

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Horseshoe Solar, LLC) Docket No. EG23-___-000

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 Horseshoe Solar, LLC ("Horseshoe Solar") hereby submits this notice of self-certification that Horseshoe Solar 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:

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PUBLIC SERVICE COMMISS

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¹18 C.F.R. § 366.7(a) (2021).

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

³18 C.F.R. § 366.1.

II. DESCRIPTION OF HORSESHOE SOLAR

A. Horseshoe Solar's Facility and Power Sales

Horseshoe Solar is an indirect subsidiary of D. E. Shaw & Co., L.P.

Horseshoe Solar is constructing and will own and operate a 75 MWac (nameplate) solar energy electric generating facility and associated interconnection facilities to be located in Tooele County, Utah (the "Facility"). The Facility will include limited electric interconnection facilities necessary to effectuate Horseshoe Solar's wholesale power sales from the Facility. The Facility will be interconnected to the transmission system owned by PacifiCorp in the PacifiCorp-East balancing authority area.⁴ Horseshoe Solar will sell electric energy, capacity, and/or ancillary services from the Facility exclusively at wholesale.⁵

⁴Horseshoe Solar may occasionally obtain from third parties back-up power that Horseshoe Solar may need for station power to operate its Facility when Horseshoe Solar is not self-supplying its station power load. Such back-up or station power would be delivered to the Facility over the interconnection facilities that Horseshoe Solar will use to interconnect with PacifiCorp's 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).

⁵Such 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). Horseshoe Solar 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 this self-certification, Horseshoe Solar is filing an application requesting market-based rate authorization under Section 205 of the Federal Power Act.

(footnote continued on next page)

B. Horseshoe Solar's Other Potential Incidental Activities

In connection with developing, owning, and operating the Facility, Horseshoe Solar 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;⁶
- reassign excess transmission capacity consistent with the Commission's requirement that such reassignment of excess transmission capacity be limited to transmission capacity Horseshoe Solar originally obtained for the purpose of affecting a specific wholesale sale of electric energy;⁷
- purchase and sell congestion revenue rights that Horseshoe Solar needs for the Facility's power sale operations;⁸
- 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 Horseshoe Solar to operate the Facility;⁹
- 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;¹⁰

⁶The ancillary services Horseshoe Solar 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).

⁷See *CNG Power Services Corp.*, 71 FERC ¶ 61,026, at 61,103–04 (1995).

⁸See *Duquesne Power, LP*, 106 FERC ¶ 61,104 (2004).

⁹See *Selkirk Cogen Partners, L.P.*, 69 FERC ¶ 61,037, at 61,168–69 (1994).

¹⁰See *UGI Development Co.*, 89 FERC ¶ 61,192 (1999).

(footnote continued on next page)

- 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;¹¹
- grant easement, lease, or rent property to third parties, but to the extent such an arrangement is not reasonably necessary to Horseshoe Solar’s wholesale power business and a rental fee is received above a nominal amount, Horseshoe Solar will, consistent with EWG precedent, donate or transfer such rental revenues to a non-affiliated entity;¹²
- 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;¹³ and
- engage in other activities incidental to the sale of electric energy at wholesale that are consistent with the Commission’s EWG precedent.

¹¹See *Madison Windpower, LLC*, 93 FERC ¶ 61,270 (2000).

¹²See, e.g., *Duke Energy Hot Spring, LLC*, 98 FERC ¶ 61,287 (2002); *PSEG Fossil, LLC*, 95 FERC ¶ 61,405 (2001).

¹³See, e.g., *Empresa Valle Hermoso, S.A.*, 72 FERC ¶ 61,306 at 62,288 (1995). Horseshoe Solar 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.

(footnote continued on next page)

III. REPRESENTATIONS REGARDING EXEMPT WHOLESALE GENERATOR STATUS

Horseshoe Solar 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. Other than the permissible incidental activities that Horseshoe Solar may undertake as discussed in Section II.B., *supra*, Horseshoe Solar will be engaged directly and exclusively in the business of owning and operating all or part of one or more Eligible Facilities¹⁴ and selling electric energy at wholesale. The Facility, including the interconnection facilities described in Section II.A. 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 Section II.B. above that Horseshoe Solar may engage in will be incidental to the wholesale generation business and will not violate the EWG exclusivity requirement.
- B. Horseshoe Solar 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 Section II.A. above, which

¹⁴Section 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.

are used to interconnect the Facility to PacifiCorp's transmission system.

These interconnection facilities are necessary to effectuate Horseshoe Solar'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 the Public Utility Holding Company Act of 1935 are required.

E. No portion of the Facility will be owned or operated by an Electric Utility Company that is an Affiliate or Associate Company¹⁵ of Horseshoe Solar.¹⁶

In accordance with Section 366.7(a) of the Commission's regulations,¹⁷ a copy of this notice of self-certification was concurrently served upon the Utah Public Service Commission Utah Public Service Commission.

¹⁵The terms "Electric Utility Company," "Affiliate" and "Associate Company" have the meanings ascribed to them in Section 366.1 of the Commission's regulations.

¹⁶See *Buffalo Gap Wind Farm 2, LLC*, 118 FERC ¶ 61,069, at P 13 (2007) (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").

¹⁷18 C.F.R. § 366.7(a).

IV. CONCLUSION

For the reasons set forth in this notice of self-certification, Horseshoe Solar 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
Attorney for Horseshoe Solar, LLC

September 12, 2023

CERTIFICATE OF SERVICE

I hereby certify that Horseshoe Solar LLC's foregoing Notice of Self-Certification of Exempt Wholesale Generator Status was served this 12th day of September 2023, by first-class mail, postage prepaid, upon the following:

Utah Public Service Commission
P.O. Box 4558
Salt Lake City, UT 84114-4558

/s/ Deborah A. Carpentier

Deborah A. Carpentier