

144 FERC ¶ 62,011  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Copper Mountain Solar 2, LLC

Docket No. EC13-108-000

ORDER AUTHORIZING DISPOSITION OF JURISDICTIONAL  
FACILITIES

(Issued July 3, 2013)

On May 22, 2013, Copper Mountain Solar 2, LLC (Copper Mountain or Applicant) filed an application pursuant to section 203(a)(1)(A) of the Federal Power Act (FPA)<sup>1</sup> requesting Commission authorization for the disposition of jurisdictional assets resulting from the purchase by Consolidated Edison Development, LLC (ConEd Development ) of 50 percent of the membership interests in Copper Mountain from Copper Mountain Solar 2 Holdings (Copper Holdings) (Proposed Transaction). The jurisdictional facilities involved in the Proposed Transaction are Copper Mountain's market-based rate tariff and related contracts, books, records, and interconnection equipment associated with the facility.

The Applicant states that Copper Mountain owns a facility that will be capable of generating up to 150 megawatts (MW). The Applicant states that the solar PV facility is located near Boulder City, Nevada (Solar Project). The Applicant states that the Solar Project is interconnected to the California Independent System Operator (CAISO) controlled grid and CAISO is the relevant market. Copper Mountain has market-based rate authority and is an exempt wholesale generator. The Applicant states that Copper Mountain is committed to sell all the output of the Solar Project under a long-term power purchase agreement to Pacific Gas & Electric Company (PG&E).

The Applicant states that Copper Mountain is 100 percent owned by Copper Holdings, an indirect wholly-owned subsidiary of Sempra Global. Applicant states that Sempra Global is a wholly-owned subsidiary of Sempra Energy, a public utility holding company based in San Diego, California that provides electric, natural gas, and energy-related products and services to a range of customers.

The Applicant states that ConEd Development is an indirect, wholly-owned subsidiary of Consolidated Edison, Inc. (ConEd). Applicant states that ConEd Development has four affiliates in the relevant geographic market, CAISO. The

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<sup>1</sup> 16 U.S.C. § 824b (2006).

Applicant states that Alpaugh North, LLC (Alpaugh North) owns and operates a 20 MW solar PV facility; Alpaugh 50, LLC (Alpaugh 50) owns and operates a 50 MW solar PV facility; White River, LLC (White River) owns and operates a 20 MW solar PV facility; and CED Corcoran Solar, LLC (Corcoran) is constructing and will own and operate a 20 MW facility. The Applicant states that Alpaugh North, Alpaugh 50, White River, and Corcoran all have long-term power purchase agreements with PG&E under which PG&E will purchase all of the output from their respective facilities.

The Applicant states that ConEd Development will acquire 50 percent of the membership interests of Copper Holdings and will immediately transfer and assign those membership interests to a to-be-formed wholly-owned subsidiary of ConEd Development. Applicant states that as a result of the Proposed Transaction, Copper Mountain will be jointly owned in equal shares by subsidiaries of Sempra Energy and ConEd Development.

Applicant states that the Proposed Transaction is consistent with the public interest because it will have no adverse impact on competition, rates, or regulation and will not result in cross-subsidization or the pledge or encumbrance of utility assets for the benefit of an associate company.

With respect to competition, Copper Mountain states that the Proposed Transaction will not change the market share of generating capacity that Sempra Energy, through its affiliates, holds in the relevant market. Copper Mountain states that the Proposed Transaction would result in a *de minimis* change in market share of installed capacity owned and controlled by ConEd Development and its affiliates. The Applicant states that as a result of the Proposed Transaction ConEd Development will own and control 320 MW of generation capacity in CAISO, which would result in market share of less than one percent because the CAISO market has nearly 60,000 MW of installed capacity. Additionally, Copper Mountain states that all of the capacity of the Copper Mountain Facility is committed on a long-term basis to PG&E and the Proposed Transaction will not affect or otherwise change the amount of uncommitted capacity in the CAISO market. Therefore, according to Copper Mountain, the Proposed Transaction does not raise any horizontal market power concerns in the relevant market.

Copper Mountain states that the Proposed Transaction raises no vertical market power concerns. Copper Mountain states that its affiliate, San Diego Gas & Electric, owns electric transmission facilities in the relevant market; however, San Diego Gas & Electric have conveyed operational control over its transmission facilities to CAISO. Copper Mountain represents that neither ConEd Development, nor its affiliates own electric transmission facilities in the relevant market. Copper Mountain states the Proposed Transaction will not cause it or any ConEd Development affiliate to gain the ability or incentive to affect prices or outputs in the downstream electricity markets, nor affect any input to electricity production, or discourage entry to new generators.

Therefore, Copper Mountain states that the Proposed Transaction does not raise any vertical market power concerns in the relevant market.

Copper Mountain states that the Proposed Transaction will not adversely affect rates because the Proposed Transaction will have no effect on wholesale rates. Copper Mountain states that it will continue to sell the entire output of the facility to PG&E under the long-term power purchase agreement, and Copper Mountain will maintain its market-based rate tariff on file with the Commission. Copper Mountain also states that it does not and will not have retail customers. Copper Mountain states that neither it nor any ConEd Development affiliates serve transmission customers in the Southwest region. Therefore, Copper Mountain states that the Proposed Transaction will have no adverse effect on rates.

Copper Mountain represents that the Proposed Transaction will have no adverse effect on state or federal regulation because the Proposed Transaction will not affect the ability of the Commission to regulate the Applicant with respect to its jurisdictional activities. Additionally, Copper Mountain states that nothing about the Proposed Transaction will adversely affect the authority or ability of state regulators to regulate the sale of power to retail customers. Therefore, Copper Mountain states that the Proposed Transaction will have no adverse effect on regulation.

Copper Mountain states 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, cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional facilities 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 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 filings were noticed on May 23, 2013, with comments, protests or interventions due on or before June 12, 2013. None was filed. 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). Any opposed or untimely filed motion to intervene is governed by the provision of Rule 214.

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.<sup>2</sup> The foregoing authorization may result in a change in status. Accordingly, Copper Mountain is advised that it must comply with the requirements of Order No. 652. In addition, Copper Mountain shall make appropriate filings under section 205 of the FPA, to implement the Proposed Transaction.

Information and/or systems connected to the bulk 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 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 the 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.

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 described in this Order and for the purposes set forth in the application;
- (2) 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 whatsoever now pending or which may come before the Commission;
- (3) 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;

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<sup>2</sup> *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).

- (4) The Commission retains authority under sections 203(b) and 309 of the FPA, to issue supplemental orders as appropriate;
- (5) If the Proposed Transaction results in changes in the status or the upstream ownership of Copper Mountain's affiliated Qualifying Facilities, if any, an appropriate filing for recertification pursuant to 18 C.F.R. § 292.207 (2012) shall be made;
- (6) Copper Mountain shall make appropriate filings under section 205 of the FPA, as necessary, to implement the Transaction;
- (7) Copper Mountain must inform the Commission of any change in circumstances that would reflect a departure from the facts the Commission relied upon in authorizing the Transaction; and
- (8) Copper Mountain 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. 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.

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

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