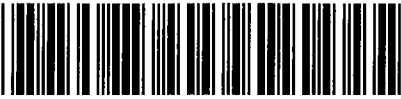




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UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Diversion Wind Energy Holdings 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 (the "Commission") rules¹ implementing the Public Utility Holding Company Act of 2005 ("PUHCA 2005"), enacted by the Energy Policy Act of 2005 §§ 1261 *et seq.*,² Diversion Wind Energy Holdings LLC ("DW Holdings") hereby submits this notice of self-certification that it is an exempt wholesale generator ("EWG") as defined in Section 366.1 of the Commission's rules.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:

¹ 18 C.F.R. § 366.7(a).

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

³ 18 C.F.R. § 366.1.

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II. DESCRIPTION OF DW HOLDINGS

A. DW Holdings Ownership Structure

DW Holdings is an indirect, wholly-owned subsidiary of Invenergy Renewables Holdings LLC (“IR Holdings”).⁴

B. DW Holdings’ Existing and Potential Proposed Activities

At the time of the filing of this notice, Diversion Wind Energy LLC (“Diversion”) is a direct, wholly-owned subsidiary of DW Holdings.⁵ Diversion is constructing and will own and operate an approximately 200.6 MW wind energy generating facility located in Baylor and Wilbarger Counties, Texas (the “Diversion Project”). Diversion will sell electric energy, capacity and/or ancillary services exclusively at wholesale.⁶ The Diversion Project is estimated to begin test power operations in the future.

⁴ While DW Holdings is a subsidiary of IR Holdings at the time of the filing of this notice, in the future, DW Holdings’ upstream ownership may change.

⁵ While Diversion is a subsidiary of DW Holdings at the time of the filing of this notice, in the future, Diversion’s upstream ownership may change.

⁶ 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). Diversion may also purchase power and resell it at

The Diversion Project will include limited electric interconnection facilities necessary to effectuate wholesale power sales from the Diversion Project.⁷ The Diversion Project will be interconnected to electric transmission facilities owned by Public Service Company of Oklahoma (“PSC Oklahoma”), which such transmission system is controlled by Southwest Power Pool, Inc. (“SPP”).

Pursuant to certain contractual arrangements, DW Holdings may manage (for a period of time after the Diversion Project begins generating power and its interconnection facilities are energized) certain matters for the final construction and completion of the Diversion Project and be an agent of the Diversion Project owner in connection with such activities. Specifically, DW Holdings has entered into an agreement with a third-party involving a proposed sale by DW Holdings of all its ownership interests in Diversion to the third-party (“Sale”). In connection with such Sale and if certain conditions occur under such contractual arrangements, DW Holdings may have operational control responsibilities described above with respect to the Diversion Project for a certain period of time after closing on the Sale transaction.

Due to the level of control over the Diversion Project that DW Holdings may have under such contractual arrangements if such circumstances occur, DW Holdings may be considered a public utility under the Federal Power Act (“FPA”) with respect to such activities (once the Diversion Project begins generating test power and transmitting it in interstate commerce), thus, DW Holdings has filed with the Commission an application for market-based rate

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).

⁷ Diversion may occasionally obtain from third-parties back-up power that Diversion may need for station power to operate its Diversion Project when Diversion is not self-supplying its station power load. Such back-up or station power would be delivered to the Diversion Project over the interconnection facilities in which Diversion will own interests. EWGs may use their interconnection facilities to transmit back-up power to their generation facilities. *See Zond Systems, Inc*, 81 FERC ¶61,001 (1997).

authorization. In connection with development and construction of the Diversion Project, DW

Holdings may also engage in the following incidental activities that the Commission has found to be permissible EWG activities:

- engage in project development activities associated with the Diversion Project. 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 Diversion Project and/or additional electric generation facilities that satisfy the criteria for EWG status;⁸ and
- engage in other activities incidental to the sale of electric energy at wholesale that are consistent with the Commission's EWG precedent.

III. DW HOLDINGS' REPRESENTATIONS REGARDING EXEMPT WHOLESALE GENERATOR STATUS

DW Holdings 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. DW Holdings will be engaged directly, or indirectly through an affiliate as defined in 18 C.F.R. §366.1, and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more Eligible Facilities⁹ and selling electric energy at wholesale. The Diversion Project, including the interconnection facilities described in Section II.B.1 above, satisfy the definition of Eligible Facilities because they will be used for the

⁸ See, e.g., *Empresa Valley Hermoso, S.A.*, 72 FERC ¶ 61,306 at 62,288 (1995). DW Holdings 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.

⁹ 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.

generation of electric energy exclusively for sale at wholesale. As described in Section II.B above, DW Holdings may have responsibilities for the Diversion Project through the managerial and operational services it may provide to the Diversion Project owner and in such case will act as agent of the Diversion Project owner. For EWG purposes, the Commission has found that it is appropriate and consistent with the intent of PUHCA to “deem the operator as being engaged in sales of electric energy at wholesale if it has an agency relationship with the person selling electricity at wholesale from the eligible facility.”¹⁰ The Commission has found that operators providing services to owners of Eligible Facilities, whether or not they are subject to the direction and control of such owners, satisfy the EWG “selling electricity at wholesale” criteria under Section 32(a)(2) of PUHCA by imputing the Eligible Facility owner’s sales to such operators.¹¹ Here, imputing to DW Holdings the electricity sales made by the Diversion Project

¹⁰ See *Filing Requirements and Ministerial Procedures for Persons Seeking Exempt Wholesale Generator Status*, Order No. 550-A, FERC Stats. & Regs. ¶ 30,969, at 30,841 (1993).

¹¹ See, e.g., *CPV Milford, LLC*, 105 FERC ¶62,201 (2003); *Adirondack Operating Services, LLC*, 73 FERC ¶61,061 (1995); *Destec Operating Canada, Inc.*, 69 FERC ¶61,041 (1994); *Wartsila Diesel Dominicana, S.A.*, 69 FERC ¶61,191 (1994); Notice of Self-Certification of EWG Status filed by Luning Energy Holdings LLC on August 25, 2016, in Docket No. EG16-141-000 and Notice of Effectiveness issued in Docket No. EG16-141-000, *et al.* on November 2, 2016; Notice of Self-Certification of EWG Status filed by Shoreham Solar Commons Holdings LLC on August 18, 2017, in Docket No. EG17-142-000 and Notice of Effectiveness issued in Docket No. EG17-142-000, *et al.* on November 15, 2017; Notice of Self-Certification of EWG Status filed by Beech Ridge Energy II Holdings LLC on December 21, 2017, in Docket No. EG18-24-000 and Notice of Effectiveness issued in Docket No. EG18-24-000, *et al.* on March 8, 2018; Notice of Self-Certification of EWG Status filed by Hardin Wind Energy Holdings LLC on December 21, 2017, in Docket No. EG18-23-000 and Notice of Effectiveness issued in Docket No. EG18-23-000, *et al.* on March 8, 2018; Notice of Self-Certification of EWG Status filed by States Edge Wind I Holdings LLC on December 19, 2017, in Docket No. EG18-21-000 and Notice of Effectiveness issued in Docket No. EG18-21-000, *et al.* on March 8, 2018; Notice of Self-Certification of EWG Status filed by Invenergy Wilkinson Solar Holdings LLC on November 18, 2019, in Docket No. EG20-34-000 and Notice of Effectiveness issued in Docket No. EG20-34-000, *et al.* on February 11, 2020; Notice of Self-Certification of EWG Status filed by Hardin Solar Holdings LLC on August 5, 2020, in Docket No. EG20-225-000 and Notice of Effectiveness issued in Docket No. EG20-225-000, *et al.* on November 16, 2020; Notice of Self-Certification of EWG Status filed by Dry Lake Solar Holdings LLC on December 11, 2020, in Docket No. EG21-55-000 and Notice of Effectiveness issued in Docket No. EG20-225-000, *et al.* on March 10, 2021; Notice of Self-Certification of EWG Status filed by Fairbanks Solar Holdings LLC on August 19, 2021, in Docket No. EG21-222-000 and Notice of Effectiveness issued in Docket No. EG21-222-000, *et al.* on November 4, 2021; Notice of Self-Certification of EWG Status filed by Top Hat Wind Energy Holdings LLC on July 25, 2022, in Docket No. EG22-187-000 and Notice of Effectiveness issued in Docket No. EG22-187-000, *et al.* on October 11, 2022.

owner, for EWG purposes, is consistent with EWG precedent.¹² Also, consistent with the Commission's EWG precedent, the incidental activities described in Section II.B above that DW Holdings may engage in will be incidental to the wholesale generation business and will not violate the EWG exclusivity requirement.

B. DW Holdings will not make any foreign sales of power at retail.

C. Through interconnection facilities described in Section II.B above, the Diversion Project will be interconnected with transmission facilities owned by PSC Oklahoma. DW Holdings will only operate the limited interconnection or transmission facilities that will be necessary to effectuate the Diversion Project's wholesale power sales.

D. No rate or charge for, or in connection with, the construction of the Diversion Project or for electric energy produced by the Diversion Project 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. Except for other EWGs, no portion of the Diversion Project will be owned or operated by an Electric Utility Company that is an Affiliate or Associate Company¹³ of DW Holdings.¹⁴

¹² Also, although DW Holdings does not currently plan to enter into wholesale power sale transactions on its own behalf, it may do so under the market-based rate tariff it has filed with the Commission once accepted for filing.

¹³ The terms "Electric Utility Company," "Affiliate" and "Associate Company" have the meanings ascribed to them in Section 366.1 of the Commission's regulations.

¹⁴ 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".)

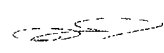
In accordance with Section 366.7(a) of the Commission's regulations,¹⁵ a copy of this notice of self-certification was concurrently served upon the Public Utility Commission of Texas.

IV. CONCLUSION

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

Dated: December 15, 2022

Respectfully submitted,

DocuSigned by


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Name: Jesse Campbell

Title: Vice President of Diversion Wind
Energy Holdings LLC

Holly Rachel Smith
Associate General Counsel – Regulatory
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*Counsel for Diversion Wind Energy Holdings
LLC*

¹⁵ 18 C.F.R. §366.7(a).

CERTIFICATE OF SERVICE

I hereby certify that Diversion Wind Energy Holdings LLC's foregoing Notice of Self-Certification of Exempt Wholesale Generator Status was served this 15th day of December, 2022, by first-class mail, postage prepaid, upon the following:

Public Utility Commission of Texas
1701 N. Congress Avenue
PO Box 13326
Austin, TX 78711-3326

Laura V. Szabo/jlc
Laura V. Szabo