

146 FERC ¶ 62,013
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Mojave Solar LLC

Docket No. EC14-35-000

ORDER AUTHORIZING DISPOSITION OF
JURISDICTIONAL FACILITIES

(Issued January 8, 2014)

On December 6, 2013, Mojave Solar LLC (Mojave Solar or Applicant) filed an application under section 203(a)(1)(A) of the Federal Power Act (FPA)¹ requesting Commission authorization for the disposition of jurisdictional facilities. Specifically, Abengoa Solar LLC (Abengoa Solar) will sell Class A membership interests, which are passive and non-controlling, in Mojave Solar Holdings LLC (Mojave Holdings) to American International Group, Inc. (AIG) or a direct or indirect wholly-owned affiliate of AIG (Equity Investor) (Proposed Transaction).² The affected jurisdictional facilities consist of a market-based rate tariff, and various books and records.

Mojave Solar, an exempt wholesale generator (EWG) with market-based rate authority, is constructing, and will own and operate a 250 megawatt (MW) solar-powered generating facility located in San Bernardino County, California (Facility). The Facility will interconnect to the transmission system of the Southern California Edison Company under the functional control of the California Independent System Operator Corporation (CAISO). Thus, according to Mojave Solar, the CAISO control area is the relevant market for the Facility.

Mojave Solar is a direct wholly-owned subsidiary of Mojave Holdings. Mojave Holdings is a direct wholly-owned subsidiary of Abengoa Solar, an indirectly-owned

¹ 16 U.S.C. § 824b (2006).

² Mojave Solar states that the Proposed Transaction is identical in all material respects to a transaction approved by the Commission on September 30, 2013 (Docket No. EC13-137-000) involving passive, non-controlling equity investments in Mojave Holdings by Citibank, N.A., Bankers Commercial Corporation, and Sovereign Bank, N.A, or affiliates of each (the Authorized Equity Investors). Mojave Solar further states that the Proposed Transaction simply will admit the Equity Investor as an additional passive, non-controlling equity investor to the existing group of Authorized Equity Investors.

subsidiary of Agengoa Solar, S.A. (Abengoa Solar SA) doing business in the United States(U.S.). Abengoa Solar SA, a company chartered in Spain, develops, owns, and operates solar energy facilities in Spain, the U.S., Africa, and the Middle East.

According to Mojave Solar, Agengoa Solar SA is 99.99 percent owned by Abengoa, S.A.,³ which is also chartered in Spain and is associated with business groups that are involved with ethanol production, industrial water treatment, and engineering and construction. In addition to Mojave Solar, Abengoa Solar wholly indirectly or partially owns or is affiliated with Arizona Solar One LLC (Arizona Solar) and Palen Solar Holdings, LLC (Palen Solar). Arizona Solar is the owner and operator of an approximately 250 MW generation facility located in Gila Bend, Arizona, and within the control area of the Arizona Public Service Company. Palen Solar is developing a solar power facility of up to 500 MW at a project site approximately 10 miles east of Desert Center, California, in Riverside County (Palen Solar Project).⁴ Lastly, Mojave Solar states that Abengoa Solar is not affiliated with the Equity Investor.

AIG is an international insurance and financial services firm. According to Mojave Solar, AIG and its affiliates are not primarily engaged in energy-related business activities and do not directly control or own (other than passive interests) any electric generating or transmission assets or generation output in the U.S. Through various subsidiaries, AIG indirectly holds passive, non-controlling interests in certain electric generation facilities located in the U.S., all of which are EWGs or qualifying facilities. Lastly, Mojave Solar states that AIG is not affiliated with any of the Authorized Equity Investors

Under the Proposed Transaction, the Equity Investor will acquire approximately 23.56 percent of the passive, non-controlling Class A membership interests in Mojave Holdings, representing up to approximately 11.76 percent of the total equity in Mojave Holdings, and indirectly, in Mojave Solar, in exchange for the Equity Investor funding a portion of Mojave Solar's base equity commitment. Mojave Solar states that the Class A members will have only limited voting rights to protect their investments and will have neither control over Mojave Solar's day-to-day operations, nor any decision-making authority over sales of electric energy. Mojave Solar further states that Abengoa Solar will hold 100 percent of the Class B membership interests in Mojave Holdings, representing no less than approximately 50.1 percent of the total equity (Class A and Class B) in Mojave Holdings, and indirectly, in Mojave Solar, and will serve as Mojave

³ Mojave Solar states that the other 0.01 percent is owned by Abengoa Solar Espana, S.A.

⁴ Mojave Solar states that Palen Solar has not yet filed for EWG status or applied for market-based rate authority. The Palen Solar Project is still under development.

Holdings' managing member. Thus, according to Mojave Solar, Abengoa Solar will retain day-to-day control of the Facility.

Applicant 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, Applicant states that the Proposed Transaction raises no concerns. Applicant asserts that the Proposed Transaction involves only the indirect transfer of passive, non-controlling interests and thus will not result in a decrease of competitors in the CAISO market. Furthermore, Mojave Solar states that the electric output of the Facility is fully committed under a long-term contract.

With regard to vertical market power, Mojave Solar states that the Proposed Transaction raises no concerns. Mojave Solar asserts that the Proposed Transaction does not involve any transmission facilities, except for limited interconnection facilities. Mojave Solar further states that neither it, the Equity Investor, nor any of its affiliates currently own or operate any electric transmission or distribution facilities (other than limited interconnection facilities), natural gas facilities of any kind, coal production or transportation facilities, or any other inputs to electricity products in the CAISO control area.

With regard to rates, Mojave Solar states that the Proposed Transaction will not have an adverse effect. Mojave Solar states that it will continue to sell electric energy at market-based rates after consummation of the Proposed Transaction. In addition, Mojave Solar states that the Proposed Transaction does not involve any transmission facilities, except for limited interconnection facilities.

With regard to regulation, Mojave Solar states that the Proposed Transaction will not have an adverse effect. Mojave Solar states that it will remain subject to the Commission's jurisdiction after consummation of the Proposed Transaction. Mojave Solar also states that the Proposed Transaction will not adversely affect state regulation.

Mojave Solar 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 assets of a traditional public utility that has captive customers or that owns or provides transmission service over jurisdictional facilities for the benefit of an associate company. Specifically, Mojave Solar states that the Proposed Transaction is an arms-length arrangement between it and unaffiliated entities regarding the transfer of passive, non-controlling interests in Mojave Holdings. Furthermore, Mojave Solar states that the Proposed Transaction will not result in, at the time of the Proposed Transaction or in the future: (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 December 9, 2013, with comments, protests, or interventions due on or before December 27, 2013. None were 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.

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.

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, Mojave Solar is advised that it must comply with the requirements of Order No. 652. In addition, Mojave Solar shall make any necessary filings under section 205 of the FPA to implement the Proposed Transaction.

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).

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) 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;
- (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;
- (5) If the Proposed Transaction results in changes in the status or upstream ownership of Mojave 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) Mojave Solar shall make appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transaction; and
- (7) Mojave Solar 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 (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

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