

155 FERC ¶ 62,190

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

63SU 8ME LLC

Docket No. EC16-102-000

ORDER AUTHORIZING DISPOSITION
OF JURISDICTIONAL FACILITIES

(Issued June 8, 2016)

On April 14, 2016, 63SU 8ME LLC (Applicant) filed an application under section 203(a)(1) of the Federal Power Act (FPA)¹ requesting authorization for the sale of 100 percent of the passive equity interests in its parent company, DESRI Springbok 2 Holdings, L.L.C. (Holdco) to State Street Bank and Trust Company (SSBT), for its designee Antrim Corporation (Antrim), and Citicorp North America, Inc. (Citi) (Proposed Transaction). The jurisdictional facilities associated with the Proposed Transaction are Applicant's market-based rate tariff, and associated books, records, accounts, and related agreements, a Shared Facilities Agreement and a Large Generator Interconnection Co-Tenancy Agreement and limited interconnection facilities.

Applicant is developing and will own and operate an approximately 155 megawatt (MW) solar photovoltaic electric generating facility located in Kern County, California (the Springbok 2 Facility) within the Los Angeles Department of Water and Power balancing authority area. Applicant also owns certain transmission facilities necessary to interconnect the Springbok 2 Facility to a collector substation and to a generator tie-line. Applicant states that a portion of the collector substation and the tie-line (Shared Interconnection Facilities) are the subject of a Co-Tenancy and Shared Facilities Agreement (Shared Facilities Agreement) between it and three affiliates. Applicant will use its undivided interest in the Shared Interconnection Facilities to transmit electricity from the Springbok 2 Facility.

Applicant is a wholly owned subsidiary of Holdco. DESRI Springbok 2 Financing, L.L.C. owns all of the managing interests in Holdco, and is indirectly, wholly owned by D.E. Shaw & Co., Inc. (DESCO Inc.). DESCO Inc. is owned by Dr. David E. Shaw, its chairman, president, and sole stockholder.

Applicant states that Citi is a subsidiary of Citigroup Inc., a global financial services company. Applicant represents that Citi is not primarily engaged in energy

¹ 16 U.S.C. § 824b (2012).

related business activities and does not own or control any electric generating or transmission assets in the United States. Citigroup Inc. is a bank holding company that indirectly holds non-managing or passive, non-controlling interests in certain electric generating facilities in the United States, all of which are exempt wholesale generators or qualifying facilities.

According to Applicant, Citigroup Inc. also owns, directly or indirectly, 100 percent of the interests in Citigroup Energy Inc. (CEI) and Citigroup Energy Canada ULC (CECU). CEI is a power and gas marketer that has been authorized by the Commission to make wholesale sales of energy, capacity, and ancillary services at market-based rates. CECU is Canadian corporation that operates as a gas marketer in Canada and is authorized by the Commission to make wholesale sales of energy, capacity, and ancillary services at market-based rates.

Applicant states that Antrim is wholly owned by SSBT. SSBT is a wholly owned subsidiary of State Street Corporation (State Street), a financial holding company headquartered in Boston, Massachusetts. Antrim, SSBT and State Street directly or indirectly own interests in electric generation facilities in various markets across the United States, but none of their subsidiaries or affiliates is a traditional franchised utility. None of Antrim, SSBT or State Street, or any of their subsidiaries or affiliates, owns electric transmission facilities or intrastate natural gas pipelines facilities or have been authorized by the Commission to sell at market-based rates. Further, none of them provide energy management services or control electric capacity through power purchase agreements.

According to Applicant, direct or indirect subsidiaries of State Street may hold debt or equity positions from time to time in energy companies in connection with their broker/dealer, financial trading or banking activities. Applicant states that these are non-controlling, passive interests that do not give State Street any discretion as to how and when power may be sold. Applicant further states that direct or indirect subsidiaries of State Street also may be engaged in the management of mutual funds and/or other collective investment vehicles as a fiduciary on behalf of persons who hold interests in such funds or other investment vehicles, and such funds or investment vehicles 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 Applicant, pursuant to the terms of the Membership Interest Purchase Agreement, Citi will purchase, and Class B Owner will sell 100 percent of the non-controlling, passive Class A ownership interests in Holdco. As a result of the Proposed Transaction, Class B owner will continue to own all of the controlling interests in Holdco and will continue to have operational control and full ownership of Applicant.

Applicant states that the Proposed Transaction is consistent with the public interest

and will not adversely affect competition, rates or regulation. With respect to competition, Applicant states that Proposed Transaction raises no horizontal market power issues because it will not result in any new combination of electric generating assets that could have an impact on the competitive situation in any relevant market. Applicant states that all of the power generated by the Springbok 2 Facility is committed to a non-affiliated purchaser pursuant to a long-term power purchase agreement that will not be affected by the Proposed Transaction. Applicant adds that all of its and its affiliates' generation capacity in the LADWP balancing authority area and all first-tier markets is likewise committed under long-term agreements with unaffiliated entities. Finally, Applicant explains that Antrim and Citi's acquisition of the Class A ownership interests in Holdco will not result in a change in their market shares because they will not gain control over Holdco or Applicant as a result of the Transaction. Applicant thus concludes that the Proposed Transaction does not raise any horizontal market power concerns.

Applicant also states that the Proposed Transaction raises no vertical market power concerns. Applicant states that it only owns the limited transmission facilities necessary to connect the Springbok 2 Facility to the transmission grid. Applicant represents that it has affiliates that own interconnection transmission facilities, but all of them are used solely to interconnect their respective generating facilities to the transmission grid. Additionally, Applicant states that neither it nor any of its affiliates, nor either of Antrim or Citi or any of their affiliates has any ownership interest 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, Applicant concludes that the Proposed Transaction will not have an adverse effect on vertical market power.

With respect to rates, Applicant states that the Proposed Transaction will not have any adverse effect on rates because all sales of electric energy, capacity, and ancillary services by Applicant will continue to be made at market-based rates. In addition, Applicant states that neither it nor any of its affiliates, nor Antrim or Citi, or any of their affiliates has any transmission customers whose rates could be affected by the Proposed Transaction.

With respect to regulation, Applicant states that the Proposed Transaction will not impair the ability of the Commission or any state regulatory authority to regulate it. Applicant states that its status as an FPA-jurisdictional public utility will not change as a result of the Proposed Transaction. Therefore Applicant concludes that the Proposed Transaction will not have an adverse effect on regulation.

Applicant state 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 and associate company. Specifically, Applicant states that the Proposed Transaction does not involve a franchised utility with captive customers and will not result in: (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.

This filing was noticed on April 15, 2016, with comments, protests or interventions due on or before May 5, 2016. None was 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.² 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 (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

² *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) 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

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