

EMP-104 Sub 0

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

Fern Solar LLC

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Docket No. EG20-\_\_\_\_

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

Pursuant to the Public Utility Holding Company Act of 2005 (“PUHCA 2005”)<sup>1</sup> and Section 366.7 of the regulations of the Federal Energy Regulatory Commission (“FERC” or “Commission”),<sup>2</sup> Fern Solar LLC (“Applicant”) hereby submits this notice of self-certification as an Exempt Wholesale Generator (“EWG”) as defined in Section 366.1 of the Commission’s regulations.<sup>3</sup>

**I. Communication**

All correspondence and communication regarding this Notice should be directed to the following persons:

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**II. Description of the Applicant**

Applicant is a North Carolina limited liability company that is constructing and developing,

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<sup>1</sup> Pub. L. No. 109-58, 119 Stat. 594, § 1266 (Aug. 8, 2005).

<sup>2</sup> 18 C.F.R. § 366.7 (2018)

<sup>3</sup> 18 C.F.R. § 366.1.

and will operate and maintain, a solar-powered electric generation facility in Edgecombe County, North Carolina (“Facility”). The Facility will have a capacity of 134 MW (dc) / 100 MW (ac), estimated to begin generating electricity in the third quarter of 2020. The Facility will also include electric interconnection facilities necessary to effectuate the Applicant’s wholesale power sales from the Facility and will be interconnected to the transmission facilities of Virginia Electric and Power Company within the PJM Interconnection, LLC (“PJM”).

### **III. Certification of 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>4</sup> Applicant makes the following representations to certify that the Facility will satisfy the requirements for EWG status:

1. Applicant is engaged directly, or indirectly through one or more affiliates as defined in section 366.1 of the Commission’s regulations, 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.
2. The Facility is an “eligible facility” because (i) it is used for the generation of electric energy exclusively for sale at wholesale and (ii) it will include only those interconnecting transmission facilities that may be necessary to effect a sale of electric energy at wholesale.
3. No rate or charge for, or in connection with, the construction of the Facility, or for electric energy produced by the Facility (other than any portion of a rate or charge which represents recovery of the cost of a wholesale rate or charge), was in effect under the laws of

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<sup>4</sup> See 18 C.F.R. §§ 366.7 and 366.1.

any state on October 24, 1992. Therefore, no determinations by a state commission are necessary for this self-certification to become effective.

4. No portion of the Facility is owned or operated by an electric utility company that is an affiliate or associate company of the Company, as defined in section 366.1 of the Commission's regulations.

5. There are no leasing arrangements involving the Facility and any public utility company or any affiliate or associate company of any public utility company.

6. Applicant will not own any transmission facilities other than those interconnection facilities that are necessary to effect the wholesale sale of electric energy from the Facility, consistent with Commission precedent construing the definition of "eligible facility" under Section 32(a)(2) of PUHCA 1935.

7. Applicant may engage in activities the Commission has previously determined to be "incidental" to an EWG's primary business of owning and operating eligible facilities and selling electric energy exclusively at wholesale, including, but not necessarily limited to:

- a. Selling ancillary services and interconnected operations services at wholesale consistent with Commission precedent construing the exclusivity requirements of Section 32 of PUHCA;<sup>5</sup>
- b. Risk management and hedging activities that are a necessary incident to participation in the energy markets (e.g., financial swap arrangements to cover price fluctuations associated with Applicant's physical exposure of its

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<sup>5</sup> See *Duke Energy Oakland, LLC*, 83 FERC ¶ 61,304 (1998); *Sithe Framingham LLC, et al.*, 83 FERC ¶ 61,106 (1998).

- wholesale sales of electric energy in the energy markets);<sup>6</sup>
- c. Selling byproducts of the generation of electric energy;<sup>7</sup>
  - d. Entering into contracts for transmission capacity solely to the extent necessary to effect sales at wholesale of electricity generated by Applicant or others<sup>8</sup>
  - e. Reselling or reassigning excess transmission capacity originally obtained to affect a wholesale sale of electric energy;<sup>9</sup>
  - f. Purchasing and selling congestion revenue rights that Applicant needs for the Facility's power sale operations;<sup>10</sup>
  - g. Trading emission allowances associated with the normal operations of the Facility;<sup>11</sup>
  - h. Selling "green" power certificates or credits associated with power produced by the Facility or other eligible facilities owned and/or operated by Applicant;<sup>12</sup>
  - i. Selling spare parts and/or equipment originally acquired in connection with the ownership and operation of the Facility when such spare parts and/or equipment

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<sup>6</sup> See *Sithe/Indep. Power Partners, L.P.*, 101 FERC ¶ 61,287, P 6, n.4 (2002) (citing TXU (No. 5) Pty. Ltd., 92 FERC ¶ 61,170 (2000)).

<sup>7</sup> See *Richmond Power Enter., L.P. et al.*, 62 FERC ¶ 61,157 (1993)

<sup>8</sup> See *CNG Power Serv. Corp.*, 71 FERC ¶ 61,026, 61,103-104 (1995).

<sup>9</sup> See *id.*; *Compañía Hidroeléctrica Doña Julia S. De R.L.*, 85 FERC ¶ 61,336, n. 3 (1998).

<sup>10</sup> See *Duquesne Power, L.P.*, 106 FERC ¶ 61,104 (2004).

<sup>11</sup> See *UGI Dev. Co.*, 89 FERC ¶ 61,192 (1999).

<sup>12</sup> See *Madison Windpower, LLC*, 93 FERC ¶ 61,270 (2000).

- have become surplus to Applicant's needs due to a change in conditions;<sup>13</sup> and
- j. Engaging in certain project development and financing activities associated with the Facility, such as developing and constructing the Facility and additional generating facilities and other activities that may be required to achieve financial closing on an eligible facility or an EWG.<sup>14</sup>

#### **IV. State Commission Notification**

As required by Section 366.7(a) of the Commission's regulations, Applicant is serving a copy of this Notice with the North Carolina Utilities Commission, which is the state regulatory authority of the state in which the Facility is located.

#### **V. Conclusion**

Wherefore, for the reasons set forth in this Notice, the Applicant satisfies the requirements for EWG Status.

Respectfully submitted,

/s/ Stephanie Phillips

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June 12, 2020

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<sup>13</sup> See *Blue Spruce Energy Ctr., LLC*, 105 FERC ¶ 61,059 (2003).

<sup>14</sup> See *AEP Res., Project Mgmt. Co.*, 74 FERC ¶ 61,202 (1996); *Southern Elec. Wholesale Generators, Inc.*, 66 FERC ¶ 61,264 (1994); *Empresa Valle Hermoso, S.A.*, 72 FERC ¶ 61,306 (1995).

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day caused the foregoing Notice of Self-Certification of Exempt Wholesale Generator Status to be served by first-class mail upon the North Carolina Utilities Commission.

Dated: June 12, 2020.

/s/ Stephanie Phillips  
Stephanie Phillips