



## **Filing Receipt**

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

<b>Five Wells Solar Center LLC</b>	) ) )	<b>Docket No. EG23-____-000</b>
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**NOTICE OF SELF-CERTIFICATION OF  
EXEMPT WHOLESALE GENERATOR STATUS**

Pursuant to the Public Utility Holding Company Act of 2005 (“PUHCA 2005”),<sup>1</sup> as enacted in the Energy Policy Act of 2005<sup>2</sup> and Section 366.7 of the regulations of the Federal Energy Regulatory Commission (“FERC” or the “Commission”), 18 C.F.R. § 366.7, Five Wells Solar Center LLC (“Five Wells Solar”) hereby submits this Notice of Self-Certification as an Exempt Wholesale Generator (“EWG”) (“Notice”), as defined in Section 366.1 of the Commission’s regulations, 18 C.F.R. § 366.1.

**I. COMMUNICATIONS**

Please direct all correspondence and communications regarding this Notice to the individuals indicated below:

Catherine P. McCarthy  
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ENGIE North America Inc.  
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Five Wells Solar requests that the foregoing persons be placed on the official service list for this proceeding.

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<sup>1</sup> 42 U.S.C. §§ 16451 *et seq.* (2018).

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

## **II. PRINCIPAL PLACE OF BUSINESS**

Five Wells Solar's principal office is:

Five Wells Solar Center LLC  
c/o ENGIE North America Inc.  
1360 Post Oak Blvd, Ste. 400  
Houston, TX 77056

## **III. DESCRIPTION OF THE APPLICANT AND THE FACILITY**

Five Wells Solar is a Delaware limited liability company that has been formed for the purpose of developing, owning, and operating the Five Wells Solar Project, an approximately 320 MW nameplate capacity solar generation facility and associated interconnection facilities being constructed in Bell County, Texas (the "Eligible Facility"). The Eligible Facility includes an approximately 0.2 mile generator interconnection transmission tie-line used exclusively to connect the solar facility and proximate storage facility to the existing transmission grid. The Eligible Facility is under construction and has an expected in-service date in 2023. The Eligible Facility will be interconnected with the electric transmission system of the Oncor Electric Delivery Company LLC ("Oncor") within the Electric Reliability Council of Texas, Inc. ("ERCOT") balancing authority area.

Five Wells Solar is an indirect subsidiary of ENGIE Renewables NA LLC. ENGIE Renewables NA LLC is a direct subsidiary of ENGIE North America Inc. ENGIE North America Inc. is a direct subsidiary of ENGIE Holdings Inc., which is a direct subsidiary of ENGIE Énergie Services International S.A., which in turn is a direct subsidiary of ENGIE S.A. ("ENGIE"). ENGIE is a French *société anonyme* listed on the Brussels and Paris stock exchanges.<sup>3</sup> Among other things, ENGIE

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<sup>3</sup> The French Republic (France) owns stock in ENGIE representing 23.64% of the share capital and 33.41% of the share voting rights. No other shareholder owns or controls a 10% or greater voting interest in ENGIE.

holds ownership interests in a number of energy-related subsidiaries which, internationally, engage in: the production, transmission, and distribution of electricity; power marketing; production, transportation and distribution of natural gas; the transport and distribution of liquefied natural gas; and the development and ownership of energy projects. ENGIE's energy-related subsidiaries operate in Europe, North America, South America, Africa, Asia, Australia, and the Middle East.

Once operational, Five Wells Solar will sell the electrical output of the Eligible Facility exclusively at wholesale into the markets administered by ERCOT. Five Wells Solar's sole business is owning and operating the Eligible Facility.

An affiliate of Five Wells Solar, Five Wells Storage LLC ("Five Wells Storage"), is developing an approximately 220 MW / 220 MWh lithium-ion battery storage system including batteries, inverters, controller, and related equipment and software ("Five Wells Storage Project") that is proximate to the Eligible Facility. Five Wells Storage plans to file its own Self-Certification of EWG Status and each facility has its own interconnection agreement. The design of the proximate facilities includes a substation shared among the Eligible Facility, the Five Wells Storage Project, and the interconnected transmission and distribution utility.

The Five Wells Storage Project will require auxiliary power to cool its battery storage facilities. Due to the size of the Five Wells Storage Project's load and the configuration of the proximate substation, this auxiliary power is supplied by the shared substation. During the day, due to the substation's configuration, when the Eligible Facility is producing energy, Five Wells Storage Project's auxiliary load will be supplied by the Eligible Facility behind the revenue meter purely as a matter of physics. To ensure that Five Wells Solar and Five Wells Storage each remain responsible for costs related to their respective auxiliary loads, a settlement will occur between

Five Wells Storage and Five Wells Solar, and Five Wells Solar will be reimbursed for energy that it otherwise would have sold at wholesale if the Five Wells Storage Project were not proximate to it. The shared substation and shared location are not profit centers for either project. The design of the Eligible Facility and the Five Wells Storage Project are consistent with each project owner's intent to participate solely and exclusively in the wholesale market, and the auxiliary load arrangement allows Five Wells Storage to make these sales to the wholesale market. The Eligible Facility receives station service from Oncor, and when the Eligible Facility is not producing energy, the Five Wells Storage Project also receives station service from Oncor.

#### **IV. REPRESENTATIONS**

Pursuant to Section 366.1 of the Commission's regulations, Five Wells Solar makes the following representations in support of its notice of self-certification of EWG status:

1. Other than the provision of auxiliary power to the Five Wells Storage Project described above, Five Wells Solar represents that it will be engaged directly, and exclusively, in the business of owning and having operational control of the Eligible Facility and selling, at wholesale, electric energy and other power services the Eligible Facility is capable of producing.<sup>4</sup>
2. The Five Wells Solar generation facility is an "eligible facility" as that term is defined in Section 32(a)(2) of PUHCA 2005, which is incorporated by reference into Section 366.1 of FERC's regulations.
3. Other than the provision of auxiliary power to the Five Wells Storage Project described above, all of the electric energy generation from the Eligible Facility will be sold within the United States exclusively at wholesale, and Five Wells Solar will not make domestic or foreign sales at retail.
4. No rate or charge for, in connection with, the construction of the Eligible Facility, or for electric energy produced by the Eligible Facility, was in effect under the laws of the State of Texas, or any other State, on October 24, 1992. Therefore, no determinations are

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<sup>4</sup> Five Wells Solar may engage in the sale of ancillary services as a by-product that is incidental to the wholesale electric energy sales from the Eligible Facility, as permitted by the Commission. *See, e.g., DTE Pontiac N. LLC*, 121 FERC ¶ 61,037 (2007); *see also, Sithe Framingham, LLC, et al.*, 83 FERC ¶ 61,106 (1998).

required to be made by any state commission prior to this self-certification of exempt wholesale generator status becoming effective.

5. As noted above, the Eligible Facility includes an approximately 0.2 mile generator interconnection transmission tie-line. The Eligible Facility does not include transmission or distribution facilities other than those interconnection facilities necessary to permit the Eligible Facility to connect to the existing transmission grid.
6. Five Wells Solar does not own or operate any portion of a facility that is partially owned or operated by an “electric utility company” that is an “affiliate” or “associate company” of Five Wells Solar, as those terms are defined in Section 366.1 of FERC’s regulations, 18 C.F.R. § 366.1.
7. There are no leasing arrangements of any kind involving a public utility company or an affiliate or associate company of a public utility company.
8. Sales of electric energy generated and other power services the Eligible Facility is capable of producing will be consistent with the instant self-certification of EWG status sought by Five Wells Solar.
9. Five Wells Solar will not sell electric capacity or energy to an affiliated electric utility company.
10. Five Wells Solar 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. wholesale marketing and brokering of electric energy that Five Wells Solar has not generated;<sup>5</sup>
  - b. selling or reselling ancillary services and interconnected operations services at wholesale, such as operating reserves (spinning and supplemental reserves), reactive supply and voltage control, regulation and frequency response, energy imbalance, real power loss service, backup supply service, and restoration service, consistent with Commission precedent construing the exclusivity requirements of Section 32 of PUHCA 2005;<sup>6</sup>
  - c. the sale of the byproducts of the generation of electric energy;<sup>7</sup>
  - d. delivering fuel to third parties to generate electric power to be delivered by that third party to Five Wells Solar for sale at wholesale;<sup>8</sup>

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<sup>5</sup> See, e.g., *Entergy Power Mktg. Corp.*, 73 FERC ¶ 61,063 (1995); *LG&E Power Mktg., Inc.*, 67 FERC ¶ 61,083 (1994).

<sup>6</sup> See, e.g., *Duke Energy Oakland LLC*, 83 FERC ¶ 61,304 (1998); *Sithe Framingham, LLC, et al.*, 83 FERC ¶ 61,106.

<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 ¶ 61,378 (1995); *Southern Energy Mktg., Inc.*, 71 FERC ¶ 61,376 (1995).

- e. entering into contracts for transmission capacity solely to the extent necessary to effect sales at wholesale of electricity generated by Five Wells Solar or others;<sup>9</sup>
- f. reselling or reassigning excess transmission capacity originally obtained to effect a wholesale sale of electric energy;<sup>10</sup>
- g. the purchase and sale of congestion revenue rights that Five Wells Solar needs for the Eligible Facility's power sale operations;<sup>11</sup>
- h. entering into financial contracts, consistent with FERC EWG precedent;<sup>12</sup>
- i. trading environmental attributes associated with the normal operations of the Eligible Facility;<sup>13</sup>
- j. sales of spare parts and/or equipment originally acquired in connection with the ownership and operation of the Eligible Facility when such spare parts and/or equipment have become excess to Five Wells Solar's needs;<sup>14</sup>
- k. engaging in development activities, such as developing and constructing additional generating facilities;<sup>15</sup>
- l. leasing or renting property to third parties, provided that all revenues from such activity not reasonably incidental to the ownership or operation of the Eligible Facility and sales of electric energy at wholesale are at a nominal amount or no compensation;<sup>16</sup>
- m. providing auxiliary power to the Five Wells Storage Project in the circumstances described above;<sup>17</sup>
- n. entering into agreements relating to facilities to be shared with other entities and used in the operation of eligible facilities, as consistent with FERC EWG precedent;<sup>18</sup>
- o. entering into agreements related to real property for purposes of using that real property to construct and operate the Eligible Facility;<sup>19</sup> and
- p. such other activities incidental to the sale of electric energy at wholesale that are consistent with the Commission's EWG precedent.

<sup>9</sup> See *CNG Power Serv. Corp.*, 71 FERC ¶ 61,026, at pp. 61,103-104 (1995).

<sup>10</sup> See, e.g., *id.* and *Compañía Hidroeléctrica Doña Julia S. De R.L.*, 85 FERC ¶ 61,336 (1998).

<sup>11</sup> See *Duquesne Power, L.P.*, 106 FERC ¶ 61,104 (2004).

<sup>12</sup> See *Sithe/Independence Power Partners, L.P.*, 101 FERC ¶ 61,287 (2002).

<sup>13</sup> See *UGI Dev. Co.*, 89 FERC ¶ 61,192 (1999).

<sup>14</sup> See, e.g., *Blue Spruce Energy Ctr., LLC*, 105 FERC ¶ 61,059 (2003).

<sup>15</sup> See, e.g., *Empresa Valle Hermoso, S.A.*, 72 FERC ¶ 61,306 at p. 62,288 (1995).

<sup>16</sup> See, e.g., *Duke Energy Hot Spring, LLC*, 98 FERC ¶ 61,287 (2002); *PSEG Fossil, LLC*, 95 FERC ¶ 61,405 (2001).

<sup>17</sup> See *Erie Boulevard Hydropower, L.P.*, 87 FERC ¶ 61,378 (1999) (generation owner retains EWG status with agreement with nuclear power plant to provide back-up power in emergency circumstances); *Duke Energy Hot Spring, LLC*, 98 FERC ¶ 61,287 (generation facility owner maintains EWG status and provides back-up power to a utility's substation).

<sup>18</sup> See *Hardee Power Partners, Ltd.*, 104 FERC ¶ 61,327 at P 11 (2003).

<sup>19</sup> See *DTE Pontiac*, 121 FERC ¶ 61,037, at P 7 n. 6.

11. Five Wells Solar will notify the Commission of any material change in facts that may affect its eligibility for EWG status in accordance with the procedures set forth in 18 C.F.R. § 366.7(c).

## **V. SERVICE**

A copy of this Notice has been served, on this day, to the Public Utility Commission of Texas, the state regulatory authority in the state in which the Eligible Facility is located.

## **VI. CONCLUSION**

For the foregoing reasons, Five Wells Solar respectfully requests that the Commission accept this Notice of Self-Certification as an Exempt Wholesale Generator.

Respectfully submitted,

/s/ Tami Walker

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*Counsel for Five Wells Solar Center LLC*

Dated: September 1, 2023



### **CERTIFICATE OF SERVICE**

I hereby certify that I have, on this day, caused the foregoing document to be served electronically, upon the Public Utility Commission of Texas.

/s/ Catherine P. McCarthy

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Dated: September 1, 2023