

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Goldman Sachs Renewable
Power Marketing

Docket No. ER20-547

Protest of Public Citizen, Inc.

On December 9, 2019, Goldman Sachs Renewable Power Marketing LLC applied for market-based rate authority claiming—we are not making this up—that it is not an affiliate of The Goldman Sachs Group, Inc, despite the fact that they share a name, employees, the same offices, the same phone number, and the provision of significant interrelated financial services. The Commission must render the application to be deficient because the facts suggest that Goldman Sachs Renewable Power Marketing appears to operate as an affiliate of The Goldman Sachs Group, Inc.

To clear the confusion caused by the deficient application, the Commission should compel Goldman Sachs Renewable Power Marketing LLC to amend its application in two ways. First, the articles of incorporation, articles of organization, corporate bylaws, operating agreements, certificate of formation, corporate charter and shareholder agreements should be publicly disclosed for Goldman Sachs Renewable Power Marketing LLC and its parent company, Goldman Sachs Renewable Power LLC, and its affiliate, Goldman Sachs Renewable Power Operating Company LLC. These documents should detail the various relationships between Goldman Sachs Renewable Power Marketing LLC and The Goldman Sachs Group, Inc, and will help the Commission determine whether or not the two are affiliates.

Second, the application must be amended to publicly identify the names of the three Board of Directors of Goldman Sachs Renewable Power that applicants claim have “management and control” over Goldman Sachs Renewable Power. In addition to publicly identifying these three individuals, applicants should disclose biographical detail of the three individual's professional and financial affiliations, in order to better ascertain their potential affiliations with The Goldman Sachs Group, Inc.

About Public Citizen

Public Citizen is a national, not-for-profit, non-partisan, research and advocacy organization representing the interests of household consumers. We are active before FERC promoting just and reasonable rates, and supporting efforts for utilities to be accountable to the public interest. Our financial details are located at our web site.¹

Public Citizen submitted a doc-less Motion to Intervene on Saturday, December 28 that is effectively filed on Monday December 30.

Public Citizen Protest

I. Goldman Sachs Renewable Power Marketing Fails To Identify The Three Members Of the Board Of Directors It Claims Have “Management and Control” Over it

The December 9 application states that Goldman Sachs Renewable Power Marketing LLC “is a wholly-owned subsidiary of Goldman Sachs Renewable Power Operating Company LLC, which, in turn, is a wholly-owned subsidiary of Goldman Sachs Renewable Power LLC (“GSRP”). Management and control of GSRP, and subsequently Seller, is held exclusively by GSRP’s Board of Directors.”²

The application, however, fails to identify the names and affiliations of the Board of Directors that it claims have “management and control” over the applicant. The application therefore must be considered deficient until it is amended to publicly identify the identifies of the Board of Directors and their affiliations.

The application contains no information on how these members of the Board are nominated, selected, compensated, or their length of terms—information needed to determine who controls the Board. This information is likely to be included in the articles of incorporation, articles of organization, corporate bylaws, operating agreements, certificate of formation, corporate charter and shareholder agreements for Goldman Sachs Renewable Power Marketing LLC and its parent company, Goldman Sachs Renewable Power LLC.

¹ www.citizen.org/about/annual-report/

² Application, at pages 2-3.

II. Goldman Sachs Renewable Power Marketing Appears To Be An Affiliate Of The Goldman Sachs Group, Inc.

Buried in Footnote 6 of the application is a statement claiming that Goldman Sachs Renewable Power LLC is unaffiliated with The Goldman Sachs Group, Inc:

Goldman Sachs Asset Management, L.P. is the investment manager to GSRP. However, GSRP's Board of Directors consists of three independent directors, who are independent of The Goldman Sachs Group, Inc. ("GS Group"). Further, GS Group's ownership in GSRP is less than 5%. Therefore, for purposes of FERC's regulations, GSRP is not affiliated with GS Group or any of GS Group's FERC-jurisdictional entities.

Goldman Sachs Renewable Power's claim that it has no affiliation with The Goldman Sachs Group, Inc. is significant because The Goldman Sachs Group is one of the largest investment banks in the world, and has a separate, significant presence in FERC-jurisdictional markets. Labeling them as unaffiliated carries significant regulatory and legal advantages for both entities.

The Goldman Sachs Group, Inc. has a wholly-owned subsidiary Goldman Sachs Asset Management. Footnote 6 in the application claims that this Goldman Sachs Group subsidiary provides "investment manager" services for Goldman Sachs Renewable Power LLC. The application, however, provides no detail whatsoever about the scope of these services.

One service appears to be having The Goldman Sachs Group host the allegedly unaffiliated Goldman Sachs Renewable Power Marketing at The Goldman Sachs Group offices. Pages two to three of the December 9 application lists a Goldman Sachs Group vice-president—Patrick McAlpine—as the contact for Goldman Sachs Renewable Power, and lists a business address, phone number and email address all identified with The Goldman Sachs Group, Inc.

This arrangement suggests that, among the duties The Goldman Sachs Group, Inc. provides is employment staffing needs for Goldman Sachs Renewable Power Marketing. The Commission should require Goldman Sachs Renewable Power Marketing to confirm whether they have any employees independent of The Goldman Sachs Group, Inc.

In addition, The Goldman Sachs Group, Inc. is one of North America's largest power marketers, and is a registered swap dealer with the U.S. Commodity Futures Trading Commission. Goldman Sachs Asset Management—the “investment manager” for Goldman Sachs Renewable Power—also manages the renewable energy portfolio for The Goldman Sachs Group, Inc. FERC should also demand the extent to which such power marketing, commodity hedging, swaps market services and renewable energy asset management services The Goldman Sachs Group provides to Goldman Sachs Renewable Power Marketing.

The Goldman Sachs Group Has Significant Financial And Regulatory Incentive To Falsely Label Goldman Sachs Renewable Power Marketing As Unaffiliated

The Goldman Sachs Group, Inc. is a Large Bank Holding Company subject to oversight by The Federal Reserve. As part of its many regulatory obligations under this status, The Goldman Sachs Group has reporting requirements for all of its assets and operations. The Goldman Sachs Group has significant financial and regulatory incentive to spin off some of its equity assets and derivative obligations into unrelated entities in order to keep those assets off its books—and concealed from The Federal Reserve.

In 2017, The Goldman Sachs Group set up Goldman Sachs Renewable Power LLC as a shell company with a weak Board of Directors structure that The Goldman Sachs Group could influence to ensure that it could exploit all the financial advantages of running the day-to-day management of Goldman Sachs Renewable Power LLC with none of the downside regulatory or financial risk of operating it as an affiliate.

Conclusion

Contrary to the claim in the application for market-based rate authority, the facts suggest that Goldman Sachs Renewable Power is an affiliate of The Goldman Sachs Group, Inc. The Commission must therefore find the application to be deficient, and must order the applicant to disclose, as part of the public record in this docket, the following:

- the articles of incorporation, articles of organization, corporate bylaws, operating agreements, certificate of formation, corporate charter and shareholder agreements for Goldman Sachs Renewable Power Marketing LLC, its parent company, Goldman Sachs Renewable Power LLC, and its affiliate, Goldman Sachs Renewable Power Operating Company LLC.
- The names and affiliations of the three individuals on the Board of Directors, including details on how these Board members are nominated, selected, compensated, and their length of terms.
- Confirmation that Goldman Sachs Renewable Power Marketing has a The Goldman Sachs Group, Inc. vice-president as its primary contact, and a The Goldman Sachs Group, Inc. address and phone number.
- Corroboration that among the “investment manager” services that The Goldman Sachs Group, Inc. provides to Goldman Sachs Renewable Power Marketing include: provision of employment staff; power marketing, commodity hedging, swaps market services and renewable energy asset management services.

Respectfully submitted,

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