

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

96WI 8ME, LLC

Docket No. EC17-42-000

ORDER AUTHORIZING DISPOSITION OF
JURISDICTIONAL FACILITIES

(Issued January 9, 2017)

On December 2, 2016, as supplemented on December 23, 2016, 96WI 8ME, LLC (Applicant) filed an application pursuant to section 203(a)(1) of the Federal Power Act (FPA)¹ requesting authorization for a transaction whereby Applicant will dispose of 100 percent of the membership interests in Applicant to Dominion Solar Holdings IV, LLC (Purchaser) (Proposed Transaction). The jurisdictional facilities involved in the Proposed Transaction consist of Applicant's market-based rate tariff and associated books, records, and accounts.

Applicant states that it is developing a 30 megawatt (MW) solar-powered electric generation facility (Facility) and related generation interconnection facilities located in Imperial County, California and interconnected to the transmission system owned and operated by Imperial Irrigation District. Applicant has filed a notice of self-certification as an exempt wholesale generator and, on January 5, 2017 was granted authorization to make sales of energy, capacity, and ancillary services at market-based rates.² Applicant asserts that all the electric energy and capacity from the Facility will be sold under a long-term power purchase agreement to Imperial Irrigation District with a term of more than one year.

Applicant states that it is wholly owned by Solar Frontier Americas Holding LLC, which is wholly owned by Solar Frontier Americas, Inc. Solar Frontier Americas, Inc., through its subsidiaries, develops and builds solar energy projects in the U.S. Solar Frontier Americas, Inc. is wholly owned by Solar Frontier K.K, which is wholly owned by Showa Shell Sekiyu K.K. The shares of Showa Shell Sekiyu K.K. are owned 15 percent by Saudi Aramco, 35 percent by Royal Dutch Shell, and the remaining 50 percent are publicly traded on the Tokyo Stock Exchange. With the exception of Solar Frontier Americas, Inc., Applicant represents that Showa Shell Sekiyu K.K does not otherwise: (a) directly or indirectly own or control any generation or transmission facilities in the

¹ 16 U.S.C. § 824b (2012).

² *96WI 8ME, LLC*, Docket No. ER17-339-000, by unpublished letter order.

United States; (b) engage in wholesale sales of electric energy, or any other Commission jurisdictional transactions in the United States; (c) hold electric transmission rights and natural gas transportation rights in the United States; or (d) directly or indirectly own or control a franchised utility.

Applicant states that Purchaser is 99 percent owned by Dominion Solar Projects C, Inc. and 1 percent by Dominion Solar Projects D, Inc., both of which are direct, wholly owned subsidiaries of Dominion Energy, Inc. (Dominion Energy). Dominion Energy directly or indirectly owns various subsidiaries that own and operate electric generating facilities in the United States. Dominion Energy is a direct, wholly owned subsidiary of Dominion Resources, Inc. (Dominion Resources), whose subsidiaries include Dominion Energy Marketing, Inc., a power marketer. Dominion Resources is the parent company of Dominion Virginia Power, a regulated, vertically integrated public utility engaged in the generation, distribution, and sale of electric energy. Applicant states that Dominion Virginia Power owns generating units in Virginia, North Carolina, and West Virginia with an aggregate generating capacity of approximately 24,400 MW, as well as approximately 57,000 miles of electric distribution lines. Dominion Virginia Power also owns approximately 6,400 miles of transmission facilities that are under the operational control of PJM Interconnection, L.L.C. pursuant to the PJM Open Access Transmission Tariff. According to Applicant, Dominion Virginia Power sells electric energy at retail in Virginia and North Carolina, but also sells electric energy at wholesale to rural electric cooperatives, municipalities, and wholesale electricity markets at market-based rates.³

Applicant adds that Dominion Resources owns or holds interests in two gas utility local distribution companies, four interstate gas pipeline companies, and Dominion Retail, Inc., a retail marketing entity that sells natural gas. Dominion Resources also owns Questar Corporation (Questar), an integrated natural gas company with subsidiaries that provide natural gas services and storage in the western United States.

Applicant states that, pursuant to a purchase and sale agreement, Solar Frontier Americas Holdings, LLC will sell to Purchaser 100 percent of the membership interests in Applicant.

Applicant states that the Proposed Transaction will not have an adverse effect on horizontal or vertical competition. With respect to horizontal competition, Applicant states that Purchaser is affiliated with one 20 MW solar generation facility in the Imperial Irrigation District balancing authority area, the relevant geographic market for the Proposed Transaction. Applicant states that the acquisition of the 30 MW Facility will

³ *Virginia Electric and Power Co.*, Docket No. ER98-3771-000 (Letter Order issued Aug. 13, 1998); 80 FERC ¶ 61,275 (1997); 86 FERC ¶ 61,027 (1999) (order accepting settlement agreement and terminating Docket No. ER97-3561-0000); and 91 FERC ¶ 61,209 (2000).

have a *de minimis* impact on the concentration of generation in the Imperial Irrigation District balancing authority area. Additionally, Applicant notes that the energy and capacity of both facilities is fully committed under long-term power purchase agreements to Imperial Irrigation District. With regard to vertical competition, Applicant states that neither Applicant nor the Purchaser are affiliated with transmission in the Imperial Irrigation District balancing authority area, other than interconnection facilities necessary to interconnect generation to the transmission grid. Furthermore, Applicant asserts that neither Applicant nor Purchaser or its affiliates own inputs to electricity products in the relevant geographic market,⁴ and all of Purchaser's affiliated local distribution is located in other geographic markets.

Applicant states that the Proposed Transaction will not have an adverse effect on the rates for electric energy sold by Applicant or those of any other entity. Applicant states that all of its sales of electric energy will be made pursuant to market-based rate authorization. In addition, Applicant asserts that the Proposed Transaction will have no effect on the transmission rates of Dominion Virginia Power's transmission customers, and there is no mechanism for the pass-through of costs from the Proposed Transaction to those customers.

Applicant states that the Proposed Transaction will have no adverse effect on regulation. Applicant asserts that the Proposed Transaction will not deprive the Commission or any other federal or state agency of jurisdiction it had prior to consummation of the Proposed Transaction, and the Commission will be able to exercise the same regulatory authority over the sale of electricity at wholesale that it did prior to the Proposed Transaction. Additionally, Applicant states that no facilities will be removed from the Commission's jurisdiction.

According to Applicant, the Proposed Transaction falls within one of the "safe harbors" established by the Commission for which detailed explanation and evidentiary support to demonstrate a lack of cross-subsidization is not required. Specifically, Applicant states that the Proposed Transaction falls within the "safe harbor" for transactions that do not involve a franchised public utility with captive customers.

Applicant verifies 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 Proposed Transaction or in the future, any 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 transfers 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

⁴ Applicant asserts that Questar does not own or operate any facilities with a delivery point in the Imperial Irrigation District balancing authority area.

issuances 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 contracts 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 application was noticed on December 2, 2016 with comments, protests, or interventions due on or before December 23. On December 21, 2016, Imperial Irrigation District filed a timely motion to intervene. The supplement was noticed on December 27, 2016 with comments, protests, or interventions due on or before December 30, 2016. 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) (2016).

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.⁵ 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) 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 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 Applicant's affiliated qualifying facilities, an appropriate filing for recertification pursuant to 18 C.F.R. § 292.207 (2016) shall be made;
- (6) The Commission retains authority under sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate;
- (7) Applicants shall make any appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transaction; and

⁵ *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).

- (8) Applicants 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 (2016). 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 (2016).

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