

FILED

OCT 11 2017

Clerk's Office  
N.C. Utilities Commission

September 4, 2017

Chief Clerk's Office  
North Carolina Utilities Commission  
4325 Mail Service Center  
Raleigh, NC 27699-4300

SP-5220 subO

Re: Bladen Solar, LLC, Docket No. EG18-3-000, Notice of Self-Certification of Exempt Wholesale Generator Status

Dear Clerk:

Pursuant to 18 C.F.R. § 385.2010, enclosed please find a copy of the Notice of Self-Certification of Exempt Wholesale Generator Status filed by Bladen Solar LLC with the Federal Energy Regulatory Commission in the above-referenced docket.

Thank you very much for your attention to this matter. Please do not hesitate to contact me if you have any questions.

Sincerely,

*Olya Petukhova*

Olya Petukhova

Enclosure



FOLEY & LARDNER LLP

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October 4, 2017

**VIA ELECTRONIC FILING**

Honorable Kimberly D. Bose  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, D.C. 20426

Re: **Bladen Solar, LLC EG17-\_\_\_\_-000**  
**Notice of Self-Certification of Exempt Wholesale**  
**Generator Status**

Dear Secretary Bose:

Pursuant to Section 366.7 of the Federal Energy Regulatory Commission's ("Commission") regulations<sup>1</sup>, enclosed for filing please find a notice of self-certification of exempt wholesale generator status of Bladen Solar, LLC. This filing has been mailed on this date to the North Carolina Utilities Commission.

Please contact me if you have any questions regarding this notice.

Very truly yours,

/s/ Thomas McCann Mullooly  
Thomas McCann Mullooly  
Olya Petukhova  
Foley & Lardner LLP

*Counsel for Bladen Solar, LLC*

cc: North Carolina Utilities Commission

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<sup>1</sup> 18 C.F.R. § 366.7.

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

Bladen Solar, LLC

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Docket No. EG17-\_\_\_\_-000

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**NOTICE OF SELF-CERTIFICATION OF BLADEN SOLAR, LLC  
OF EXEMPT WHOLESALE GENERATOR STATUS**

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Pursuant to the Public Utility Holding Company Act of 2005 (“PUHCA 2005”)<sup>2</sup> and Section 366.7<sup>3</sup> of the Federal Energy Regulatory Commission’s (“Commission”) Rules and Regulations, Bladen Solar, LLC (“Applicant”), a North Carolina limited liability company, hereby submits this Notice of Self-Certification of Exempt Wholesale Generator (“EWG”) Status (“Notice”) based on its development, ownership and operation of an approximately 50 MW (AC) solar photovoltaic power facility located in the City of Fayetteville, Bladen County, North Carolina (“Facility”). A copy of this notification has been provided to the North Carolina Utilities Commission (“NCUC”). 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 the State of North Carolina, or any other state, on October 24, 1992. Therefore, no determinations are required to be made by any state commission prior to this self-certification of exempt wholesale generator status becoming effective.

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

<sup>3</sup> 18 C.F.R. § 366.7 (2015).

## I. COMMUNICATIONS

Applicant requests that all communications regarding this Notice be sent to the following individuals:<sup>4</sup>

Cypress Creek Renewables, LLC  
Attention: General Counsel  
3250 Ocean Park Boulevard, Suite 355  
Santa Monica, CA 90405  
obrien@ccrenew.com  
legal@ccrenew.com

Thomas McCann Mullooly  
Olya Petukhova  
Foley & Lardner LLP  
777 East Wisconsin Avenue  
Milwaukee, WI 53202  
Phone: (414) 297.5566  
[tmullooly@foley.com](mailto:tmullooly@foley.com)

*Counsel for Bladen Solar, LLC*

## II. INFORMATION ABOUT APPLICANT

Applicant will own and operate an approximately 50 MW (AC) Qualifying Facility<sup>5</sup> located in the City of Fayetteville, Bladen County, North Carolina, within the Duke Energy Progress, Inc. ("DEP") balancing authority area. Applicant expects the Facility to begin generating test power on or about October 10, 2017, and to reach commercial operation on or about November 15, 2017.

The Facility's output is fully committed to DEP under a firm 10-year power purchase agreement. The Facility will be comprised of solar photovoltaic panels and associated facilities and equipment necessary for the generation of power at wholesale. The Facility will not include, nor will Applicant own, operate, or control transmission facilities other than limited facilities needed to interconnect the Facility with the DEP-controlled grid.

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<sup>4</sup> Applicant requests waiver of 18 C.F.R. § 385.203(b)(3) to the extent necessary to allow each person listed to be included on the official service list for this proceeding.

<sup>5</sup> See *Bladen Solar, LLC*, Docket No. QF15-773 (self-certification Form 556, effective May 22, 2015).

### III. REPRESENTATIONS REGARDING 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>6</sup> Consistent with the Commission's regulations, Applicant makes the following representations to certify that it satisfies the requirements for EWG status:

- (1) Applicant will be engaged directly 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, and the Facility will satisfy the definition of an "eligible facility" because it will be used for the generation of electric energy exclusively for sale at wholesale.
- (2) 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.
- (3) 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, therefore, no State determination is required with respect to this filing.
- (4) There are, and will be no lease arrangements through which Applicant will lease the Facility to a public utility company or any other party.
- (5) Applicant does not sell electricity at retail to any customer. Accordingly, the Facility does not rely on the exception provided by Section 32(h) of PUHCA 1935 regarding foreign sales of power at retail.
- (6) No portion of the Facility will be owned or operated by an "electric utility company" that is an "affiliate" or "associate company" of Applicant.
- (7) Applicant may engage in activities that the Commission has previously determined to be "incidental" to an EWG's primary business of owning and operating eligible facilities and selling electric energy at wholesale, including:

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<sup>6</sup> See 18 C.F.R. §§ 366.7 and 366.1 (2014). Section 366.1 incorporates Sections 32(a)(2) through (4), and Section 32(b) through (d) of the Public Utility Holding Company Act of 1935, 15 U.S.C. §§ 79z-5a(a)(2)-(4), 79z-5b(b)-(d) ("PUHCA 1935"), for purposes of establishing or determining whether an entity qualifies for EWG status.

- (a) wholesale marketing and brokering of electric energy that Applicant has not generated;<sup>7</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, back-up supply service, and restoration service, consistent with Commission precedent construing the exclusivity requirements of Section 32 of PUHCA;<sup>8</sup>
  - (c) reassigning excess transmission capacity<sup>9</sup> originally obtained to effect a wholesale sale of electric energy;
  - (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>10</sup>
  - (e) engaging in development activities, such as developing and constructing additional generating facilities;<sup>11</sup>
  - (f) selling "green" power certificates or credits consistent with the Commission's limitation that an EWG may sell such certificates or credits where they are associated with power produced by the Facility;<sup>12</sup> and
  - (g) leasing or renting property to third parties, but to the extent a lease arrangement is not reasonably necessary to Applicant's wholesale power business and a rental fee is received above a nominal amount, Applicant will, consistent with EWG precedent, donate or transfer such rental revenues to a non-affiliated entity.<sup>13</sup>
- (8) Applicant will notify the Commission of any material changes 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).

#### IV. FORM OF FILING NOTICE AND SERVICE

Included with this Notice is a form of notice of filing suitable for publication in the *Federal Register* as required by 18 C.F.R. § 366.7(a) and in accordance with the

<sup>7</sup> See, e.g., *Entergy Power Marketing Corp.*, 73 FERC ¶ 61,063 (1995); *LG&E Power Marketing, Inc.*, 67 FERC ¶ 61,083 (1994).

<sup>8</sup> See, e.g., *Duke Energy Oakland, LLC*, 83 FERC ¶ 61,304 (1998); *Sithe Framingham, LLC*, 83 FERC ¶ 61,106 (1998).

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

<sup>10</sup> See *CNG Power Services Corp.*, 71 FERC ¶ 61,378 (1995).

<sup>11</sup> See, e.g., *Empresa Valley Hermosa, S.A.*, 72 FERC ¶ 61,306, at 62,288 (1995).

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

<sup>13</sup> See, e.g., *Duke Energy Hot Spring, LLC*, 98 FERC § 61,287 (2002); *PSEG Fossil, LLC, et al.*, 95 FERC ¶ 61,405 (2001).

specifications in 18 C.F.R. § 385.203(d). A copy of this Notice has been served on the NCUC, which is the state regulatory authority of the state in which the Facility is located.

**V. CONCLUSION**

For the foregoing reasons, Applicant satisfies the requirements for EWG status.

Respectfully submitted,

/s/ Thomas McCann Mullooly

Thomas McCann Mullooly

Olya Petukhova

Foley & Lardner LLP

3000 K Street, N.W., Suite 600

Washington, DC 20007-5109

202-672-5300

[tmullooly@foley.com](mailto:tmullooly@foley.com)

Dated: October 4, 2017

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

Bladen Solar, LLC

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Docket No. EG17-\_\_\_\_-001

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**NOTICE OF FILING**

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On October 4, 2017 Bladen Solar, LLC ("Applicant") filed with the Federal Energy Regulatory Commission ("Commission") a Notice of Self-Certification of Exempt Wholesale Generator Status under Section 366.7 of the Commission's regulations, 18 C.F.R. § 366.7, demonstrating that it is an exempt wholesale generator pursuant to Part 366 of the Commission's regulations. Applicant owns and has operational control of the approximately 50 MW (AC) solar photovoltaic power facility located in the City of Fayetteville, Bladen County, North Carolina.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. §§ 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, D.C. There is an "eSubscription" link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5:00 pm Eastern Time on \_\_\_\_\_, 2017.

Kimberly D. Rose  
Secretary



**CERTIFICATE OF SERVICE**

I hereby certify that I have this day caused the foregoing document to be served upon the North Carolina Utilities Commission in accordance with Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010.

Dated at Milwaukee, WI this 4th day of October, 2017.

/s/ Olya Petukhova

Olya Petukhova  
Foley & Lardner LLP  
777 East Wisconsin Avenue  
Milwaukee, WI 53202  
(414) 297-5566