

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Antelope DSR 1, LLC
EC16-180-000

Docket No.

ORDER AUTHORIZING DISPOSITION
OF JURISDICTIONAL FACILITIES

(Issued October 11, 2016)

On September 9, 2016, Antelope DSR 1, LLC (Antelope) filed an application under section 203(a)(1) of the Federal Power Act (FPA)¹ requesting authorization for the disposition of jurisdictional facilities. Specifically, JPM Capital Corporation (JPM Capital) will acquire an indirect interest in Antelope (Proposed Transaction). The affected jurisdictional facilities consist of a market-based rate tariff and rate schedules, a power purchase agreement, a shared facilities agreement, a co-tenancy agreement, interconnection facilities, and books and records.

Antelope states that the Proposed Transaction may not require Commission approval under section 203(a)(1); however, out of an abundance of caution, it nevertheless asks the Commission to authorize the Proposed Transaction. This order authorizes the Proposed Transaction without making any determination of jurisdiction.²

Antelope is an exempt wholesale generator with market-based rate authority. Antelope owns an approximately 50 megawatt photovoltaic power project located in the City of Lancaster, Los Angeles County, California (Antelope DSR 1 Project). Antelope DSR 1 Project is situated within the California Independent System Operator Corporation (CAISO) market. Thus, according to Antelope, the relevant market for the Proposed Transaction is CAISO. Further according to Antelope, output from Antelope DSR 1 Project is committed under a long-term power purchase agreement to an unaffiliated entity.

Antelope is an indirect subsidiary of FTP Power LLC (FTP), a limited liability company. According to Antelope, FTP has the right to control it and Antelope DSR 1 Project on a day-to-day basis. The membership interests in FTP consist of Class A Units and Common Units, which are held in various percentages by C2E, LLC (C2E), a limited liability company, and two other limited liability companies--Fir Tree Solar LLC and Martifer-Silverado Fund I, LLC

¹ 16 U.S.C. § 824b (2012).

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

(MS Fund). C2E is owned in equal parts by Creamer Group, LLC, a limited liability company; Creamer Investments, Inc., a corporation; and two individuals. MS Fund is owned 42 percent by Silverado Power, LLC, a limited liability company, and 58 percent by Martifer Solar, Inc., a corporation.

JPM Capital is an indirect subsidiary of financial service company JPMorgan Chase & Co. (JPMorgan Chase). Antelope asserts that JPM Capital 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. Furthermore, JPMorgan Chase does not control and is not affiliated with any entity that controls inputs to generation within the CAISO market.

According to Antelope, sPower FinCo 4 LLC (FinCo 4) is a subsidiary of FTP and Antelope is directly owned by FinCo 4. FinCo 4 is also the direct parent of SPW Solar Managing Member 3, LLC (SPWSMM 3), which holds 100 percent of the Class B Interests in SPW Solar Holdings 3, LLC (SPW3). According to Antelope, the Class B Interests are the controlling interests. Antelope also states that JPM Capital currently holds 100 percent of the Class A Interests in SPW3 and that the Class A Interests are passive, non-controlling interests. Prior to the Proposed Transaction, according to Antelope, FinCo 4 will transfer Antelope and Antelope DSR 1 Project to SPW3.³ Simultaneously with that transfer JPM Capital will, under the Proposed Transaction, acquire an indirect interest in Antelope and Antelope DSR 1 Project as a result of holding its existing Class A Interests in SPW3.

According to Antelope, SPWSMM3 will remain as the managing member of SPW3 and, as such, will continue to have the right to control SPW3. Further according to Antelope, SPWSMM3, as manager of SPW3 and owner of all of the controlling Class B Units in SPW3, will have the right to control Antelope and Antelope DSR 1 Project. JPM Capital, as owner of all of the passive, non-controlling Class A Units in SPW3, will have only limited rights in Antelope and Antelope DSR 1 Project to protect its economic investments.

Antelope states that the Proposed Transaction is consistent with the public interest and will have no adverse effect on competition, rates, or regulation. With respect to horizontal market power, Antelope states that the Proposed Transaction raises no concerns. Antelope states that output from Antelope DSR 1 Project is fully committed to a non-affiliated purchaser under a long-term agreement. Antelope also states that neither it nor its affiliates own any uncommitted capacity within the CAISO market. Furthermore, Antelope states that JPM Capital's ownership of the passive Class A Units in SPW3 will not result in JPM Capital gaining control over Antelope DSR 1 Project.

³ Antelope claims that this transfer qualifies for a blanket authorization under section 203(a)(1) of the FPA, specifically under 18 C.F.R. § 33.1(c)(6). Antelope does not seek in the application an authorization under section 203 of the FPA for this transfer and none is granted by this order.

With regard to vertical market power, Antelope states that the Proposed Transaction does not raise any concerns. Antelope states that it will not own any transmission facilities, other than limited interconnection facilities, or other inputs to generation. Furthermore, Antelope states that it will not become affiliated with any entity that owns, controls, or operates transmission facilities or other inputs to power production within the CAISO market. In addition, Antelope states that neither it nor JPM Capital, or their affiliates, own or control sites for the development of new generation in the United States that would prevent third parties from entering the CAISO market.

With regard to rates, Antelope states that the Proposed Transaction raises no concerns. Antelope states that it will sell power at market-based rates. Antelope also states that the Proposed Transaction will not alter the terms of its long-term agreement. With regard to regulation, Antelope states that the Proposed Transaction raises no concern because it will not create a regulatory gap at the federal or state level or shift regulatory authority between the Commission and any state commission.

Antelope states 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 closing or in the future, cross-subsidization of a non-utility associate company or the pledge or encumbrance of assets for the benefit of an associate company. Specifically, Antelope 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.

The filing was noticed on September 12, 2016, with comments, protests, or interventions due on or before September 30, 2016. None were received.

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 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.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 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

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).

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 Antelope's affiliated qualifying facilities, an appropriate filing for recertification pursuant to 18 C.F.R. § 292.207 (2016) shall be made;
- (6) The Commission retains authority under section 203(b) and 309 of the FPA to issue supplemental orders as appropriate;
- (7) Antelope shall make 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 (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
Regulation – West