156 FERC ¶ 62,146

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

North Star Solar PV LLC Docket No. EC16-133-000

ORDER AUTHORIZING DISPOSITION
OF JURISDICTIONAL FACILITIES

(Issued August 29, 2016)

On June 23, 2016, North Star Solar PV LLC (North Star) filed an application pursuant to section 203(a)(1) of the Federal Power Act (FPA)[1] requesting authorization for the disposition of jurisdictional facilities associated with a proposed transaction (Proposed Transaction) pursuant to which BAL Investment & Advisory, Inc. (BAL Advisory), or a wholly owned subsidiary of BAL Advisory, will purchase 100 percent of the Class A membership interests in DESRI North Star Holdings, L.L.C. (North Star Holdings). The jurisdictional facilities involved in the Proposed Transaction consist of North Star's market-based rate tariff, associated books, records, accounts and related agreements, and interconnection facilities.

North Star 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]

North Star states that it owns and will operate the North Star Solar Generating Facility, a 100 megawatt (MW) electric generating facility located in Chisago County, Minnesota (Facility) within the Midcontinent Independent System Operator, Inc. (MISO) market, along with interconnection facilities necessary to connect the Facility to the transmission system owned by Northern States Power Company (Northern States Power). According to North Star, the full output of the Facility is committed under a long term power purchase agreement with Northern States Power, an unaffiliated entity. North Star represents that it is a wholly owned subsidiary of North Star Holdings and an indirect subsidiary of DESRI North Star Development, L.L.C. (North Star Development). North Star Development is indirectly, wholly owned by D. E. Shaw & Co., L.P. (DESCO LP). D. E. Shaw & Co., Inc. (DESCO Inc.) is the general partner of DESCO LP. According to North Star, Dr. David E. Shaw is the chairman, president, and sole stockholder of DESCO Inc.

[1] 16 U.S.C. § 824b (2012).

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

According to North Star, BAL Advisory is an indirect, wholly owned subsidiary of Bank of America Corporation (Bank of America), a bank holding company and a financial holding company. North Star further represents that BAL Advisory and Bank of America 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. North Star asserts that none of BAL Advisory or its affiliates own or control 10 percent or more of the voting securities in any generating facilities located in the MISO market. North Star adds that none of BAL Advisory or its affiliates own or control inputs to electric generation located in the MISO market, or are affiliated with a traditional franchised public utility with captive customers.

North Star states that pursuant to the terms of the Membership Interest Purchase Agreement, BAL Advisory will acquire 100 percent of the non-controlling, passive Class A membership interests in North Star Holdings.

According to North Star, the Proposed Transaction is consistent with the public interest and will not have an adverse effect on competition, rates, or regulation and will not result in cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company.

North Star states that the Proposed Transaction raises no horizontal market power concerns because all of it and its affiliated generating capacity is fully committed under long term power purchase agreements with unaffiliated entities. Further, other than passive investment interests, neither BAL Advisory nor any of its affiliates own, operate or control any electric generation capacity in the MISO market. Therefore, according to North Star, the Proposed Transaction will not have an adverse impact on horizontal competition.

North Star further represents that the Proposed Transaction raises no vertical market power concerns. According to North Star, other than limited interconnection facilities, neither it nor BAL Advisory nor any of their affiliates own or control electric transmission facilities. North Star adds that neither North Star, nor its affiliates, nor BAL Advisory nor any of its affiliates, have any ownership interests in or control of fuel supplies, fuel delivery systems, inputs to electricity products or inputs to electric power production that could raise barriers to entry in the relevant market. Therefore, according to North Star, the Proposed Transaction will not have an adverse impact on vertical competition.

According to North Star, the Proposed Transaction will have no adverse effect on rates because all sales it makes of electric energy, capacity, and ancillary services will continue to be made at market-based rates. North Star asserts that neither it nor any of its affiliates, nor BAL Advisory nor any of its affiliates, have any transmission customers whose rates could be affected by the Proposed Transaction. Therefore, according to North Star, the Proposed Transaction will have no adverse effect on rates.

North Star states that the Proposed Transaction will not have an adverse effect on regulation. According to North Star, the Proposed Transaction will not remove any facilities from Commission jurisdiction, diminish the regulatory authority of the Commission or create a regulatory gap or shift regulatory authority between the Commission and any state commission. Therefore, according to North Star, the Proposed Transaction will not have an adverse impact on regulation.

According to North Star, 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. North Star states that the Proposed Transaction falls into the “safe harbor” for transactions in which no franchised public utility with captive customers is involved. Therefore, according to North Star, the Proposed Transaction does not raise any issue with respect to cross-subsidization.

Additionally, North Star represents 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 transaction or 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 June 23, 2016, with comments, protests or interventions due on or before July 14, 2016. None were received.

Information and/or systems connected to the bulk system involved in these 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 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.[3] 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 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) North Star 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 from 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 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 North Star's affiliated qualifying facilities, an appropriate filing for recertification pursuant to 18 C.F.R. § 292.207

[3] *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005).

(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) North Star shall make any appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transaction; and

(8) North Star shall notify the Commission within 10 days of the date that the Proposed 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 (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