Angeles County, California (Facility). The Facility is situated within the California Independent System Operator Corporation (CAISO) market. Thus, according to Elevation, the relevant market for the Proposed Transaction is CAISO. Output from the Facility is committed under a long-term power purchase agreement to an unaffiliated entity.

Elevation is an indirect subsidiary of FTP Power LLC (FTP), a Delaware limited liability company. According to Elevation, FTP has the right to control it and the Facility

¹ 16 U.S.C. § 824b (2012).

² *Ocean State Power*, 47 FERC ¶ 61,321 (1989).

³ Market-Based Rate Authorization was granted in *Elevation Solar C LLC et al.*, Docket No. ER16-1901-000 et al. (August 5, 2016) (delegated letter order).

on a day-to-day basis. FTP's issued membership interests consist of Class A Units and Common Units, which are both shared in various percentages by C2E, LLC (C2E), a Utah limited liability company, and two Delaware limited liability companies, Fir Tree Solar LLC and Martifer-Silverado Fund I, LLC (MS Fund). C2E is owned in equal parts by Creamer Group, LLC, a Utah limited liability company; Creamer Investments, Inc., a Nevada corporation; and two individuals. MS Fund is owned 42 percent by Silverado Power, LLC, a Delaware limited liability company, and 58 percent by Martifer Solar, Inc. a Delaware corporation.

SPW Solar Holdings 3, LLC (SPW3), an indirect subsidiary of FTP, is a Delaware limited liability company that owns and operates PV generation facilities in the United States. According to Elevation, simultaneously with the closing of the Proposed Transaction, SPW3's issued membership interests will consist of Class A Units and Class B Units. The Class A Units, which are passive and non-controlling, will be 100 percent owned by JPM Capital, an indirect subsidiary of JPMorgan Chase & Co. (JPMorgan Chase), a financial service company. Elevation asserts that JPM Capital and JPMorgan Chase are not primarily engaged in energy-related business activities and do not directly own or control any electric generating or transmission assets or generation output. Furthermore, JPMorgan Chase does not control and is not affiliated with any entity that controls inputs to generation within the CAISO market. The Class B Units, which are controlling, will be 100 percent owned by SPW Solar Managing Member 3 (SPWSMM3). Further according to Elevation, SPWSMM3 will be the Managing Member of SPW3 and, as such, will have the right to control SPW3.⁴

According to Elevation, SPW3 will acquire from FinCo 4, the direct parent of Elevation and indirect subsidiary of FTP, 100 percent of its membership interests in Elevation, and as a consequence, JPM Capital will acquire an indirect interest in Elevation. Elevation will then become a direct, wholly owned subsidiary of SPW3. SPWSMM3, as Managing Member and owner of all of the controlling Class B Units in SPW3, will have the right to control Elevation and the Facility. JPM Capital, as owner of all of the passive, non-controlling Class A Units in SPW3, will have only limited rights to protect its economic investments.

Elevation states that the Proposed Transaction is consistent with the public interest and will have no adverse effect on competition, rates, or regulation. With respect to horizontal market power, Elevation states that the Proposed Transaction raises no concerns. Elevation states that output from the Facility is fully committed under a long-term agreement to an unaffiliated entity. Elevation also states that neither it nor its affiliates own any uncommitted capacity in the CAISO market. Furthermore, Elevation

⁴ Elevation does not seek any authorization as to SPW3 or as to SPWSMM3 and none is granted in this order.

states that JPM Capital's ownership of the passive Class A Units in SPW3 will not result in JPM Capital gaining control over the Facility.

With regard to vertical market power, Elevation states that the Proposed Transaction does not raise any concerns. Elevation states that it will not own any transmission facilities, other than limited interconnection facilities, or other inputs to generation. Furthermore, Elevation states that it will not become affiliated with any entity that owns, controls, or operates transmission facilities or other inputs to power production in the CAISO market. In addition, Elevation states that neither it nor JPM Capital, nor their affiliates, own or control sites for the development of new generation in the United States that would prevent third parties from entering the CAISO market.

With regard to rates, Elevation states that the Proposed Transaction will not have an adverse effect. Elevation states that it will sell power at market-based rates. Elevation also states that the Proposed Transaction will not alter the terms of its long-term agreement. With regard to regulation, Elevation states that the Proposed Transaction will not have an adverse effect because it will not create a regulatory gap at the federal or state level or shift regulatory authority between the Commission and any state commission.

Elevation states that, based on facts and circumstances known to it or that are reasonably foreseeable, the Proposed Transaction will not result in, at the time of the closing or in the future, cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company. Specifically, Elevation states that the Proposed Transaction does not involve a franchised utility with captive customers and will not result in: (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 service agreements subject to review under sections 205 and 206 of the FPA.

The filing was noticed on July 7, 2016, with comments, protests, or interventions due on or before July 28, 2016. None were received.

Information and/or systems connected to the bulk 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 database, 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, North America Electric Reliability Corporation 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 Proposed 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.⁵ The foregoing authorization may result in a change in status. Accordingly, applicants that have market-based rates are advised that they must comply with the requirements of Order No. 652. In addition, applicants shall make appropriate filings under section 205 of the FPA to implement the Proposed Transaction.

After consideration, it is concluded that the Proposed Transaction is consistent with the public interest and is 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) Elevation 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

⁵ *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).

days from the date of 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 determinations of costs, 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 upstream ownership of Elevation's affiliated qualifying facilities, 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) Elevation shall make appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transaction; and
- (8) Elevation shall notify the Commission within 10 days of the date that the acquisition 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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