

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Cove Mountain Solar, LLC) Docket No. EG20-2-0001-10

Notice of Self-Certification of Exempt Wholesale Generator Status

Pursuant to Section 366.7(a) of the Federal Energy Regulatory Commission's ("Commission") regulations¹ implementing the Public Utility Holding Company Act of 2005 ("PUHCA 2005"), enacted by the Energy Policy Act of 2005 §§ 1261 *et seq.*,² Cove Mountain Solar, LLC ("Cove Mountain") hereby submits this notice of self-certification that Cove Mountain is an exempt wholesale generator ("EWG") as defined in Section 366.1 of the Commission's regulations.³

I. CORRESPONDENCE AND COMMUNICATIONS

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

Deborah A. Carpentier
Crowell & Moring LLP
1001 Pennsylvania Avenue, NW
Washington, DC 20004
Phone: 202-624-2857
Fax: 202-628-5116
dcarpentier@crowell.com

Cove Mountain Solar, LLC
c/o D. E. Shaw Renewable Investments, L.L.C.
1166 Avenue of the Americas, Ninth Floor
New York, NY 10036
Attention: General Counsel
Phone: 212-478-0000
Fax: 212-478-0100
desri-regulatory@world.deshaw.com

¹18 C.F.R. § 366.7(a) (2019).

²Pub. L. No. 109-58, 119 Stat. 594 (2005).

³18 C.F.R. § 366.1.

II. DESCRIPTION OF COVE MOUNTAIN

A. Cove Mountain' Ownership Structure

As of the date of this notice, Cove Mountain is a direct and wholly owned subsidiary of DESRI Utah Development, L.L.C., which is an indirect and wholly owned subsidiary of D. E. Shaw & Co., L.P.

B. Cove Mountain's Existing and Proposed Activities

1. Cove Mountain's Facility and Power Sales

Cove Mountain is constructing and will own and operate a 58 MW (nameplate) solar-powered electric generating facility to be located in Iron County, Utah (the "Facility"). Cove Mountain will sell electric energy, capacity, and/or ancillary services from the Facility exclusively at wholesale.⁴

The Facility will include limited electric interconnection facilities necessary to effectuate Cove Mountain's wholesale power sales from the Facility.⁵ The Facility will be interconnected to the transmission system owned by PacifiCorp, located in the PacifiCorp-East balancing authority area.

⁴Such sales will be made to third-parties through bilateral agreements or through a power exchange. The Commission has determined that sales through a power exchange are considered wholesale sales for EWG purposes. *See Southern California Edison Co.*, 80 FERC ¶ 61,262 (1997). Cove Mountain may also purchase power and resell it at wholesale to third parties. An EWG is permitted to resell at wholesale power that it has not generated. *See CNG Power Services Corp.*, 71 FERC ¶ 61,378 (1995). Concurrently with the filing of this notice, Cove Mountain will file an application requesting market-based rates from the Commission.

⁵Cove Mountain may occasionally obtain from third parties back-up power that Cove Mountain may need for station power to operate its Facility when Cove Mountain is not self-supplying its station power load. Such back-up or station power would be delivered to the Facility over the interconnection facilities which Cove Mountain will

(footnote continued on next page)

2. Shared Facilities Arrangement

Cove Mountain has entered into a shared facilities agreement with its affiliate, Cove Mountain Solar 2, LLC⁶ (“Cove Mountain 2” and with Cove Mountain, the “SFA Parties” and each a “SFA Party”), which will, as described below, govern their proposed joint ownership and use of certain interconnection facilities.

The Shared Facilities Common Ownership Agreement dated June 28, 2019 (the “SFA”), sets forth the terms and conditions under which the SFA Parties will jointly own and share the use of certain Federal Power Act (“FPA”)-jurisdictional facilities, including (i) a substation, which include among other things, the 138 kV bus and associated circuit breakers, disconnect switches, surge arresters, instrument transformers, and protection equipment, cable trench system containing metering, control and communications cables, 138 kV gen-tie line facilities carrying power from the 138 kV bus (the “Shared Substation”); and (ii) a switchyard, which includes among other things, a 138 kV circuit breaker, dead-end structures, disconnect switches, and the 138 kV generation tie-line including

(footnote continued from previous page)

use to interconnect with the UNSE transmission system. EWGs may use their interconnection facilities to transmit back-up power to their generation facilities. *See Zond Systems, Inc.*, 81 FERC ¶ 61,001 (1997).

⁶Cove Mountain 2 is also developing a 122 MW solar-powered electric generating facility, and is concurrently filing a notice of self-certification of EWG status.

gen-tie towers or poles running from the Shared Substation to the switchyard (with the Shared Substation, the “Shared Facilities”).⁷

Each SFA Party owns an undivided tenancy in common ownership percentage interest in each component of the Shared Facilities as defined in the SFA. Each SFA Party has the right to utilize the Shared Facilities in which it holds an ownership interest to interconnect its electric generation project(s) and to deliver electrical energy generated by its electric generation project(s) to the interconnected transmission system up to its Maximum Capacity as defined in the SFA,⁸ at such time as such SFA Party becomes an Operating Owner.⁹ Cove Mountain requires access to the Shared Facilities in order to connect its Facility to the PacifiCorp transmission system, which is necessary to effectuate Cove Mountain’s wholesale power sales from its Facility.

The SFA includes the terms and conditions for the SFA Parties’ joint ownership and use of land on which the Shared Facilities are located, and needed in connection with the development, ownership, and operation of the SFA Parties’ respective electric generation projects.

⁷Concurrently with the filing of this notice, Cove Mountain will file the SFA as a rate schedule under FPA § 205.

⁸Cove Mountain’s Maximum Capacity under the SFA is 58 MW.

⁹An “Operating Owner” is a SFA Party that has delivered notice that it intends to commence utilizing the respective Shared Facilities and sets forth the date such SFA Party intends to commence such usage.

The SFA provides that the actual costs and expenses of operating and maintaining the Shared Facilities and shared real property, as well as payments for the services of the manager of the Shared Facilities, removal of the Shared Facilities, and property taxes will be shared by the Operating Owners. Each Operating Owner's share of such costs will be, at the time of calculation, the percentage equal to such Operating Owner's Maximum Capacity divided by the total Maximum Capacity of all of the Operating Owners at such time. Once a SFA Party becomes an Operating Owner, it will be entitled to use the Shared Facilities, and responsible for its pro rata share of the costs as set forth above.¹⁰

¹⁰During the term of the SFA, there might be occasions when small amounts of power produced by Cove Mountain for its wholesale power sales might be used by another SFA Party for its station power use if such SFA Party's electric generation facility is not operating, which could occur as an incidental effect of the physical configuration of the Shared Facilities. The potential provision by Cove Mountain of such incidental back-up power to another SFA Party for its station power needs is consistent with EWG precedent. *See, e.g., Santa Rita Wind Energy, LLC*, Docket No. EG17-96-000, "Notice of Self-Certification of EWG Status" (Apr. 7, 2017) (describing the potential for the EWG to provide station power to another EWG as the result of shared ownership of interconnection facilities; EWG status granted by operation of law) ("*Santa Rita*"); *Prairie Breeze Wind Energy LLC*, Docket No. EG15-50-000, "Notice of Self-Certification of EWG Status" (Feb. 18, 2015) (same) ("*Prairie Breeze*"); *Beech Ridge Energy LLC*, Docket No. EG14-93-000, "Notice of Self-Certification of EWG Status" (Sep. 8, 2014) (same) ("*Beech Ridge*"); *Erie Boulevard Hydropower, L.P.*, 87 FERC ¶ 61,378 (1999) (permitting an EWG to provide another company with blackstart power for consumption by that company so that it could continue to provide power to its retail and wholesale power customers); *Duke Energy Hot Spring, LLC*, 98 FERC ¶ 61,287 (2002) (permitting an EWG to supply back-up power to an interconnected utility for consumption by a substation owned by the utility, which both the EWG and the utility needed to be operational to accommodate their respective electric businesses.); *see also Astoria Generating Co., L.P.*, EG99-206-000, Letter Order (Aug. 17, 1999) (granting EWG status to a company that would provide stand-by and start-up electric service to another company for such company's use to start its generation facilities.).

Cove Mountain's undivided tenancy in common ownership interest in the Shared Facilities with the other SFA Party, which each SFA Party needs for the ownership and operation of its respective electric generation project (in Cove Mountain's case, the Facility) and wholesale power business, is consistent with the Commission's EWG precedent.¹¹

3. Cove Mountain's Other Potential Incidental Activities

In connection with developing, owning, and operating the Facility, Cove Mountain 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 that are incidental to, and by-products of, the Facility's operations as a wholesale power generator;¹²
- reassign excess transmission capacity consistent with the Commission's requirement that such reassignment of excess transmission capacity be

¹¹See, e.g., *Santa Rita* (setting forth EWG's undivided joint ownership interests in interconnection facilities and other property with another EWG); *Prairie Breeze* (same); *Beech Ridge* (same); *Grand Ridge Energy LLC*, Docket No. EG09-60-000, "Notice of Self-Certification of EWG Status" (June 25, 2009) (same); *Grand Ridge Energy II LLC*, Docket No. EG09-61-000, "Notice of Self-Certification of EWG Status" (June 25, 2009) (same); *Grand Ridge Energy III LLC*, Docket No. EG09-62-000, "Notice of Self-Certification of EWG Status" (June 25, 2009) (same); *Grand Ridge Energy IV LLC*, Docket No. EG09-63-000, "Notice of Self-Certification of EWG Status" (June 25, 2009) (same); *Grand Ridge Energy V LLC*, Docket No. EG09-64-000, "Notice of Self-Certification of EWG Status" (June 25, 2009) (same). See also *Buffalo Gap Wind Farm 2, LLC*, 118 FERC ¶ 61,069 (2007) (hereafter referred to as "*Buffalo Gap 2*") (granting EWG status to a company that would own undivided interests in interconnection facilities and other property with other EWGs.).

¹²The ancillary services Cove Mountain may sell would include reactive power and voltage support, regulation and frequency response services, load following, energy balancing services, spinning and supplemental reserves, blackstart capability, and any 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).

limited to transmission capacity Cove Mountain originally obtained for the purpose of affecting a specific wholesale sale of electric energy;¹³

- purchase and sell congestion revenue rights that Cove Mountain needs for the Facility's power sale operations;¹⁴
- 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 Cove Mountain to operate the Facility;¹⁵
- 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;¹⁶
- sell "green" power certificates or 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;¹⁷
- grant easement, lease, or rent property to third parties, but to the extent such an arrangement is not reasonably necessary to Cove Mountain's wholesale power business and a rental fee is received above a nominal amount, Cove Mountain will, consistent with EWG precedent, donate or transfer such rental revenues to a non-affiliated entity;¹⁸
- 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

¹³See *CNG Power Services Corp.*, 71 FERC ¶ 61,026, at 61,103–04 (1995).

¹⁴See *Duquesne Power, LP*, 106 FERC ¶ 61,104 (2004).

¹⁵See *Selkirk Cogen Partners, L.P.*, 69 FERC ¶ 61,037, at 61,168–69 (1994).

¹⁶See *UGI Development Co.*, 89 FERC ¶ 61,192 (1999).

¹⁷See *Madison Windpower, LLC*, 93 FERC ¶ 61,270 (2000).

¹⁸See, e.g., *Duke Energy Hot Spring, LLC*, 98 FERC ¶ 61,287 (2002); *PSEG Fossil, LLC*, 95 FERC ¶ 61,405 (2001).

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;¹⁹ and

- engage in other activities incidental to the sale of electric energy at wholesale that are consistent with the Commission's EWG precedent.

III. REPRESENTATIONS REGARDING EXEMPT WHOLESALE GENERATOR STATUS

Cove Mountain 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:

- A. Cove Mountain will be engaged directly and exclusively in the business of owning and operating all or part of one or more Eligible Facilities²⁰ and selling electric energy at wholesale. The Facility, including the interconnection facilities described in Sections II.B.1 and 2 above, satisfy the definition of Eligible Facilities because they 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 Sections II.B.2 and 3 above that Cove Mountain may engage in will be

¹⁹See, e.g., *Empresa Valley Hermoso, S.A.*, 72 FERC ¶ 61,306 at 62,288 (1995). Cove Mountain 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 not described herein or EWGs.

²⁰Section 366.1 of the Commission's regulation adopts by reference Section 32(a)(2) of the Public Utility Holding Company Act of 1935 ("PUHCA 1935"), 15 U.S.C. § 79z-5a(a)(2), which defines the term eligible wholesale 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.

incidental to the wholesale generation business and will not violate the EWG exclusivity requirement.

- B. Cove Mountain will not make any foreign sales of power at retail.
- C. The Facility does not include transmission or distribution facilities other than the interconnection facilities described in Sections II.B.1 and 2 above, which are used to interconnect the Facility to the PacifiCorp transmission system. These interconnection facilities are necessary to effectuate Cove Mountain's sale at wholesale of electric energy produced by its Facility.
- 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 1935 are required.
- E. Except for other EWGs, no portion of the Facility will be owned or operated by an Electric Utility Company that is an Affiliate or Associate Company²¹ of Cove Mountain.²²

²¹The terms "Electric Utility Company," "Affiliate" and "Associate Company" have the meanings ascribed to them in Section 366.1 of the Commission's regulations.

²²See *Buffalo Gap 2, supra*, at P 13 (interpreting Section 32(d)(1) of PUHCA 1935, incorporated into the definition of "exempt wholesale generator" in Section 366.1 of the Commission's regulations, "as not precluding co-ownership (or joint operation) by affiliated EWGs".)

In accordance with Section 366.7(a) of the Commission's regulations,²³ a copy of this notice of self-certification was concurrently served upon the Utah Public Service Commission.

IV. CONCLUSION

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

Respectfully submitted,

/s/ Deborah A. Carpentier
Deborah A. Carpentier
Crowell & Moring LLP
1001 Pennsylvania Avenue, NW
Washington, DC 20004

February 14, 2020

Counsel for Cove Mountain Solar, LLC

CERTIFICATE OF SERVICE

I hereby certify that Cove Mountain Solar, LLC's foregoing Notice of Self-Certification of Exempt Wholesale Generator Status was served this 14th day of February, 2020, by first-class mail, postage prepaid, upon the following:

Utah Public Service Commission
PO Box 4558
Salt Lake City, UT 84114-4558

/s/ Deborah A. Carpentier
Deborah A. Carpentier

²³18 C.F.R. § 366.7(a).