

155 FERC ¶ 62,197

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Antelope Big Sky Ranch LLC

Docket No. EC16-115-000

ORDER AUTHORIZING DISPOSITION
OF JURISDICTIONAL FACILITIES

(Issued June 9, 2016)

On May 6, 2016, Antelope Big Sky Ranch LLC (Antelope) filed an application (Application) pursuant to section 203(a)(1)(A) of the Federal Power Act (FPA)¹ requesting authorization for the disposition of jurisdictional facilities resulting from the acquisition by SPW Solar Holdings 3, LLC (SPW3) of 100 percent of the membership interests in Antelope from sPower FinCo 4 LLC (FinCo 4). Antelope also seeks authorization for the transfer to JPM Capital Corporation (JPMCC) of the non-controlling, passive Class A Units in SPW3 (together, the Proposed Transaction). The facilities affected by the Proposed Transaction consist of Antelope's market-based rate tariff, a 25-year power purchase agreement, and associated books and records.

According to the Application, Antelope is currently a direct, wholly owned subsidiary of FinCo 4. SPW Solar Managing Member 3, LLC (SPWSMM3), which will become a direct, wholly owned subsidiary of FinCo 4 as a result of the Proposed Transaction, and JPMCC will each acquire indirect interests in Antelope. SPWSMM3, as Managing Member and acquirer of one hundred percent of the controlling Class B Units in SPW3, will control Antelope on a day-to-day basis and JPMCC, as acquirer of one hundred percent of the non-controlling, passive Class A Units in SPW3, will have only limited rights with respect to the actions of SPW3, such as consent rights necessary to protect its economic investment. Antelope states that the Proposed Transaction will not result in a transfer of control over its jurisdictional facilities because Antelope will remain under the control, albeit now indirect, of FinCo 4 and SPW3, which will become an indirect subsidiary of FinCo4 through SPWSMM3, will, as previously noted, serve as Managing Member.

Antelope states that, although the Proposed Transaction may not require authorization under section 203 (a)(1) of the FPA, it nevertheless asks the

¹ 16 U.S.C. § 824b (2012).

Commission to authorize the Proposed Transaction. This order authorizes the Proposed Transaction without making any determination of jurisdiction.²

Antelope states that it is an exempt wholesale generator with market-based rate authority.³ Antelope owns a 20 megawatt (MW) solar photovoltaic (PV) power project (ABSR Project) located in Lancaster, Los Angeles County, California, within the California Independent System Operator Corp. (CAISO) market, which, according to Antelope, is the relevant market. Antelope expects to begin generating test power from the ABSR Project in August 2016 and anticipates achieving commercial operation of the project in August 2016. Antelope is committed to sell the entire output from the ABSR Project under a 25-year power purchase agreement with a non-affiliated offtaker, Southern California Public Power Authority. Antelope's sole business is the ownership and operation of the ABSR Project. Antelope will not own any transmission facilities other than limited interconnection facilities needed to connect the ABSR Project with the transmission system of CAISO.

Antelope states that JPMCC is an indirect, wholly owned subsidiary of JPMorgan Chase & Co (JPMorgan Chase), a financial holding company. JPMCC and JPMorgan Chase are not primarily engaged in energy-related business activities and do not directly own or control any electric generating or transmission assets or generation output. None of JPMorgan Chase's affiliates own any electric transmission facilities or interstate natural gas pipeline facilities. JPMorgan Chase does not control and is not affiliated with any company that controls any essential inputs to generation in the relevant market, including any intrastate pipeline facilities. JPMCC holds direct or indirect, passive, non-controlling interests in various companies that own and operate wind and solar powered electric generation facilities in the CAISO market, but these companies are not affiliates of JPMCC.

Antelope states that the Proposed Transaction is consistent with the public interest and will not adversely affect competition, rates or regulation and will not result in cross-subsidization. With respect to horizontal market power, Antelope states that the entire output of the ABSR Project is fully committed under a long-term power purchase agreement to a non-affiliated purchaser and the Proposed Transaction will not affect the power purchase agreement. Additionally, neither Antelope nor its affiliates own uncommitted capacity in the CAISO market or in

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

³ *Antelope Big Sky Ranch LLC*, Docket No. ER16-1255-000 (May 13, 2016) (delegated letter order).

any first-tier markets. Finally, according to Antelope, JPMCC's ownership of the non-controlling, passive Class A Units in SPW3 will not result in a change in the market share of JPMCC or Antelope because JPMCC will not gain control over Antelope or the ABSR Project as a result of the Proposed Transaction. Therefore, according to Antelope, the Proposed Transaction does not raise any horizontal market power concerns.

With respect to vertical market power, Antelope states that it will not own any transmission facilities in any market other than those limited interconnection facilities necessary for connecting the ABSR Project with the transmission system of CAISO, nor will Antelope or its affiliates own or control other inputs to electric power production. Furthermore, Antelope will not become affiliated with any entity or person that owns, controls, or operates transmission facilities or other inputs to power production in the CAISO market. In addition, neither Antelope nor JPMCC, nor 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 CAISO market. Therefore, according to Antelope, the Proposed Transaction does not raise any vertical market power concerns.

With respect to rates, Antelope states that all sales from the ABSR Project will be made at market-based rates and the Proposed Transaction will not alter the terms of Antelope's long-term power purchase agreement. Therefore, according to Antelope, the Proposed Transaction will have no adverse effect on rates.

With respect to regulation, Antelope states that the Proposed Transaction will not affect the extent to which the Commission may regulate it, nor is the Proposed Transaction subject to regulation by any state entity. The Proposed Transaction will not create a regulatory gap at the federal or state level or shift regulatory authority between the Commission and any state commission. Therefore, according to Antelope, the Proposed Transaction will have no adverse effect on federal or state regulation.

Antelope states 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. Antelope states that the Proposed Transaction qualifies for the safe harbor for transactions that do not involve a franchised public utility with captive customers. In addition, Antelope represents that, based on facts and circumstances known to Antelope or that are reasonably foreseeable, 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 services agreements subject to review under sections 205 and 206 of the FPA.

This filing was noticed on May 6, 2016, with comments, protests or interventions due on or before May 27, 2016. None were received.

Information and/or systems connected to the bulk power 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 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 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.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

⁴ *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).

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) Antelope 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 the upstream ownership of Antelope'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) Antelope shall make the appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transaction; and

- (8) Antelope 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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