

145 FERC ¶ 62,216
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Black Bear Hydro Partners, LLC
Black Bear Development Holdings, LLC
Black Bear SO, LLC
Black Bear Holding LLC

Docket No. EC14-28-000

ORDER AUTHORIZING DISPOSITION OF
JURISDICTIONAL FACILITIES

(Issued December 20, 2013)

On November 14, 2013 Black Bear Hydro Partners, LLC (Black Bear Hydro), Black Bear Development Holdings, LLC (Black Bear Development), Black Bear SO, LLC (Black Bear SO, and collectively with Black Bear Hydro and Black Bear Development, the Black Bear Companies), and Black Bear Holding LLC (Black Bear Holding, and collectively with the Black Bear Companies, Applicants) filed an application pursuant to section 203(a)(1)(A) of the Federal Power Act (FPA)¹ requesting Commission authorization for the disposition of jurisdictional facilities connected with the transaction under which Black Bear Holding will acquire 100 percent of the equity interests of the Black Bear Companies (Transaction). The jurisdictional facilities involved in the Transaction include the Black Bear Companies' market-based rate tariffs, related contracts, agreements, books and records, and limited interconnection facilities.

Applicants state that the Black Bear Companies are wholly-owned indirect subsidiaries of ArcLight Energy Partners Fund III, L.P. (ArcLight Fund III). ArcLight Fund III is a private equity investment fund with a focus on the independent power sector. ArcLight Capital Partners, LLC (ArcLight Capital) manages ArcLight Fund III. ArcLight Capital also manages and controls ArcLight Energy Partners Fund I, L.P., ArcLight Energy Partners Fund II, L.P., ArcLight Energy Partners Fund IV, L.P., ArcLight Energy Partners Fund V, L.P., and ArcLight Liquid Energy Opportunities Fund, L.P. (collectively with ArcLight Fund III, ArcLight Funds), each of which is a private equity investment fund with a focus on the independent power sector.

Applicants state that the Black Bear Companies own or control seven Commission-licensed hydroelectric generating projects located in the State of Maine, in

¹ 16 U.S.C. § 824b (2006).

the ISO New England Inc. (ISO-NE) market, with a total capacity of approximately 30.3 megawatts (MW). In addition to the Black Bear Companies, Black Bear Holding will also acquire, directly or indirectly, Black Bear HVGW, LLC (Black Bear HVGW), Bangor Pacific Hydro Associates (Bangor Pacific), and Topsham Hydro Partners Limited Partnership (Topsham), each of which owns or controls hydroelectric generating projects located in Maine with a total capacity of approximately 28.5 MW. Each of Black Bear HVGW's, Bangor Pacific's and Topsham's facility is a qualifying small power production facility (QF) under the Public Utility Regulatory Policies Act of 1978, as amended (PURPA).

Applicants state that Black Bear HVGW is lessee and operator of Howland Project, a 1.8 MW QF located in Maine. Surrender of the license for Howland Project was accepted by order on June 16, 2010. Black Bear HVGW will operate this facility under an Operating and Management agreement until it is decommissioned.

Applicants state that Black Bear Hydro is a Delaware limited liability company. Black Bear Hydro was formed for the purpose of owning and operating five hydroelectric projects located in Maine, in the ISO-NE market: Ellsworth Hydroelectric Project, with a capacity of 8.9 MW; Medway Hydroelectric Project, with a capacity of 3.2 MW; Milford Hydroelectric Project, with a capacity of 7.8 MW; Orono Hydroelectric Project, with a capacity of 2.7 MW; and Stillwater Hydroelectric Project, with a capacity of 1.8 MW. Black Bear Hydro has authorization to make wholesale sales of energy, capacity, and ancillary services at market-based rates and is an exempt wholesale generator (EWG).

Applicants state that Black Bear Development is a Delaware limited liability company. Black Bear Development was formed for the purpose of constructing and directly owning two new hydroelectric generating facilities, one 2.2 MW facility at the Stillwater Hydroelectric Project (Stillwater Expansion) and one 3.7 MW facility at the Orono Hydroelectric Project (Orono Expansion). Black Bear Development does not take title to the power generated by these new facilities, nor does it exercise any control over the management and operations thereof. Black Bear Development is an EWG under PUHCA and has authority to sell energy, capacity, and ancillary services at market-based rates.

Applicants state that Black Bear SO is a Delaware limited liability company. Black Bear SO leases, operates, and controls the Stillwater Expansion and Orono Expansion. Black Bear SO is an EWG under PUHCA and has authority to sell energy, capacity, and ancillary services at market-based rates.

Applicants state that Black Bear Holdings is a limited liability company with its principal place of business in Marlborough, Massachusetts. Black Bear Holdings is partially, indirectly owned and controlled by its ultimate parent company, Brookfield Asset Management Inc. (Brookfield Management). Brookfield Management is an

Ontario corporation with its principal place of business in Toronto, Ontario, Canada. Brookfield Management is a global alternative asset manager focused on property, renewable power, infrastructure assets, and private equity. It currently has approximately \$175 billion in assets under management.

Applicants state that Brookfield's wholly-owned affiliate, Brookfield Renewable Power Inc. (Brookfield Power) owns, on a fully consolidated basis, approximately 65 percent of the limited partnership units of Brookfield Renewable Energy Partners L.P. (Brookfield Energy), a Bermuda limited partnership. Brookfield Power, through its wholly-owned subsidiary, Brookfield Renewable Partners Limited, owns the 0.1 percent general partnership interest in Brookfield Energy. As general partner of Brookfield Energy, it has the sole responsibility and authority for the management and control of Brookfield Energy. Brookfield Management provides management services to Brookfield Energy under a long-term Master Services Agreement.

Applicants state that the remaining approximately 35 percent of the limited partnership interests in Brookfield Energy are held by public investors. No individual public investor holds 10 percent or more of the Brookfield Energy limited partnership interests. The public investors are passive limited partners which:

- i. cannot take part in the management or control of the activities of Brookfield Energy;
- ii. do not have authority to act or bind Brookfield Energy or its affiliates;
- iii. cannot manage or control the day-to-day operations of Brookfield Energy or its affiliates; and
- iv. are not entitled to vote on matters related to Brookfield Energy, and have only limited consent rights in respect of material amendments to the limited partnership agreement that adversely affect the public investors, and with respect to a sale of all or substantially all of the assets held by Brookfield Energy.

Brookfield Energy owns a 50.1 percent limited partnership interest in Brookfield Renewable Energy L.P. The remaining limited partnership and the general partnership interests are held by Brookfield Power. Brookfield Renewable Energy L.P. wholly-owns Brookfield BRP Holdings (Canada) Inc., which, in turn, indirectly owns Brookfield Power US Holding America Co. (Brookfield America). Brookfield America directly, wholly owns BREP BIF II US Generation AIV LLC (BREP BIF Generation), which indirectly holds a 40 percent controlling interest in Black Bear Holding.

Applicants state that the remaining 60 percent interest in Black Bear Holdings is held by private equity investors. No private equity investor holds 10 percent or greater interest in Black Bear Holdings. The private equity investors in Black Bear Holdings are passive members with limited consent and veto rights necessary to protect their economic interests.

Applicants state that through its affiliates, BREP BIF Generation indirectly holds ownership interests in United States power generation assets. BREP BIF Generation is affiliated with several companies regulated as public utilities under the FPA, and companies owning QFs, interests in a United States interstate natural gas pipeline, and in electricity transmission companies. BREP BIF Generation is affiliated with approximately 1,280 MW of generation capacity in ISO-NE. None of this generation capacity is located in the Connecticut or Southwest Connecticut submarkets within ISO-NE.

Applicants state that BREP BIF Generation is also affiliated with several power marketers with market-based rate authorization. Applicants state that Brookfield Energy Marketing LP, Brookfield Energy Marketing Inc., and Brookfield Renewable Energy Marketing US LLC do not own, operate, or control any electric generation or transmission facilities. Brookfield Energy Marketing US LLC is a marketer that owns and controls generation in the PJM Interconnection, L.L.C. market.

Applicants state that pursuant to the terms of the Purchase and Sale Agreement dated October 31, 2013 between Black Bear Sellers² and Black Bear Holdings, Black Bear Sellers will sell 100 percent of the equity interests of the Black Bear Companies to Black Bear Holdings. Following consummation of the Transaction, the Black Bear Companies will be wholly-owned subsidiaries of Black Bear Holdings and will no longer be affiliated with the Black Bear Sellers or the ArcLight Funds.

Applicants state that the Transaction is consistent with the public interest because it will have no adverse impact on competition, rates, or regulation and will not result in cross-subsidization or the pledge or encumbrance of utility assets for the benefit of an associate company.

Applicants state that the Transaction will not have an adverse effect on horizontal competition in the ISO-NE market, the relevant geographic market for the Transaction, where the capacity owned by Applicants and their affiliates is located. Black Bear Holdings' affiliates currently own or operate approximately 1,013 MW of the approximately 30,000 MW of generating capacity in the ISO-NE market, representing a market share of approximately 3.19 percent of installed capacity in ISO-NE. Black Bear Holdings will obtain a total of 58.9 MW of generation located within ISO-NE as a result of the Transaction, a *de minimis* share.

² The Black Bear Sellers are comprised of Black Bear Hydro Partners Holdings, LLC; Black Bear Power Holdings, LLC; Black Bear HVGW Holdings, LLC; Black Bear SO Holdings, LLC.

Applicants state that the Transaction raises no vertical market power concerns because the Transaction does not involve any transmission facilities, except for limited interconnection facilities. Further, neither Black Bear Holdings nor its affiliates own or control intrastate natural gas transportation, intrastate natural gas storage or distribution facilities, or sources of coal supplies and the transportation of coal supplies in the relevant geographic market.

Brookfield Management, through its subsidiaries, holds an upstream ownership interest in Cross-Sound Cable Company LLC, which owns and operates Cross Sound Cable Project, a direct current transmission line that runs between the markets operated by ISO-NE and the New York Independent System Operator. Applicants state that Brookfield Management's ownership interest in the Cross-Sound Cable Company, LLC raises no issues with respect to vertical market power. ISO-NE schedules transmission service on the Cross Sound Cable Project under its open access transmission tariff (OATT) in coordination with the New York Independent System Operator, Inc. Further, service over the Cross Sound Cable Project is provided under Schedule 18 of the ISO-NE OATT.

Applicants state that the Transaction will not have an adverse effect on the rates charged to wholesale ratepayers because no Applicant has captive wholesale requirements customers. Likewise, the Transaction does not involve transmission rates or transmission customers. All sales of electric energy, capacity, and ancillary services from generation capacity owned or controlled by the Black Bear Companies will continue to be made at market-based rates following the Transaction.

Applicants state that the Transaction will not affect the ability of the Commission to regulate any Applicant with respect to its Commission-jurisdictional activities. Following consummation of the Transaction, the Commission will continue to have the same jurisdiction over the Black Bear Companies that it has now. No facilities will be removed from Commission jurisdiction as a result of the Transaction. Moreover, the Transaction will have no adverse effect on state regulation.

Applicants state that the Transaction is within the scope of the safe harbor for transactions in which no franchised public utility with captive customers is involved in the transaction, and thus raises no cross-subsidization issues. Nevertheless, Applicants verify that, based on facts and circumstances known to them or that are reasonably foreseeable, the Transaction will not result in, at the time of the Transaction or in the future, cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional facilities for the benefit of an associate company, including: (1) any transfer of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and an

associate company; (2) any new issuance of securities by a traditional public utility associate company that has captive customers or that owns, or provides transmission service over, jurisdictional transmission facilities, for the benefit of an associate company; (3) any new pledge or encumbrance of assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; or (4) any new affiliate contracts between a non-utility associate company and a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, other than non-power goods and service agreements subject to review under sections 205 and 206 of the FPA.

The filing was noticed on November 15, 2013, with comments, protests or interventions due on or before December 5, 2013. None were filed. Notices of intervention and unopposed timely filed motions to intervene are granted pursuant to the operation of Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214). Any opposed or untimely filed motion to intervene is governed by the provision of Rule 214.

Order No. 652 requires that sellers with market-based rate authority timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.³ The foregoing authorization may result in a change in status. Accordingly, Applicant is advised that it must comply with the requirements of Order No. 652. In addition, Applicant shall make appropriate filings under section 205 of the FPA, to implement the Transaction.

Information and/or systems connected to the bulk system involved in this transaction may be subject to reliability and cybersecurity standards approved by the Commission pursuant to FPA section 215. Compliance with these standards is mandatory and enforceable regardless of the physical location of the affiliates or investors, information database, and operating systems. If affiliates, personnel or investors are not authorized for access to such information and/or systems connected to the bulk power system, a public utility is obligated to take the appropriate measures to deny access to the information and/or the equipment/software connected to the bulk power system. The mechanisms that deny access to information, procedures, software, equipment, etc. must comply with all applicable reliability and cybersecurity standards. The Commission, NERC or the relevant regional entity may audit compliance with

³ *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 70 Fed. Reg. 8,253 (Feb. 18, 2005), FERC Stats. & Regs. ¶ 31,175, order on reh'g, 111 FERC ¶ 61,413 (2005).

reliability and cybersecurity standards.

After consideration, it is concluded that the Transaction is consistent with the public interest and is hereby authorized, subject to the following conditions:

- (1) The Transaction is authorized upon the terms and conditions described in this Order and for the purposes set forth in the application;
- (2) The foregoing authorization is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determination of cost or any other matter whatsoever now pending or which may come before the Commission;
- (3) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted;
- (4) The Commission retains authority under sections 203(b) and 309 of the FPA, to issue supplemental orders as appropriate;
- (5) If the Transaction results in changes in the status or the upstream ownership of Applicants' affiliated Qualifying Facilities, if any, an appropriate filing for recertification pursuant to 18 C.F.R. § 292.207 (2012) shall be made;
- (6) Applicants shall make appropriate filings under section 205 of the FPA, as necessary, to implement the Transaction;
- (7) Applicants must inform the Commission of any change in circumstances that would reflect a departure from the facts the Commission relied upon in authorizing the Transaction; and

(8) Applicants shall notify the Commission within 10 days of the date that the Transaction has been consummated.

This action is taken pursuant to the authority delegated to the Director, Division of Electric Power Regulation – West under 18 C.F.R. § 375.307. This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order pursuant to 18 C.F.R. § 385.713.

Steve P. Rodgers
Director
Division of Electric Power Regulation - West