

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Solios Power LLC

Docket No. EL06-21-000

ORDER GRANTING PETITION FOR DECLARATORY ORDER
DISCLAIMING JURISDICTION

(Issued February 15, 2006)

1. In this order, the Commission grants Solios Power LLC's (Solios Power) petition for a declaratory order disclaiming jurisdiction under section 203(a) of the Federal Power Act (FPA).¹ We find that certain passive shareholders of Solios Power (Passive Investors) do not control jurisdictional facilities and that transactions involving interests in the passive investors thus will not require Commission approval under section 203(a) of the FPA.

I. Background

2. On November 30, 2005, Solios Power filed a petition asking the Commission to disclaim jurisdiction under section 203(a) over transactions involving interests in Solios Power's passive shareholder, Solios Master Fund Ltd. (Solios Master Fund) and its upstream owners.

3. Solios Power will be a marketer and broker of electric power and ancillary services. It may also arrange related customer services such as transmission. Solios Asset Management LLC (Solios Management) owns all of the voting shares of Solios Power. Solios Management will provide investment advice to Solios Power with respect to Solios Power's wholesale power trades and will be authorized by Solios Power to execute wholesale power trades on behalf of Solios Power.

¹ 16 U.S.C. § 824b (2000), *amended by* the Energy Policy Act of 2005 (EPAct 2005), Pub. L. No. 109-58, § 1289(a), 119 Stat. 594, 982 (2005). Section 1289(a) of EPAct 2005 became effective on February 8, 2006.

4. Solios Master Fund owns all of Solios Power's non-voting shares. The application states that none of Solios Master Fund or any of its affiliates: (1) directly or indirectly owns any public utility as defined in section 201 of the FPA other than Solios Power; (2) owns or controls any interests in electric facilities or capacity available in any U.S. market, whether through ownership of electric facilities or contractual arrangements that confer control over the facilities; (3) is an electric utility company, a public utility company, or a holding company under the Public Utility Holding Company Act of 1935 (PUHCA),² or is an affiliate or subsidiary company of a public utility company, an electric utility company, or a holding company under PUHCA; or (4) aside from the investment documents in Solios Power, will have any contractual arrangements with Solios Power.

5. According to the application, Solios Master Fund is bound by the terms of the Limited Liability Company Agreement (LLC Agreement) of Solios Power. The LLC Agreement provides Solios Master Fund with the limited veto rights (Passive Veto Rights) necessary to protect its economic investment in Solios Power. Specifically, Solios Master Fund has the right to vote only at class meetings where matters concerning any proposed changes to its share rights are to be determined. Solios Master Fund, however, has no right to receive notice of, attend, or vote at the general meetings of Solios Power. Accordingly, Solios Power states that Solios Master Fund has no control or decision-making authority over Solios Power or any of its jurisdictional facilities.

II. Notice and Interventions

6. Notice of Solios Power's filing was published in the *Federal Register*, 70 Fed. Reg. 73,999 (2005), with protests, and interventions due on or before December 21, 2005. None were filed.

III. Discussion

7. Section 203(a) of the FPA provides that a public utility shall not sell, lease, or otherwise dispose of the whole of its facilities subject to the jurisdiction of the Commission, or any part thereof with a value in excess of \$10,000,000, without the Commission's prior approval.³

² 15 U.S.C. §§ 79a *et seq.* (2000), *repealed by* EAct 2005, Pub. L. No. 109-58, § 1263, 119 Stat. 594, 974 (2005). EAct 2005 enacted the Public Utility Holding Company Act of 2005 (PUHCA 2005). Pub. L. No. 109-58, § 1261, 119 Stat. 594, 972 (2005). Sections 1261 and 1263 of EAct 2005 became effective on February 8, 2006.

³ Section 1289(a) of EAct 2005 amended section 203(a) of the FPA by increasing the value requirement, from \$50,000 to \$10,000,000, and in other ways not relevant here.

8. Solios Power expects that the upstream ownership of Solios Master Fund may change from time to time. It argues that acquisitions, sales, or other dispositions of the direct and indirect interests in Solios Master Fund should not require Commission approval under section 203(a) of the FPA. Solios Power states that Solios Master Fund and its upstream owners will not: (1) have authority to manage, direct, or control Solios Power's activities, including wholesale power transactions; and (2) control Solios Power's jurisdictional facilities.

9. In *Shaw Plasma Power, L.L.C. (D.E. Shaw)*, 102 FERC ¶ 61,265 (2003), the Commission disclaimed jurisdiction over transfers of passive investment interests in the owner of a power marketer. The Commission did so because the transfers would not result in a change in control over the marketer or its jurisdictional facilities. The passive investors in *D.E. Shaw* had only those limited rights necessary to protect their indirect, passive investments. As noted above, Solios Management owns all of the voting shares of Solios Power and therefore has complete control over Solios Power and its jurisdictional activities. Solios Master Fund has only those Passive Veto Rights described above. Solios Power states that Solios Master Fund will have no authority to manage, direct, or control Solios Power's activities, including wholesale power transactions, or to control Solios Power's jurisdictional facilities.

10. The Commission will disclaim jurisdiction under section 203(a) of the FPA with respect to acquisitions, sales, or other dispositions of the direct and indirect interests in Solios Master Fund. The facts outlined in the Petition make it clear that such transactions will not result in changes of control of Solios Power or its jurisdictional facilities. The Passive Investors will not have authority to manage, direct, or control the activities of Solios Power in its day-to-day operations as it engages in wholesale power transactions. The Commission also finds that the Passive Veto Rights do not give the Passive Investors control of jurisdictional facilities and will not affect the ability of Solios Power to conduct jurisdictional activities. Since the Passive Investors lack control over Solios Power, we further find that direct or indirect investors in the Passive Investors will also lack control of Solios Power. Therefore, transactions involving interests in the Passive Investors will not require our approval under section 203(a) of the FPA.

The Commission orders:

Solios Power's petition for a declaratory order disclaiming jurisdiction is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.