

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

\_\_\_\_\_  
**Macho Springs Solar, LLC**  
\_\_\_\_\_  
\_\_\_\_\_

**Docket No. EG14-\_\_\_\_\_-000**

**NOTICE OF SELF-CERTIFICATION OF  
EXEMPT WHOLESALE GENERATOR STATUS**

Pursuant to Section 366.7(a) of the Federal Energy Regulatory Commission’s (“Commission”) rules<sup>1</sup> implementing the Public Utility Holding Company Act of 2005 (“PUHCA 2005”), enacted by the Energy Policy Act of 2005 §§ 1261 *et seq.*,<sup>2</sup> Macho Springs Solar, LLC (“Macho Springs”) hereby submits this notice of self-certification that it is an exempt wholesale generator (“EWG”) as defined in Section 366.1 of the Commission’s rules.<sup>3</sup>

**I. CORRESPONDENCE AND COMMUNICATIONS**

All communications and correspondence regarding this notice should be sent to the following persons who are authorized to receive service:

Raymond B. Wuslich  
Winston & Strawn LLP  
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Assistant General Counsel  
Project Development  
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<sup>1</sup> 18 C.F.R. § 366.7(a) (2011).

<sup>2</sup> Pub. L. No. 109-58, 119 Stat. 594 (2005).

<sup>3</sup> 18 C.F.R. § 366.1.

## **II. DESCRIPTION OF MACHO SPRINGS**

### **A. Macho Springs' Ownership Structure**

Macho Springs is a Delaware limited liability company that is indirectly wholly owned by First Solar, Inc., a Delaware corporation headquartered in Tempe, Arizona.

### **B. Macho Springs' Proposed Activities**

#### **1. The Facility and Power Sales**

Macho Springs is constructing and owns an approximately 50 MW alternating current solar photovoltaic ("PV") power plant located in Luna County, New Mexico (the "Facility"). The Facility is expected to begin operational testing in January 15, 2014 and to begin full commercial operation on or about May 1, 2014. The Facility will consist of 704,160 First Solar Series 3 Black PV modules, and associated facilities and equipment necessary for the generation and sale of power at wholesale. The Facility will also include electric interconnection facilities necessary to effectuate Macho Springs' wholesale power sales from the Facility. Macho Springs will own the electric interconnection facilities that consist of generator leads, lengths of wire, step-up transformers, substations and/or other related appurtenant equipment to the point of interconnection. The Facility will be interconnected with the transmission system operated by El Paso Electric Company ("El Paso").

Macho Springs plans to sell electric energy and capacity produced from the Facility exclusively at wholesale. Before producing or selling power, Macho Springs will file with the Commission for authorization under section 205 of the Federal Power Act to make wholesale power sales at market-based rates.

## 2. Macho Springs' Other Potential Incidental Activities

In connection with owning and operating the Facility, Macho Springs may also engage in the following incidental activities that the Commission has found to be permissible EWG activities:

- sell ancillary services available from the Facility which are incidental to, and by-products of, the Facility's operations as a wholesale power generator;<sup>4</sup>
- reassign excess transmission capacity consistent with the Commission's requirement that such reassignment be limited to transmission capacity that Macho Springs obtains for the purpose of making wholesale sales of electric energy;<sup>5</sup>
- purchase and sell congestion revenue rights that Macho Springs needs for the Facility's wholesale power sales;<sup>6</sup>
- resell excess fuel supplies or assign its excess fuel transportation capacity provided that such sales be made only if such fuel supplies or transportation were originally contracted by Macho Springs to operate the Facility;<sup>7</sup>
- trade emission allowances consistent with the Commission's limitation that an EWG may only engage in such trading so long as the emission allowances were originally obtained in the normal course of operating the Facility;<sup>8</sup>
- sell "green" power certificates or renewable energy credits consistent with the Commission's limitation that an EWG may sell such certificates or credits where they are associated with power produced by the Facility;<sup>9</sup>

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<sup>4</sup> The Commission has recognized that the sale of the following ancillary services are consistent with EWG status: reactive power and voltage support, regulation and frequency response services, load following, energy balancing services, spinning and supplemental reserves, and blackstart capability, and other ancillary services consistent with the Commission's rules or as otherwise permitted by the Commission. *See, e.g., Duke Energy Oakland, LLC*, 83 FERC ¶ 61,304 (1998); *Sithe Framingham, LLC*, 83 FERC ¶ 61,106 (1998).

<sup>5</sup> *See CNG Power Services Corp.*, 71 FERC ¶ 61,026, at p. 61,103-04 (1995).

<sup>6</sup> *See Duquesne Power, LP*, 106 FERC ¶ 61,104 (2004).

<sup>7</sup> *See Selkirk Cogen Partners, LP*, 69 FERC ¶ 61,037, at p. 61,168-69 (1994).

<sup>8</sup> *See UGI Development Co.*, 89 FERC ¶ 61,192 (1999).

<sup>9</sup> *See Madison Windpower, LLC*, 93 FERC ¶ 61,270 (2000).

- lease or rent property to third parties, but to the extent a lease arrangement is not reasonably necessary to Macho Springs' generation business and a rental fee is received above a nominal amount, Macho Springs will, consistent with EWG precedent, donate or transfer such rental revenues to a non-affiliated entity;<sup>10</sup>
- engage in project development activities associated with the Facility. Such project development activities may include, but are not necessarily limited to, the following activities: due diligence; site investigations; feasibility studies; preliminary design and engineering; licensing and permitting; negotiation of asset and land acquisitions; negotiation of contractual commitments with lenders, equity investors, governmental authorities and other project participants and such other activities as may be necessary to financially close on eligible facilities; negotiation of power sales contracts; equipment purchases; fuel supply; engineering, construction, interconnection, and related matters; preparation and submission of bid proposals; and development of financing programs related to owning or operating the Facility and/or additional electric generation facilities that satisfy the criteria for EWG status;<sup>11</sup> and
- engage in other activities incidental to the sale of electric energy at wholesale that are consistent with the Commission's EWG precedent.

### **III. MACHO SPRINGS' REPRESENTATIONS REGARDING EXEMPT WHOLESALE GENERATOR STATUS**

Macho Springs makes the following representations in order to demonstrate that it meets the Commission's definition of an EWG under Section 366.1 of the Commission's regulations for its energy sales from the Facility.

A. Macho Springs will be engaged directly and exclusively in the business of owning or operating all or part of one or more Eligible Facilities<sup>12</sup> and selling electric energy at wholesale. The Facility, as described in Section II.B.1 above, is an Eligible Facility because it

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<sup>10</sup> See, e.g., *Duke Energy Hot Spring, LLC*, 98 FERC ¶ 61,287 (2002); *PSEG Fossil, LLC, et al.*, 95 FERC ¶ 61,405 (2001).

<sup>11</sup> See *Coastal Nejava Ltd.*, 71 FERC ¶ 61,081 (1995). Macho Springs will, to the extent required by the Commission, file a new notification of EWG status if it acquires ownership and/or operating interests in any additional Eligible Facilities or EWGs not described herein.

<sup>12</sup> Section 366.1 of the Commission's regulations adopts by reference Section 32(a)(2) of the Public Utility Holding Company Act of 1935 (as amended, "PUHCA 1935"), 15 U.S.C. § 79a-5a(a)(2), which defines the term eligible facilities ("Eligible Facilities"). Thus, the term Eligible Facilities as used herein has the meaning ascribed to it in Section 32(a)(2) of PUHCA 1935.

will be used for the generation of electric energy exclusively for sale at wholesale. Consistent with the Commission's EWG precedent, the activities described in Section II.B.2 above that Macho Springs may engage in are incidental to the wholesale generation business and will not violate the EWG exclusivity requirement.

B. Macho Springs will not make any sales of power at retail.

C. The Facility will be interconnected with the transmission facilities owned by El Paso and operated by the El Paso balancing authority. Macho Springs will own only limited interconnection facilities that are necessary to effectuate the Facility's wholesale power sales. Such interconnection facilities also constitute Eligible Facilities.

D. No rate or charge for, or in connection with, the construction of the Facility or for electric energy produced by the Facility was in effect under the laws of any state as of October 24, 1992. Accordingly, no State commission determinations pursuant to Section 32(c) of PUHCA are required.

E. No portion of the Facility will be owned or operated by an Electric Utility Company that is an Affiliate or Associate Company of Macho Springs.<sup>13</sup>

In accordance with Section 366.7(a) of the Commission's regulations,<sup>14</sup> a copy of this notice of self-certification is being concurrently served upon the New Mexico Public Regulation Commission.

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<sup>13</sup> The terms "Electric Utility Company," "Affiliate" and "Associate Company" have the meanings ascribed to them in Section 366.1 of the Commission's regulations.

<sup>14</sup> 18 C.F.R. § 366.7(a).

#### IV. CONCLUSION

For the reasons set forth in this notice of self-certification, Macho Springs satisfies the requirements for EWG status.

Respectfully submitted,

*/s/ Raymond B. Wuslich*

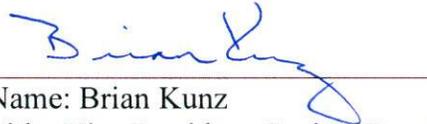
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ATTORNEY FOR  
MACHO SPRINGS SOLAR, LLC

Dated: December 20, 2013

**SUBSCRIPTION CERTIFICATION**

I, Brian Kunz, hereby certify that I am Vice President, Project Development of Macho Springs Solar, LLC ("Macho Springs") and that, as such, I am legally authorized to bind Macho Springs to the facts and representations in the foregoing notice of self-certification of exempt wholesale generator status. I have read the foregoing notice of self-certification of Macho Springs and I affirm that the facts, representations and statements set forth therein are true and correct to the best of my knowledge and belief.



Name: Brian Kunz

Title: Vice President, Project Development

Date: December 20, 2013

**UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION**

**Macho Springs Solar, LLC**

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**Docket No. EG14-\_\_\_\_\_-000**

**NOTICE OF SELF-CERTIFICATION  
OF EXEMPT WHOLESALE GENERATOR STATUS**

(December \_\_\_\_, 2013)

Take notice that on December 20, 2013, Macho Springs Solar, LLC (“Macho Springs”), a limited liability company, filed a Notice of Self Certification demonstrating that it is an exempt wholesale generator within the meaning of section 366.1 of the Commission’s regulations.

Macho Springs will own and operate an approximately 50 MW alternating current solar photovoltaic power plant located in Luna County, New Mexico (the “Facility”). The Facility will be interconnected with the transmission system operated by El Paso Electric Company.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission’s Rules of Practice and Procedure (18 C.F.R. §§ 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate, pursuant to 18 C.F.R. § 385.214. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the “eFiling” link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the “eLibrary” link and is available for review in the Commission’s Public Reference Room in Washington, D.C. There is an “eSubscription” link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Kimberly D. Bose  
Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that Macho Springs Solar, LLC's foregoing Notice of Self-Certification of Exempt Wholesale Generator Status was served this 20th day of December, 2013, by first-class mail, postage prepaid, upon the following:

New Mexico Public Regulation Commission  
1120 Paseo De Peralta  
PERA Building  
P.O. Box 1269  
Santa Fe, NM 87504  
(1-888) 427-5772

/s/ Carlos Sisco  
Carlos Sisco  
Winston & Strawn LLP  
1700 K Street, NW  
Washington, DC 20006