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May 13, 2020

20311

Public Utility Commission of Texas
1701 N. Congress Avenue
PO Box 13326
Austin, TX 78711-3326

Re: Notice of Self-Certification of EWG Status (Docket No. EG20-____-000)

Ladies and Gentlemen:

Cubico Wagyu Lessee, LLC filed the enclosed Notice of Self-Certification of Exempt Wholesale Generator Status this afternoon in Docket No. EG20-____-000. This mailing constitutes service in accordance with Rule 2010 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Sincerely,

Alexandra J. Hemmings

Alexandra J. Hemmings

Enc: Notice of Self-Certification of Exempt Wholesale Generator Status (Docket No. EG20-____-000)

447

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

Cubico Wagyu Lessee, LLC

)

Docket No. EG20-____-000

**NOTICE OF SELF-CERTIFICATION OF
EXEMPT WHOLESALE GENERATOR STATUS**

Pursuant to section 1266 of the Public Utility Holding Company Act of 2005 (“PUHCA 2005”)¹ and section 366.7(a) of the regulations of the Federal Energy Regulatory Commission (“FERC” or “Commission”),² Cubico Wagyu Lessee, LLC (“Wagyu Lessee” or “Applicant”) hereby submits this notice of self-certification as an exempt wholesale generator (“EWG”), as defined in section 366.1 of the Commission’s regulations.³

I. CORRESPONDENCE AND COMMUNICATIONS

All communications and correspondence regarding this notice are requested to be sent to the following persons who are authorized to receive service:

Michael A. Yuffee
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II. DESCRIPTION OF WAGYU LESSEE

Wagyu Lessee is a Delaware limited liability company engaged in the business of operating an approximately 120 MW_{AC} (nameplate) solar photovoltaic generating facility and

¹ Pub. L. No. 109-58, 119 Stat. 594, § 1266 (2005).

² 18 C.F.R. § 366.7(a) (2019).

³ 18 C.F.R. § 366.1 (2019).

associated interconnection facilities located in Brazoria County, Texas (“Facility”). The Facility is located in and interconnected to the Electric Reliability Council of Texas (“ERCOT”) balancing authority area. An affiliate of Wagyu Lessee, Wagyu Solar, LLC, a Texas limited liability company (“Wagyu”),⁴ and Starbucks Corporation (“Corporation”) are parties to a 15-year wholesale power purchase agreement (“PPA”) dated December 5, 2018, pursuant to which Starbucks will purchase up to 50 MW of the electrical output of the facility and certain associated environmental attributes (*e.g.*, RECs). With respect to the remaining output of the Facility, Wagyu has entered into a 12-year power hedge agreement with BP Energy Company (“BP”) that will become effective on August 1, 2020 (“Hedge Agreement”). The Facility does not include (and the Applicant does not own, operate, or control) any transmission facilities other than limited and discrete interconnection facilities needed to connect the Facility to the ERCOT system. The Applicant expects the Facility to begin generating test energy on or about May 15, 2020, and to reach commercial operation on or about June 20, 2020.

Wagyu has entered into an 18-year lease of the Facility to Wagyu Lessee, pursuant to the terms of a Master Lease dated as of August 16, 2019. Wagyu Lessee will be responsible for the day-to-day operation and maintenance of the Facility and all associated costs and expenses. Although Wagyu will retain the PPA and the Hedge Agreement, Wagyu Lessee will be responsible for sales of the output of the Facility to Starbucks and BP during the lease term. Wagyu and Wagyu Lessee have entered into an agreement whereby Wagyu has assigned to Wagyu Lessee all of Wagyu’s right, title and interest in and to all payments, receipts and revenues for power sales under the PPA and Hedge Agreement. Wagyu Lessee, in turn, will

⁴ Concurrent with this submission, Applicant’s affiliate, Wagyu is making a separate self-certification of EWG status.

make fixed and variable lease payments (payments that vary with the gross revenues of Wagyu Lessee) to Wagyu during the term of the lease.

III. SELF CERTIFICATION OF EWG STATUS

Wagyu Lessee makes the following representations in order to demonstrate that it meets the Commission's definition of an EWG under Section 366.1 of the Commission's regulations for its energy sales from the Facility.

- A. Wagyu Lessee is engaged directly and exclusively in the business of operating the Facility, which will be used exclusively to generate electric products exclusively for sale at wholesale. The Facility, as described above, will satisfy the definition of "Eligible Facilities" in Section 32(a)(2) of the Public Utility Holding Company Act of 1935, as incorporated by reference in 18 C.F.R. § 366.1, because it will be used for the generation of electric energy exclusively for sale at wholesale.
- B. The Facility includes no transmission or distribution facilities other than those interconnecting transmission facilities necessary to permit sales of electricity exclusively at wholesale.
- C. Applicant does not make sales of power at retail.
- D. The Facility is not located in a foreign country, and Wagyu Lessee will not make any foreign sales of power at retail. All electric energy generated by the Facility will be sold directly within the United States exclusively at wholesale.
- E. No rate or charge for, or in connection with, the construction of the Facility, or for any electric energy produced thereby, was in effect under the laws of any state on October 24, 1992. As such, no determination of certification by any state commission is necessary prior to acceptance of this self-certification as an EWG.

- F. Other than Wagyu, no portion of the Facility will be owned or operated by an electric utility company that is an affiliate or associate company of Applicant, as those terms are defined in Section 366.1 of the Commission's regulations.
- G. Other than the lease with Wagyu, there are no lease arrangements involving the Facility and any public utility company or any affiliate or associate company of any public utility company.⁵

In accordance with Section 366.7(a) of the Commission's regulations, a copy of this notice of self-certification is being concurrently served upon the Public Utility Commission of Texas.

III. CONCLUSION

Based on the facts, representations, and statements set forth herein, Wagyu Lessee hereby requests that the Commission accept this notice of self-certification of EWG status.

Respectfully Submitted,

/s/ Michael A. Yuffee
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Ryan C. Norfolk
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*Attorneys for
Cubico Wagyu Lessee, LLC*

Dated: May 13, 2020

⁵ Such lease arrangements with a public-utility company and involving a facility used exclusively to generate electricity for sale exclusively at wholesale satisfy the "and selling" requirement for EWG status. *DTE Pontiac North LLC*, 121 FERC ¶ 61,037 at P 7 (2007).

CERTIFICATE OF SERVICE

I, Alexandra J. Hemmings, hereby certify that I have this day caused the foregoing Notice of Self-Certification of Exempt Wholesale Generator Status of Cubico Wagyu Lessee, LLC, to be served by first-class mail upon the Public Utility Commission of Texas.

Dated at Fripp Island, North Carolina, this 13th day of May, 2020.

/s/ Alexandra J. Hemmings

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