150 FERC ¶ 62,152
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

RE Columbia, LLC
Recurrent Energy, LLC
Canadian Solar, Inc.

Docket No. EC15-72-000

ORDER AUTHORIZING THE DISPOSITION OF FACILITIES

(Issued March 16, 2015)

On February 10, 2015 RE Columbia, LLC (Columbia), Recurrent Energy, LLC (Recurrent) and, Canadian Solar, Inc. (Canadian Solar, collectively Applicants) filed an application seeking authorization under section 203(a)(1) of the Federal Power Act (FPA)[1] for the disposition of a portion of the upstream ownership interests in Recurrent by an upstream owner, Sharp US Holding, Inc. (Sharp U.S.) to Canadian Solar Energy Acquisition Co., a wholly owned subsidiary of Canadian Solar (Proposed Transaction). The jurisdictional facilities involved with the Proposed Transaction consist of a Shared Facilities Agreement and the Amended and Restated CLGIA Co-Tenancy Agreement and jurisdictional transmission facilities.

Applicants state that Recurrent is a wholly owned subsidiary of Sharp U.S. which in turn is wholly owned by Sharp Corporation, a Japanese corporation. Recurrent owns interests in entities which include nine solar projects with a combined capacity of six megawatts (MW) in the California Independent System Operator, Inc. (CAISO) footprint and a five megawatt solar facility in the PJM Interconnection, LLC (PJM) footprint.

Columbia owns and operates an approximately eight mile generation tie-line and related interconnection facilities in Kern County, California. Columbia is directly owned by the following entities: 45 percent RE Camelot LLC (Camelot); 20 percent RE Clearwater LLC (Clearwater); 20 percent by RE Yakima LLC (Yakima); and 15 percent by RE Columbia Two LLC (Columbia Two). Each of Clearwater and Yakima is wholly owned by Recurrent. Each of Camelot and Columbia Two is wholly owned by Dominion Solar Holdings, Inc. an indirect wholly owned subsidiary of Dominion Resources, Inc.

Applicants state that Recurrent owns an indirect five percent ownership interest in each of RE Mckenzie 1 LLC; RE Mckenzie 2 LLC; RE Mckenzie 3 LLC; RE Mckenzie

[1] 16 U.S.C. § 824b (2012).

4 LLC; RE Mckenzie 5 LLC; and RE Mckenzie 6 LLC each of which owns a five MW solar generation facility within the Sacramento Municipal Utility District balancing authority area.

Canadian Solar is a vertically-integrated provider of ingot, wafer, solar cell, solar module, and other solar applications. Canadian Solar is an indirect minority owner of a number of qualifying facilities within the United States. Applicants state that, to the extent Canadian Solar owns or controls, directly or indirectly, any inputs to power production, these would include a portfolio of late stage solar projects under development including land rights that total approximately 164 MW.

Applicants state that in the Proposed Transaction, Canadian Solar will acquire all of Sharp U.S.' ownership interest in Recurrent, and accordingly, acquire 40 percent indirect interest in Columbia.

Applicants state that the Proposed Transaction will not have an adverse effect on horizontal competition. Applicants state that Recurrent and Canadian Solar do not conduct business in the same market. Applicants state that Columbia does not generate or sell electric energy, it provides only limited transmission service over a generation tie-line. Applicants also state that Canadian Solar is not associated with any generation in the CAISO balancing authority area.

Applicants explain that the Proposed Transaction does not have an adverse effect on vertical competition. Applicants state that none of Columbia, Canadian Solar, or any of their affiliates directly or indirectly, own or control transmission facilities in or adjacent to the CAISO market other than the generation-tie line and other limited interconnection facilities necessary to connect to transmission grid. None of Canadian Solar, Canadian Solar's affiliates, Columbia, or any of Clearwater's or Yakima's affiliates that are part of the Proposed Transaction directly or indirectly own or control inputs to electric power production. Applicants state that sites for generation development acquired by Canadian Solar's affiliates would not allow Applicants to raise barriers to entry. Further, Applicants state the market for photovoltaic panels is highly competitive and the Proposed Transaction does not represent any further concentration in the market.

Applicants state that the Proposed Transaction will not have an adverse effect on rates charged to either wholesale sales or transmission service customers. Applicants state that Columbia does not intend to makes sales of electric energy in interstate commerce. Applicants state that following the Proposed Transaction, Columbia's owner, the RE Project Companies, will make sales at market-based rates. Applicants explain that there will be no effect on transmission rates resulting from the Proposed Transaction. The Shared Facilities Agreement and the Amended and Restated CLGIA Co-Tenancy Agreement, which govern the joint use and sharing costs relating to shared transmission

facilities owned by Columbia, will not be affected by the Proposed Transaction.

Applicants state that the Proposed Transaction will have no adverse effect on regulation. Applicants state that the Proposed Transaction will not impair the ability of the Commission or any state regulatory authority to regulate Applicants or their affiliates. Applicants explain that following the closing of the Proposed Transaction, the Commission will be able to exercise the same jurisdiction over Columbia and its facilities. Applicants or their affiliates and has no effect on state commission regulation.

Applicants state that Applicants' only franchised utility affiliate, Dominion Virginia Power, is not involved in the Proposed Transaction. Applicants verify that based on 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 or in the future cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company. Applicants state that the Proposed Transaction 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 traditional public utility associate companies that has captive customers or that own or provide transmission service over jurisdictional transmission facilities, for the benefit of an associate company; (3) any new pledges or encumbrances 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 non-utility associate companies 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.[2]

The original filing was noticed on February 11, 2015. Comments, protests or interventions were due on or before March 3, 2015. None were filed.

Information and/or systems connected to the bulk power system involved in this transaction may be subject to reliability and cyber security standards approved by the Commission pursuant to FPA section 215 of the FPA.[3] 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

[2] *See* Applicants' Exh. M.

[3] 16 U.S.C. § 824o.

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 cyber security standards. The Commission, North American Electric Reliability Corporation or the relevant regional entity may audit compliance with reliability and cyber security 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 this 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] The foregoing authorization may result in a change in status. Accordingly, the Applicants are advised that they must comply with the requirements of Order No. 652. In addition, Applicants shall make any necessary filings under section 205 of the FPA to implement the transaction.

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) 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 cost, or any other matter whatsoever now pending or which may become before the Commission;

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[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).

(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;

(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 Applicants' affiliated qualifying facilities, if any, an appropriate filing for recertification pursuant to 18 C.F.R. § 292.207 (2014) shall be made;

(6) Applicants shall make appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transaction;

(7) Applicants 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) 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 (2014). 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(2014).

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

Document Content(s)