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**RECEIVED**

**NOV 14 2022**

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

November 8, 2022

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wrappolt@sheppardmullin.com

Public Utilities Commission  
Capitol Building, 1st floor  
500 E. Capitol Ave.  
Pierre, SD 57501-5070

Re: Service - Self-Certification of EWG Status

Please see enclosed Fall River Solar, LLC's Notice of Self-Certification of Exempt Wholesale Generator Status filed in FERC Docket No. EG22-220.

Very truly yours,

/s/ William M. Rappolt

William M. Rappolt  
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

SMRH:4887-8459-6542.1  
Attachments



## **II. DESCRIPTION OF APPLICANT**

Fall River Solar is a Utah limited liability company with a principal place of business at 13699 Antelope Lane, Oelrichs, SD 57763. Fall River Solar will own and operate the Fall River Solar project (the “Project”), an approximately 80 MW (nameplate) solar photovoltaic facility (nameplate), as determined by the AC output of the inverters to which the solar array is connected, under development in Fall River County, South Dakota, and engage in other lawful business activities consistent with EWG status.

Fall River Solar is currently a wholly-owned direct subsidiary of Utility Solar AcquisitionCo 2021 LLC (“Utility Solar AcquisitionCo”). Utility Solar AcquisitionCo is a wholly owned direct subsidiary of Greenbacker Renewable Energy Corporation, which is a wholly-owned direct subsidiary of Greenbacker Renewable Energy Company LLC (“Greenbacker”). Greenbacker is a publicly-registered, non-traded company. No individual or company has a ten percent (10%) or greater ownership interest in Greenbacker.

## **III. DESCRIPTION OF THE PROJECT**

The Project is an approximately 80 MWac (nameplate) solar photovoltaic facility under development in Fall River County, South Dakota. Applicant is not currently engaged in any business activities other than those associated with the development, financing, construction, ownership, and future operation of the Project. The Project will be interconnected with the transmission system owned by Black Hills Power, Inc. (“Black Hills”), and is expected to commence operations in the fourth quarter of 2022. The Project includes electric interconnection facilities necessary to effectuate Fall River Solar’s wholesale power sales from the Project. Fall River Solar will neither own nor control transmission, other than certain interconnection facilities necessary to permit the Project to engage in sales at wholesale.

In connection with owning and operating the Project, the Applicant may from time to time engage in certain incidental services and activities which the Commission has previously found permissible for EWGs, including: facility development activities;<sup>4</sup> wholesale power marketing;<sup>5</sup> sale of ancillary services;<sup>6</sup> and any other activity that the Commission has determined, or may in the future determine, to be within the permitted activities of an EWG.

#### IV. REPRESENTATIONS REGARDING EWG STATUS

The Commission's regulations require that an EWG be engaged directly, or indirectly through one or more affiliates, and exclusively in the business of owning and/or operating one or more eligible facilities and selling electric energy at wholesale.<sup>7</sup>

Pursuant to Section 366.7(a) of the Commission's regulations, Applicant makes the following representations to demonstrate that it satisfies the requirements for EWG status:

1. Applicant is engaged directly and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale, except to the extent that it may engage in certain activities incidental to the wholesale sale of electric energy that the Commission has determined do not violate the exclusivity requirement for EWG status.<sup>8</sup>
2. Applicant represents that the Project is an "eligible facility," as defined in Section 32(a)(2) of PUHCA 1935, as incorporated by reference in Section 1262(6) of

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<sup>4</sup> See, e.g., *Southern Electric Wholesale Generators, Inc.*, 66 FERC ¶ 61,264 (1994).

<sup>5</sup> See, e.g., *Entergy Power Marketing Corp.*, 73 FERC ¶ 61,063 (1995).

<sup>6</sup> See, e.g., *Sithe Framingham LLC*, 83 FERC ¶ 61,106 (1998).

<sup>7</sup> See 18 C.F.R. § 366.1, which incorporates Sections 32(a)(2) through (4) and Sections 32(b) through (d) of the Public Utility Holding Company Act of 1935, 15 U.S.C. §§ 79z-5a(a)(2)-(4), 79z-5b(b)-(d) ("PUHCA 1935"), for purposes of establishing or determining whether an entity qualifies for EWG status.

<sup>8</sup> E.g. nn. 4-6, *supra*.

PUHCA 2005,<sup>9</sup> and Section 366.1 of the Commission's regulations, because the Project will be used for the generation of electric energy exclusively for sale at wholesale.<sup>10</sup>

3. Applicant represents that the Project will not include any transmission or distribution facilities other than those limited interconnection facilities necessary to interconnect the Project to the transmission grid and to permit the sale of the Project's output at wholesale.
4. Applicant represents that it is not currently engaged in, and has no plans to engage in, any sales of electric energy at retail. All of the electric energy generated by the Project will be sold exclusively at wholesale.
5. Applicant represents that no portion of the Project is or will be owned or operated by an "electric utility company" that is an "affiliate" or "associate company" of Applicant as such terms are defined in Section 366.1 of the Commission's regulations, 18 C.F.R. § 366.1.
6. Applicant represents that there are no existing leasing arrangements involving the Project under which Applicant is the lessor.
7. Applicant represents that no rate or charge for, or in connection with, the construction of the Project, or for electric energy to be produced by the Project, was in effect under the laws of any state as of October 24, 1992. As such, no determination or certification by a state commission is necessary prior to certification of Applicant as an EWG.

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<sup>9</sup> 42 U.S.C. § 16451(6) (2018).

<sup>10</sup> In addition to generating facilities, "eligible facilities" include "interconnecting transmission facilities necessary to effect a sale of electric energy at wholesale." 15 U.S.C. § 79z-5a(a)(2).

**CERTIFICATE OF SERVICE**

I hereby certify that Fall River Solar, LLC's foregoing Notice of Self-Certification of Exempt Wholesale Generator Status was served this 13th day of September 2022 upon the South Dakota Public Utilities Commission.

*/s/ William M. Rappolt*

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William M. Rappolt

**V. NOTICE**

As required by section 366.7(a) of the Commission's regulations, a copy of this self-certification has been filed with the Montana Public Service Commission.

**VI. CONCLUSION**

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

Respectfully submitted,

*/s/ William M Rappolt*

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**ATTORNEY FOR FALL RIVER SOLAR, LLC**

Date: September 13, 2022