

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

White Pine Solar, LLC
White Oak Solar, LLC

Docket No. EC16-101-000

ORDER AUTHORIZING DISPOSITION
OF JURISDICTIONAL FACILITIES

(Issued June 22, 2016)

On April 13, 2016, as supplemented on May 5, 2016, White Pine Solar, LLC (White Pine) and White Oak Solar, LLC (White Oak) (collectively, Applicants) filed an application pursuant to section 203(a)(1) of the Federal Power Act (FPA)¹ requesting authorization for the disposition of jurisdictional facilities resulting from the transfer of 100 of the passive, non-managing Class B Membership Interests in Georgia Longleaf Solar 1, LLC (Georgia Longleaf), the owner of Applicants, to JPM Capital Corporation (JPM Capital) or an affiliate (JPM Capital, or their respective affiliates each an Investor and collectively, Investors)² (Proposed Transaction). The jurisdictional facilities involved in the Proposed Transaction consist of market-based rate tariffs, power purchase agreements, associated books and records, and interconnection facilities.

Applicants state that the Proposed Transaction may not require Commission approval under FPA section 203 (a)(1); they nevertheless ask the Commission to authorize the Proposed Transaction. This order authorizes the Proposed Transaction without making any determination of jurisdiction.³

¹ 16 U.S.C. § 824b (2012).

² According to Applicants, to the extent that the Investors are currently holding companies within the meaning of FPA section 203(a)(2), such Investors are holding companies solely with respect to exempt wholesale generators, foreign utility companies, or qualifying facilities. Applicants assert that any such holding company's involvement in the Proposed Transaction qualifies for blanket authorization pursuant to 18 C.F.R. § 33.1(c)(8).

³ See *Ocean State Power*, 47 FERC ¶ 61,321 (1989).

Applicants state that White Pine is a limited liability company under the laws of Delaware and a wholly owned direct subsidiary of Georgia Longleaf. White Pine will own and operate a 101.3 megawatt (MW) photovoltaic generating facility (White Pine Facility) located in Taylor County, Georgia within the Southern Company Services, Inc. (SOCO) balancing authority area (BAA). According to Applicants, the White Pine Facility could start producing test energy as early as May 24, 2016. The White Pine Facility will interconnect with Georgia Power Company's (Georgia Power) transmission system.

Applicants state that White Pine has entered into a long-term power purchase agreement (PPA) with Georgia Power, a non-affiliate, for all of the output from the White Pine Facility, as of January 1, 2017. Applicants state that Georgia Power will also purchase all the test energy from the White Pine Facility under the PPA as of May 24, 2016, or such other date when test energy starts being produced. Applicants note that White Pine and Georgia Power are finalizing a separate power sales agreement under which Georgia Power will purchase all the energy from the White Pine Facility once the test energy phase is completed in 2016 and until regular sales under the PPA commence on January 1, 2017. Applicants state that the PPA is in effect during this period, but these post-test energy sales will be made under the separate power sales agreement, pursuant to Georgia Power's request. The Commission has authorized White Pine to make wholesale sales of electricity, capacity and ancillary services at market-based rates.

Applicants state that White Oak is a limited liability company under the laws of Delaware and a wholly owned direct subsidiary of Georgia Longleaf. White Oak will own and operate a 76.5 MW photovoltaic generating facility (White Oak Facility) located in Burke County, Georgia within the SOCO BAA. According to Applicants, the White Oak Facility could start producing test energy as early as May 29, 2016. The White Oak Facility will interconnect with Georgia Power's transmission system.

Applicants state that White Oak has entered into a long-term PPA with Georgia Power, a non-affiliate, for all of the output produced from the White Oak Facility, as of January 1, 2017. Applicants state that Georgia Power will also purchase all the test energy from the White Oak Facility under the PPA as of May 29, 2016 or such other date when test energy starts being produced. Applicants note that White Oak and Georgia Power are finalizing a separate power sales agreement under which Georgia Power will purchase all the energy from the White Oak Facility once the test energy phase is completed in 2016 and until regular sales under the PPA commence on January 1, 2017. Applicants state that the long-term PPA is in effect during this period, but these post-test energy sales will be made under the separate power sales agreement, pursuant to Georgia

Power's request. The Commission has authorized White Oak to make wholesale sales of electricity, capacity and ancillary services at market-based rates.

According to the application, Georgia Longleaf is a limited liability company under the laws of Delaware and is a wholly owned direct subsidiary of ESI Energy, LLC. Applicants state that ESI Energy, LLC is a wholly owned, direct subsidiary of NextEra Energy Resources, LLC (NextEra Resources), which is a wholly owned, direct subsidiary of NextEra Energy Capital Holdings, Inc., a corporation under the laws of Florida, which in turn is a wholly owned, direct subsidiary of NextEra Energy, Inc. (NextEra).

According to Applicants, JPM Capital is an indirect, wholly owned subsidiary of JPMorgan Chase & Co. (JPMorgan Chase), an international financial services company. JPM Capital and JPMorgan Chase are not primarily engaged in energy-related business activities and do not directly own or control any electric generation or transmission assets. Applicants state that none of JPMorgan Chase's affiliates own any electric transmission (other than limited interconnection facilities) or interstate natural gas pipeline facilities. Applicants further state that JPMorgan Chase does not control and is not affiliated with any entity that controls any essential inputs to generation in the SOCO market, including any intrastate pipeline facilities. Applicants state that through direct or indirect subsidiaries, JPMorgan Chase has a number of energy affiliates that engage in wholesale sales of electricity in the United States that own various interests in electric generating facilities.

Applicants also state that subsidiaries of JPMorgan Chase may be engaged in the management of mutual funds and/or other collective investment vehicles and separate accounts as a fiduciary on behalf of persons who hold interests in such funds or other investment vehicles, or separate accounts, and such funds, investment vehicles, or other accounts may buy and sell securities of public utilities and other companies engaged in energy-related activities without exercising control over such public utilities or other companies

According to Applicants, pursuant to the terms of a membership interest purchase agreement that has yet to be finalized, Georgia Longleaf will first convey all of its ownership interests in White Oak and White Pine to its affiliate, Longleaf Solar LLC, which will be a wholly owned subsidiary of Longleaf Solar Holdings, LLC, a wholly owned subsidiary of ESI Energy, LLC. Applicants state that, in the Proposed Transaction, Longleaf Solar Holdings, LLC's ownership interest in Longleaf Solar, LLC will be converted to 100 percent of the Class A membership interests in that entity. JPM Capital will pay cash consideration for its acquisition of 100 percent of the Class B membership interests in Longleaf Solar, LLC. Longleaf Solar Holdings, LLC, as the Class A member, will be the managing

member of Longleaf Solar, LLC, which will own and control each of the Applicants. After closing of the Proposed Transaction, all day-to-day management of Longleaf Solar, LLC, and indirectly of Applicants, and matters not constituting major decisions will be decided upon exclusively by Longleaf Solar Holdings, LLC in its capacity as managing member. Applicants state that only in the case of major decisions will JPM Capital as the Class B member have a vote. Applicants state that major decisions will only include certain major matters that could affect JPM Capital's financial investment, such as the sale of relevant electric generation facilities, incurrence of indebtedness exceeding certain dollar thresholds, amending certain material contracts, filing of bankruptcy or merging with another company. Applicants state in no circumstances will the Class B member have a vote with respect to day-to-day operation or maintenance of the underlying electric generation or interconnection facilities, including power sales.

Applicant states that the Proposed Transaction is consistent with the public interest and will not adversely affect competition, rates or regulations. With respect to competition, Applicants state that Proposed Transaction presents no horizontal market power concerns in the SOCO BAA, the relevant market. Applicants state that the Class B membership interests to be acquired in the Proposed Transaction are passive interests that do not constitute voting securities. Applicants state that there would be no change in market shares or concentration levels because the Proposed Transaction would not result in a change in control over the White Pine Facility and White Oak Facility. In addition, Applicants note that all of the electric generation that will be controlled by Applicants is committed pursuant to long term contracts. Applicants state that the Investors are not affiliated with any generation capacity in the SOCO BAA. Therefore, Applicants assert that the Proposed Transaction does not raise any horizontal market power concerns.

Applicants further state that the Proposed Transaction presents no vertical market power concerns. Applicants state that neither Investors nor any of their affiliates own or control within the SOCO BAA: (i) any electric transmission facilities (other than interconnection facilities associated with electric generation); (ii) any intrastate natural gas transportation, storage, or distribution facilities; (iii) physical coal supply sources or access to transportation of coal supplies; or (iv) any generation capacity development sites that would constitute barriers to entry to the generation market. Therefore, Applicants represent that the Proposed Transaction does not raise any vertical market power concerns.

With respect to rates, Applicants state that the Proposed Transaction will have no adverse effect on rates charged to either wholesale or transmission customers. Following the Proposed Transaction, all of the sales of electric energy from the White Pine Facility and the White Oak Facility will be made at market-based rates. Applicants state that,

while certain affiliates of Applicants currently provide unbundled transmission services, costs attributable to the Proposed Transaction will not be flowed through to transmission customers, and therefore their rates will not be affected by the Proposed Transaction.

With respect to regulation, Applicants state that, after the Proposed Transaction is consummated, the Commission will continue to have the same jurisdiction over wholesale sales of electric energy by Applicants as it had before. The Proposed Transaction has no effect on state commission regulation and does not require any state commission approval. Therefore, according to Applicants, the Proposed Transaction will not have an adverse effect on regulation.

Applicants state that 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. Applicants assert that the Proposed Transaction falls within one of the “safe harbors” adopted by the Commission for which detailed explanation and evidentiary support to demonstrate a lack of cross-subsidization is not required. Applicants more specifically state that the Proposed Transaction does not involve a franchised public utility with captive customers.

Additionally, Applicants verify that, based on the facts and circumstances known to them or that are reasonably foreseeable, the Proposed Transaction will not result in, at the time of the Proposed Transaction nor 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 services agreements subject to review under Sections 205 and 206 of the FPA.

This filing was noticed on April 14, 2016 and May 5, 2016 with comments, protests or interventions due on or before May 4, 2016 and May 16, 2016. None were filed.

Information and/or systems connected to the bulk power system involved in this Proposed 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 databases, 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, NERC 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 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.⁴ 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 hereby 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) Applicants 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 of 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 determination of cost or any other matter

⁴ *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).

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 the upstream ownership of Applicants' affiliated Qualifying Facilities, if any, 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) Applicants shall make appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transaction; and
- (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 (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