

157 FERC ¶ 62,121

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Utah Red Hills Renewable Park, LLC

Docket No. EC16-196-000

ORDER AUTHORIZING ACQUISITION
OF JURISDICTIONAL FACILITIES

(Issued November 16, 2016)

On September 30, 2016, as amended on October 4, 2016, Utah Red Hills Renewable Park, LLC (Utah Red Hills) filed an application (Application) pursuant to section 203(a)(1)(A) of the Federal Power Act (FPA)¹ requesting authorization for MIC Renewable Energy Holdings LLC (Buyer) to purchase from Solveig Solar Holdings, LLC (Seller) 100 percent of the issued and outstanding membership interests in Solveig Solar 01 UT, LLC (Solveig Solar), an upstream, indirect owner of Utah Red Hills (Proposed Transaction). Seller will no longer hold any ownership interest in Utah Red Hills following the Proposed Transaction. The jurisdictional facilities affected by the Proposed Transaction consist of Utah Red Hills' market-based rate tariff, any related agreements, and books and records.²

Utah Red Hills is an exempt wholesale generator, with market-based rate authority.³ Utah Red Hills owns and operates a qualifying facility, with a net generating capacity of 78.6 megawatts (Project) located near the town of Parowan, Utah. Utah Red Hills is interconnected to PacifiCorp and sells the entire output of the Project to PacifiCorp under a twenty-year power purchase agreement, executed pursuant to the Public Utility Regulatory Policies Act of 1978 (PURPA). Under the power purchase

¹ 16 U.S.C. § 824b (2012).

² According to Utah Red Hills, PacifiCorp is purchasing the entire output of its photovoltaic power plant. Utah Red Hills states that it does not sell power to any other purchaser, and, as such, Utah Red Hills's interconnection is not jurisdictional to the Commission, since the state authority has jurisdiction over the interconnection. The Utah Public Service Commission (Utah PSC) approved the power purchase agreement on March 20, 2014.

³ *Utah Red Hills Renewable Park, LLC*, Docket No. ER15-1026, *et al.* (May 8, 2015) (delegated letter order).

agreement, Utah Red Hills will continue to sell the Project's full output and its capacity rights to PacifiCorp.

According to Utah Red Hills, Buyer is an indirect, wholly-owned subsidiary of Macquarie Infrastructure Corporation (MIC). MIC is a public company listed on the New York Stock Exchange, and it is externally managed by a wholly-owned, indirect subsidiary of Macquarie Group Limited (MGL). MGL is a provider of banking, financial advisory, investment, and funds management services. Utah Red Hills states that MGL is affiliated with entities that own or control electric generation facilities within the United States, but none of which is located within the the PacifiCorp East Balancing Authority Area (PACE BAA), which, according to Applicant, is the relevant geographic market.

MGL is affiliated with entities that own or control electric transmission or distribution facilities within the United States. MGL indirectly owns 10 percent or more of the outstanding voting interests in Puget Sound Energy (PSE) and Cleco Power, LLC (Cleco). PSE has market-based rate authorization and operates its transmission system pursuant to an open access transmission tariff (OATT) on file with the Commission. Cleco transferred functional control of its transmission facilities to the Midcontinent Independent System Operator, Inc. (MISO), and as such, service on Cleco's transmission facilities is subject to MISO's OATT on file with the Commission. MGL is affiliated with certain entities that own or control inputs to electric power production, but these entities are not located within the PACE BAA.

Utah Red Hills states that MGL also owns an interest in Leaf River Energy Center LLC (Leaf River), a natural gas company offering natural gas storage services in interstate commerce that is regulated as a "natural gas company", under the Natural Gas Act. The Leaf River storage facility is located in Jasper County, Mississippi.

MGL indirectly owns 100 percent of Macquarie Energy LLC (Macquarie Energy), which operates as a power marketer in various markets in the United States and has market-based rate authority to sell energy, capacity, and ancillary services to wholesale purchasers. Macquarie Energy also operates as a natural gas trading and marketing company and trades oil and coal. Macquarie Energy does not own or control any electric generation, transmission, or distribution facilities.

Utah Red Hills is a direct, wholly owned subsidiary of Utah Red Hills RP HS1, LLC, which is a direct, wholly owned subsidiary of Utah Red Hills Holdco, LLC (URH Holdco). Solveig Solar owns 100 percent of the non-passive, controlling Class B membership interests in URH Holdco. Pelican Solar UT, LLC (Pelican Solar), an indirect, wholly owned subsidiary of Google, Inc., owns 100 percent of the Class A passive, non-controlling membership interests in URH Holdco. According to the Application, Pelican Solar's membership interests in URH Holdco will not be impacted by the Proposed Transaction.

Utah Red Hills states that the Proposed Transaction is consistent with the public interest and will have no adverse effect on competition, rates, or regulation and will not result in cross-subsidization. With respect to horizontal market power, Utah Red Hills states that Buyer currently does not own or control and is not affiliated with any electric generation capacity in the PACE BAA. Accordingly, because there is no market overlap, the Proposed Transaction will not result in any new affiliation or combination of electric generation assets that could have an adverse impact on horizontal competition in the relevant market. Therefore, according to Utah Red Hills, the Proposed Transaction does not raise any horizontal market power concerns.

With respect to vertical market power, there currently is no overlap of inputs to electricity products and electricity products by Utah Red Hills and Buyer in the PACE BAA, and neither Buyer nor any of its affiliates own or control inputs to electric power production located within the PACE BAA. In addition, neither Utah Red Hills nor Buyer, nor any of their respective affiliated entities, own or control electric transmission facilities in the relevant market. Additionally, Utah Red Hills, Buyer, and their respective affiliates do not own or control in the relevant market intrastate natural gas transportation, intrastate natural gas storage, or distribution facilities, sources of coal supplies or the transportation of coal supplies, or sites for generation capacity development that would constitute a barrier to entry to the generation market. Furthermore, Utah Red Hills asserts that while Buyer is affiliated with entities that own or control certain inputs to electric power production in geographic markets remote from the PACE BAA, such affiliations do not raise any competitive concerns. Therefore, according to Utah Red Hills, the Proposed Transaction does not raise any vertical market power concerns.

With respect to rates, Utah Red Hills states that it currently makes sales to PacifiCorp pursuant to its market-based rate authorization. Utah Red Hills has entered into a twenty-year PURPA agreement with PacifiCorp, which has been approved by the Utah PSC and, according to Utah Red Hills, will not be affected by the Proposed Transaction. Moreover, the Proposed Transaction does not involve transmission rates or transmission customers. Therefore, according to Utah Red Hills, the Proposed Transaction will have no effect on rates.

With respect to regulation, Utah Red Hills states that the Proposed Transaction will not affect the manner or extent to which the Commission, any state, or any other federal agency may regulate Utah Red Hills. Utah Red Hills explains that the extent to which Utah Red Hills and its affiliates are subject to the Commission's jurisdiction, will not change, as a result of the Proposed Transaction. Therefore, according to Utah Red Hills, the Proposed Transaction will have no adverse effect on federal or state regulation.

Utah Red Hills 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. Utah Red Hills further states that the Proposed Transaction qualifies for the safe harbor for transactions that do not involve a franchised public utility with captive customers. Additionally, Utah Red Hills represents that, based on facts and circumstances known to Utah Red Hills 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 October 3, 2016, with comments, protests or interventions due on or before October 21, 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 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) Utah Red Hills 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 determinations of cost, 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 Utah Red Hills's affiliated qualifying facilities, if any, an appropriate filing for recertification pursuant to 18 C.F.R. § 292.207 (2016) shall be made;
- (6) The Commission retains authority under Sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate;
- (7) Utah Red Hills shall make the appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transaction; and

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'*, 111 FERC ¶ 61,413 (2005).

- (8) Utah Red Hills 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 (2016). 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 (2016).

Steve P. Rodgers, Director
Division of Electric Power
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