

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

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P.U.C.

Airport Solar LLC ) Docket No. EG19-\_\_\_-000

**Notice of Self-Certification of Exempt Wholesale Generator Status**

Pursuant to Section 366.7(a) of the Federal Energy Regulatory

Commission's ("Commission") regulations<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> Airport Solar LLC ("Airport Solar") hereby submits this notice of self-certification that Airport Solar is an exempt wholesale generator ("EWG") as defined in Section 366.1 of the Commission's regulations.<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:

Deborah A. Carpentier  
Crowell & Moring LLP  
1001 Pennsylvania Avenue, NW  
Washington, DC 20004  
Phone: 202-624-2857  
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[dcarpentier@crowell.com](mailto:dcarpentier@crowell.com)

Airport 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  
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[desri-regulatory@world.deshaw.com](mailto:desri-regulatory@world.deshaw.com)

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<sup>1</sup>18 C.F.R. § 366.7(a) (2019).

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

<sup>3</sup>18 C.F.R. § 366.1.

## II. DESCRIPTION OF AIRPORT SOLAR

### A. Airport Solar's Facility and Power Sales

Airport Solar is an indirect, wholly owned subsidiary of D. E. Shaw & Co., L.P. Airport Solar is constructing and will own and operate a 47.3 MW (nameplate) solar-powered electric generating facility to be located in Lake County, Oregon (the "Facility"). Airport Solar will sell electric energy, capacity, and/or ancillary services from the Facility exclusively at wholesale.<sup>4</sup>

The Facility will include limited electric interconnection facilities necessary to effectuate Airport Solar's wholesale power sales from the Facility.<sup>5</sup> The Facility will be interconnected to the transmission system owned by the Facility will be interconnected to the transmission system owned by PacifiCorp ("PacifiCorp").

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<sup>4</sup>Such 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). Airport 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 the filing of this notice, Airport Solar will file an application requesting market-based rates from the Commission.

<sup>5</sup>Airport Solar may occasionally obtain from third parties back-up power that Airport Solar may need for station power to operate its Facility when Airport 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 Airport Solar will use to interconnect with the PacifiCorp 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).

## B. Airport Solar's Other Potential Incidental Activities

In connection with developing, owning, and operating the Facility,

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

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<sup>6</sup>The ancillary services Airport 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).

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

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

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

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

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

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

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

<sup>13</sup>See, e.g., *Empresa Valley Hermoso, S.A.*, 72 FERC ¶ 61,306 at 62,288 (1995). Airport 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.

### III. REPRESENTATIONS REGARDING EXEMPT WHOLESALE GENERATOR STATUS

Airport 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. Airport Solar will be engaged directly and exclusively in the business of owning and operating all or part of one or more Eligible Facilities<sup>14</sup> 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 Sections II.B. above that Airport Solar may engage in will be incidental to the wholesale generation business and will not violate the EWG exclusivity requirement.
- B. Airport 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 Sections II.A. above, which are used to interconnect the Facility to the PacifiCorp transmission system.

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<sup>14</sup>Section 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.

These interconnection facilities are necessary to effectuate Airport 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 Company<sup>15</sup> of Airport Solar.<sup>16</sup>

In accordance with Section 366.7(a) of the Commission's regulations,<sup>17</sup> a copy of this notice of self-certification was concurrently served upon the Oregon Public Utility Commission.

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<sup>15</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>16</sup>See *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".)

<sup>17</sup>18 C.F.R. § 366.7(a).

**IV. CONCLUSION**

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

Respectfully submitted,

/s/ Deborah A. Carpentier

Deborah A. Carpentier  
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1001 Pennsylvania Avenue, NW  
Washington, DC 20004

September 17, 2019

*Counsel for Airport Solar LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that Airport Solar LLC's foregoing Notice of Self-Certification of Exempt Wholesale Generator Status was served this 17th day of September, 2019, by first-class mail, postage prepaid, upon the following:

Oregon Public Utility Commission  
201 High Street SE, Suite 100  
Salem, OR 97301-3398

/s/ Diana Jeschke

Diana Jeschke