

156 FERC ¶ 62,012

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Beacon Solar 4, LLC

Docket No. EC16-131-000

ORDER AUTHORIZING DISPOSITION
OF JURISDICTIONAL FACILITIES

(Issued, July 6, 2016)

On June 8, 2016, Beacon Solar 4, LLC (Applicant) filed an application pursuant to section 203(a)(1) of the Federal Power Act (FPA)¹ requesting authorization for a transaction whereby PNC Commercial LLC (PNC) and Firststar Development, LLC (Firststar) will each acquire a passive, non-controlling interest in Applicant (Proposed Transaction). The jurisdictional facilities involved in the Proposed Transaction consist of Applicant's market-based rate tariff and rate schedules, the limited interconnection facilities associated with the Beacon Solar 4 Project, and other books and records associated with the wholesale sale of electric energy by Applicant.

Although Applicant states that the Proposed Transaction may not require authorization under FPA section 203 (a)(1), Applicant nevertheless seeks prior authorization. This order authorizes the Proposed Transaction without making any determination of jurisdiction.²

Applicant owns the Beacon Solar 4 Project, a solar photovoltaic power project with a nameplate capacity rating of approximately 50 megawatts (MW) under development in Kern County, California, located within the Los Angeles Department of Water and Power (LADWP) balancing authority area. Applicant asserts that it will own no transmission facilities other than limited interconnection facilities needed to connect the Beacon Solar 4 Project with the transmission system. According to Applicant, the entire output from the Beacon Solar 4 Project is committed to LADWP, a non-affiliated entity, under a 25-year power purchase agreement. Applicant states it has filed notice with the Commission of Applicant's status as an exempt wholesale generator (EWG)³ and has submitted an application to the Commission for authorization to make wholesale

¹ 16 U.S.C. § 824b (2012).

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

³ Notice of Self-Certification of Exempt Wholesale Generator Status of Beacon Solar 4, LLC, Docket No. EG16-92.

sales of electric energy, capacity, and ancillary services at market-based rates.⁴

Applicant states that it is a wholly owned subsidiary of FTP Power LLC (FTP), whose issued membership interests consist of Class A Units and Common Units. C2E, LLC (C2E) owns 28.4 percent of FTP's Class A Units and 0.8 percent of FTP's Common Units. C2E is owned in equal parts by Creamer Group, LLC, Creamer Investments, Inc., and two individual investors. Fir Tree Solar LLC, a limited liability company, owns 71.6 percent of FTP's Class A Units and 98.4 percent of FTP's Common Units. Martifer-Silverado Fund I, LLC (MS Fund) owns 0.8 percent of FTP's Common Units. Silverado Power, LLC owns a 42 percent interest in MS Fund and Martifer Solar, Inc. owns a 58 percent interest in MS Fund.

Applicant states that Tax Equity Partnership LLC will be a limited liability company which will indirectly own and operate solar photovoltaic energy generation facilities in the United States. Tax Equity Partnership LLC's membership interests will consist of Class A Membership Interests and Class B Membership Interests. Applicant asserts that Sponsor Member⁵ will hold one 100 percent of Tax Equity Partnership LLC's Class B Membership Interests and PNC and USB will each own 50 percent of Tax Equity Partnership LLC's non-controlling, passive Class A Membership Interests. Applicant states that Sponsor Member will be the Managing Member of Tax Equity Partnership LLC and will therefore have the right to control Tax Equity Partnership LLC on a day-to-day basis. Sponsor Member will be a limited liability company and wholly owned subsidiary of FTP. Upon the transfer of ownership to Tax Equity Partnership LLC, Sponsor Member, as Managing Member of Tax Equity Partnership LLC, will have the right to control Applicant and the Beacon Solar 4 Project on a day-to-day basis.

According to Applicant, PNC is a subsidiary of PNC Financial Services Group, Inc. (PNC Financial Services), which operates a banking franchise. Applicant asserts that PNC primarily serves as PNC Financial Service's tax equity investment arm for its renewable energy portfolio. PNC Financial Services is not primarily engaged in energy-related business activities and does not directly own or control any electric generation, transmission, or distribution assets, or otherwise have contractual rights to control the electrical output of any generating facility. Applicant states that PNC, as an owner-lessee, holds interests in multiple solar installations in various states, including facilities in the California Independent System Operator Corp. (CAISO) and LADWP balancing authority areas, pursuant to sale-leaseback or similar passive ownership arrangements. In each case, Applicant asserts that the lessee or operations and maintenance provider,

⁴ Market-based rate authority was granted on June 30, 2016 in Docket No. ER16-1738-000.

⁵ Applicant states that it will provide the name of Sponsor Member with its notice of consummation.

which is not an affiliate of PNC, has control of the day-to-day management, operation, and maintenance of the facility. Additionally, Applicant represents that, other than as described above, neither PNC nor any subsidiary or affiliate or upstream owner of PNC directly or indirectly owns, operates or controls: (1) any operational electric generation in the CAISO or LADWP balancing authority areas; (2) any electric transmission or distribution facilities in the CAISO or LADWP balancing authority areas; (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 or LADWP balancing authority areas; or (4) any franchised public utility in the United States.

Applicant states that USB, through its subsidiary U.S. Bank National Association (U.S. Bank), operates a commercial bank in the United States. USB is the sole shareholder of Firststar Capital Corporation, which is the sole member of Firststar. Firststar primarily serves as USB's tax equity investment arm for its renewable energy portfolio and owns passive, non-voting interests in qualifying facilities and EWGs throughout the United States. Applicant asserts that, other than through Firststar's passive tax equity investments in companies that engage in wholesale sales of electricity in the United States and that own various interests in renewable energy generating facilities, USB is not engaged in energy-related business activities and does not directly own or control any electric generating or transmission assets or generation output. In addition, Applicant states that neither USB nor any subsidiary or affiliate or upstream owner of USB directly or indirectly owns or controls: (1) any operational electric generation in the CAISO or LADWP balancing authority areas; (2) any electric transmission or distribution facilities in the CAISO or LADWP balancing authority areas; (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 or LADWP balancing authority areas; or (4) any franchised public utility in the United States.

Applicant states that, pursuant to the Proposed Transaction, Tax Equity Partnership LLC will acquire 100 percent of the membership interests in Applicant from Sustainable Power Group, LLC, an affiliate of FTP. Sponsor Member will initially be the sole member of Tax Equity Partnership LLC at the time of its formation. Upon consummation of the Proposed Transaction and the transfer of 100 percent of the membership interests in Applicant to Tax Equity Partnership LLC, PNC and USB will each simultaneously acquire indirect interests in Applicant. Sponsor Member, as owner of 100 percent of the Class B Membership Interests in Tax Equity Partnership LLC, will have the right to control Applicant and the Beacon Solar 4 Project on a day-to-day basis. Each of USB and PNC, as owners of 50 percent of the Class A Membership Interests in Tax Equity Partnership LLC, will have only limited rights with respect to the actions of Tax Equity Partnership LLC (and through Tax Equity Partnership LLC, Applicant), such as consent rights necessary for PNC and USB to protect their respective economic

investments in Tax Equity Partnership LLC.

Applicant states that the Proposed Transaction will not adversely affect horizontal or vertical competition. With respect to horizontal competition, Applicant asserts that the full output of the Beacon Solar 4 Project is committed to a non-affiliated purchaser under a long-term power purchase agreement, and the Proposed Transaction will have no effect on this agreement. Furthermore, Applicant states that it and its affiliates own 0 MW of uncommitted capacity in the LADWP market or in CAISO or other first-tier markets. Last, Applicant explains that PNC and USB's ownership of the Class A Membership Interests in Tax Equity Partnership LLC will not result in a change in the market share of PNC or USB or Applicant because neither PNC nor USB will not gain control over Applicant or the Beacon Solar 4 Project as a result of the Proposed Transaction.

With regard to vertical competition, Applicant states that, at closing of the Proposed Transaction it will own no transmission facilities in any market other than those limited interconnection facilities necessary for connecting the Beacon Solar 4 Project with the transmission system, nor will Applicant own or control other inputs to power production. Applicant adds that, as a result of the Proposed Transaction, (1) 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 Beacon Solar 4 Project and (2) none of Applicant, PNC, USB, or their affiliates own or control sites for the development of new generation capacity in the United States that would prevent third parties from entering the relevant market.

Applicant states that the Proposed Transaction will not have an adverse effect on rates. Applicant asserts that all sales from the Beacon Solar 4 Project will be made at market-based rates, and the Proposed Transaction will not alter the terms of Applicant's long-term power purchase agreement with LADWP.

Applicant represents that the Proposed Transaction will not adversely affect state or federal regulation. Applicant states that the Proposed Transaction is not subject to regulation by any state entity and the Proposed Transaction will not affect the extent to which the Commission may regulate Applicant. Thus Applicant concludes that the Proposed Transaction will not create a regulatory gap at the federal or state level.

Additionally, 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 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 June 9, 2016 with comments, protests, or interventions due on or before June 29. None were filed.

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.⁶ To the extent that a transaction authorized under FPA section 203 results in a change in

⁶ *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).

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 (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 any 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 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

Document Content(s)

EC16-131-000.DOC.....1-7