

131 FERC ¶ 61,008
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

AES ES Westover, LLC

Docket No. EG10-21-000

ORDER GRANTING EXEMPT WHOLESALE GENERATOR STATUS AND
PROVIDING CLARIFICATION

(Issued April 5, 2010)

1. On February 5, 2010, AES ES Westover, LLC (Applicant) filed a notice of self-certification as an exempt wholesale generator (EWG) under the Public Utility Holding Company Act of 2005¹ (PUHCA 2005) and section 366.7 of the Commission's regulations.² In this order, we grant Applicant EWG status and provide clarification on the status of Applicant's facility as a generation facility for purposes of PUHCA 2005.

Background

2. Applicant states that it is a wholly-owned subsidiary of AES Energy Storage, LLC and that it currently is engaged in the development and construction of a 20 megawatt (MW) energy storage facility (Facility) located in Broome County, New York. The Facility will consist of ten fifty-three foot containers housing bidirectional inverters and DC battery subsystems capable of 2 MW of capacity each. Applicant states that the Facility will be able to charge or discharge up to 20 MW in each instant up to a maximum 5 MW/h of energy in or out of the system. Applicant states that it intends to provide frequency regulation service in the markets operated by the New York Independent System Operator, Inc.

3. Applicant states that it will be engaged directly and exclusively in the business of owning and operating the Facility and selling electric energy at wholesale. It also may engage in activities that are incidental to the sale of electric energy at wholesale that are

¹ 42 U.S.C. §§ 16451 *et seq.* (2006).

² 18 C.F.R. § 366.7 (2009).

consistent with Commission precedent, including project development activities associated with the development of the Facility. Applicant states that the Facility is an “eligible facility” under the Commission’s regulations,³ i.e., a facility that is used to generate electric energy exclusively for sale at wholesale and that does not include transmission facilities other than interconnection facilities necessary to sell power to wholesale customers. Applicant states that no portion of the Facility will be owned or operated by an “electric utility company” that is an “associate company” or “affiliate” of the Applicant, as defined in PUHCA 2005, section 366.1 of the Commission’s regulations, and Commission precedent. Finally, Applicant states that no rate or charge for, or in connection with, the construction of the Facility, or for electric energy produced thereby, was in effect under the laws of any state on October 24, 1992 and that for this reason no determination or certification by any state commission is necessary prior to acceptance of Applicant’s self-certification as an EWG.

Notice of Filing

4. Notice of Applicant’s filing was published in the *Federal Register*, 75 FR 7577 (2010), with interventions or protests due on or before February 16, 2010. None were filed.

Discussion

5. To establish that it is an EWG, an applicant whose generation facility is located in the U.S. must represent that:⁴

- a. it 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;
- b. its generation facility is an “eligible facility” because (i) it is used for the generation of electric energy exclusively for sale at wholesale and (ii) it includes only those interconnecting

³ *Id.* § 366.1.

⁴ The representations set forth here are those that apply to the typical applicant with a domestic facility and are those that apply to the Applicant. In *DTE Pontiac North LLC*, 121 FERC ¶ 61,037 (2007), the Commission provided extensive guidance on the required representations and possible different or additional representations that may be necessary depending on the facts presented.

transmission facilities that are necessary to effect a sale of electric energy as wholesale;

- c. 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 on October 24, 1992. Therefore, no determinations by a state commission are necessary for the applicant to become an EWG; and
- d. no portion of the facility is owned or operated by an electric utility company that is an affiliate or associate company of the applicant, as defined in section 366.1 of the Commission's regulations.

6. Applicant has made representations that satisfy this requirement. Therefore, based on the facts described in Applicant's self-certification, we find that Applicant is an EWG.

7. We note that this is the first instance in which the owner of a battery storage facility has sought EWG status. The Commission has noted that "electricity storage devices . . . do not readily fit into only one of the traditional asset functions of generation, transmission or distribution."⁵ Here, Applicant has represented that it will operate the Facility in such a manner that it will be engaged directly and exclusively in selling electric energy at wholesale.⁶ Based on these representations and the other information in Applicant's notice of self-certification, we conclude that the Facility can qualify as an "eligible facility" for purposes of determining whether Applicant meets the requirements of EWG status.

8. We note that if there is any material change in facts from what is represented in Applicant's notice of self-certification, the Commission's regulations require Applicant, within 30 days, either to (1) submit a new notice of self-certification or petition for declaratory order, (2) file a written explanation why the material change in facts does not affect its status, or (3) notify the Commission that it no longer seeks to hold EWG status.⁷ Furthermore, we note that our decision here addresses whether the Facility is an "eligible facility" as defined in the Commission's regulations implementing PUHCA 2005, and it is not determinative of how any particular electricity storage facility should be viewed for

⁵ See *Western Grid Development, LLC*, 130 FERC ¶ 61,056, at P 44 (2010).

⁶ Applicant has made a filing in Docket No. ER10-712-000 seeking authority to make wholesale sales from the Facility at market-based rates.

⁷ See 18 C.F.R. § 366.7(c) (2009).

purposes of specific provisions of the Federal Power Act. Nothing in this order is intended to interfere with or prejudge a general rulemaking in the future.

The Commission orders:

Applicant's EWG status is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.