

156 FERC ¶ 62,001

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Verso Corporation  
Verso Maine Energy LLC  
Rumford Paper Company  
NewPage Energy Services LLC

Docket No. EC16-127-000

ORDER AUTHORIZING DISPOSITION  
OF JURISDICTIONAL FACILITIES

(Issued July 1, 2016)

On June 2, 2016, as amended on June 16, 2016, Verso Corporation (Verso), Verso Maine Energy LLC (Verso Maine), Rumford Paper Company (Rumford), and NewPage Energy Services LLC (NewPage Energy) (collectively, Applicants) filed an application pursuant to section 203(a)(1) of the Federal Power Act (FPA)<sup>1</sup> requesting authorization for the disposition of jurisdictional facilities that will result from a reorganization in bankruptcy of Verso and certain of its subsidiaries pursuant to a plan of reorganization (the Plan) that is pending confirmation by the U.S. Bankruptcy Court for the District of Delaware. Specifically, the indirect ownership of all the voting interests in Verso Maine, Rumford, and NewPage Energy will be transferred to a new set of stockholders (Transaction).<sup>2</sup> The jurisdictional facilities affected by the Transaction consist of market-based rate tariffs, related contracts, and various books and records.

Applicants state that, under the Plan, the existing equity of Verso will be cancelled and all existing equity owners of Verso will lose their current ownership interests in Verso. The Plan provides for new common stock of Verso to be issued to certain existing creditors of Verso's subsidiaries (New Stockholders). Applicants state that, among the New Stockholders, no single person or entity, or affiliated group of entities will acquire a 10 percent or greater equity interest in Verso or indirectly in the Verso Public Utilities.

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<sup>1</sup> 16 U.S.C. § 824b (2012).

<sup>2</sup> Verso Maine, Rumford, and NewPage Energy are referred to as "Verso Public Utilities."

Applicants state that Verso is the producer of coated papers. Verso and its subsidiaries own eight paper mills located in Kentucky, Maine, Maryland, Michigan, Minnesota and Wisconsin. According to Applicants, before the Plan is implemented investment funds managed by Apollo Management VI, L.P. (together with its subsidiaries, “Apollo”) beneficially indirectly own approximately 44 percent, and Verso management and the public own a total of approximately 56 percent, of the outstanding shares of Verso’s common stock.

Applicants state that Verso is the parent entity and sole member of Verso Paper Finance Holdings One LLC, which is indirectly held by Verso Paper Holdings LLC (Holdings). Holdings indirectly owns all of the equity interests in each of the Verso Public Utilities. Applicants state that these interests are held through Holdings’ direct or indirect subsidiaries, Verso Paper LLC, which directly owns all of the equity interests in Verso Maine, and NewPage Corporation, which directly owns all of the equity interests in Rumford and NewPage Energy.

Applicants state that Verso Maine is an indirect wholly owned subsidiary of Verso. It is a power marketer that performs certain electric energy management services for the Verso-owned paper mill in Jay, Maine (Adroscoggin Mill), including purchasing capacity and associated electric energy for the mill. Verso Maine also sells electric energy at retail to the Adroscoggin Mill, and uses its market-based rate authority to hedge purchases from the ISO New England Inc. (ISO-NE) to make such retail sales, but it has not made any wholesale sales of electricity pursuant to this authority. Verso Maine also provides approximately 67 megawatt (MW) megawatt of demand response in the ISO-NE market.

Applicants state that Rumford is an indirect wholly owned subsidiary of Verso. Rumford completed the sale of its paper mill and cogeneration facilities located in Rumford, Maine to Catalyst Paper Holdings Inc., in 2015. Rumford is authorized to make wholesale sales of electric energy, capacity and certain ancillary services at market-based rates. Rumford does not own, or control through long-term contract, any generation, transmission or distribution assets.

Applicants state that NewPage is an indirect wholly owned subsidiary of Verso. It is a power marketer that is authorized to make wholesale sales of electric energy, capacity, and certain ancillary services at market-based rates. NewPage Energy does not own, or control through long-term contract, any generation, transmission or distribution assets.

Applicants state that Verso indirectly, wholly owns six qualifying facilities (QFs) totaling 220.07 MW located in the ISO-NE market, three QFs totaling 178.4 MW located in the Midcontinent Independent System Operator, Inc. (MISO) market, and one QF totaling 65 MW located in the PJM Interconnection,

L.L.C.(PJM) market. In addition, according to Applicants, Verso owns Consolidated Water Power Company (Consolidated Water Power), an indirect wholly owned subsidiary. Consolidated Water Power owns five hydroelectric projects with a combined capacity of approximately 31.5 MW, each of which is a QF.<sup>3</sup> The projects are all located in Wisconsin within the MISO market. Consolidated Water Power is authorized to make wholesale sales of electric energy, capacity and certain ancillary services at market-based rates. Consolidated Water Power also is regulated as a utility by the Public Service Commission of Wisconsin by virtue of providing retail electric service to the paper mills operated by its parent, NewPage Wisconsin System Inc. (NewPage Wisconsin). Applicants state that most of the output of Consolidated Water Power's hydroelectric projects is sold at retail to various paper mills. Consolidated Water Power does not own any transmission facilities subject to the Commission's jurisdiction and operates only limited distribution facilities.

Applicants state that NewPage Wisconsin is an indirect wholly owned subsidiary of Verso and the parent of Consolidated Water Power. It owns three cogeneration QFs with a combined capacity of 111.3 MW. The facilities are located at paper mills in Wisconsin and Minnesota within the MISO market. All of the output from these facilities is consumed by NewPage Wisconsin's paper mills. NewPage Wisconsin does not have any rates on file with the Commission.

According to Applicants, the Plan provides for the reorganization of Verso and certain of its subsidiaries including the Verso Public Utilities in connection with their emergence from Chapter 11 of the Bankruptcy Code. Pursuant to the Plan, Verso will be reorganized. Verso and certain of its subsidiaries will be governed by new organizational documents, referred to in the Plan as "New Constituent Documents." Under the Plan, the existing equity interests in Verso will be extinguished and all of the equity interests in Verso will be issued to the New Stockholders, which are existing creditors of certain Verso subsidiaries, subject to dilution by equity issued to Verso's employees under a Management Incentive Plan and Plan Warrants. Applicants state that there will be two classes

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<sup>3</sup> The authorization in this proceeding is made under section 203 of the FPA, and is not an authorization for Consolidated Water Power, as licensee of certain hydro units, to transfer those units until authorization is also received pursuant to section 8 of the FPA, 16 U.S.C. 801 (2012). We note that, under the Transaction, Consolidated Water Power is not proposing to transfer its hydro units; it will retain ownership of its hydro units. Therefore, section 8 of the FPA is not implicated under the Transaction, and Consolidated Water Power did not file an application pursuant to section 8 of the FPA in connection with the Transaction. We advise Consolidated Water Power that if it seeks to transfer its hydro units in the future, it must obtain authorization to do so under section 8 of the FPA.

of common stock, each of which will have identical voting rights. Applicants state that the principal difference between the two classes of common stock is that one will be listed on a stock exchange, such as the New York Stock Exchange or NASDAQ, and the other will not. Applicants state that each of the New Stockholders will have full voting rights with respect to the management of Verso in proportion to their respective equity interests in Verso.

Upon consummation of the Transaction, voting common stock in Verso will be issued to the New Stockholders in accordance with the Plan. Applicants state that none of the New Stockholders will receive 10 percent or more of the common stock or any equity interests in Verso and commit to inform the Commission promptly in the event that this does occur. In addition, Applicants commit to filing publicly, together with the post-closing notice in this proceeding, a list of the New Stockholders that will initially receive 5 percent or more of the equity interests in the reorganized Verso, together with the percentage share held by each such New Stockholder.

Applicants state that after the implementation of the Transaction, Verso will continue to hold, indirectly, all of the equity interests in the Verso Public Utilities. Applicants assert that none of the New Stockholders will hold, directly or indirectly, 10 percent or more of the voting securities in any of the Verso Public Utilities.

Applicants state that the Transaction is consistent with the public interest and will not adversely affect competition, rates or regulation. With respect to competition, Applicants state that the Proposed Transaction raises no horizontal market power concerns in the ISO-NE, MISO, and PJM markets, which, according to Applicants, are the relevant markets. Applicants state that the Proposed Transaction does not involve any acquisition of interests in, or control over, electric generating capacity by Verso or any of its subsidiaries, nor any consolidation of any electric generating capacity with capacity owned or controlled by Verso or any of its subsidiaries. Applicants note that the Proposed Transaction involves only a change in the upstream ownership of Verso and, indirectly, of the Verso Public Utilities. Applicants state that none of the Verso Public Utilities will become affiliated with the owners of any additional electric generating capacity as a result of the Transaction. Applicants state that Verso will continue to be a public company whose common stock will be widely dispersed among numerous holders and may be publicly traded either on a stock exchange or otherwise. Applicants assert that no New Stockholder will have the ability to exercise control over Verso or their Verso Public Utilities. For these reasons, Applicants represent that the Transaction will have no effects on horizontal market power.

Applicants state that the Transaction raises no vertical market power concerns. Applicants state that the Transaction involves no electric transmission facilities. Applicants assert that the only transmission facilities owned by them or any of their affiliates are discrete and limited facilities necessary to interconnect electric generating facilities to the electric transmission grid, all of which are associated with QFs. Applicants state that neither they nor any of their affiliates, own or control any transmission facilities used to provide service to third parties or inputs to electricity production (*i.e.*, intrastate natural gas transportation, intrastate natural gas storage or distribution facilities; sites for generation capacity development; physical coal supply sources and ownership of or control over who may access transportation of coal supplies) in any market that would allow them to erect barriers to entry to new generation into any market. Applicants affirmatively state that they have not, and will not, erect barriers to entry into the relevant markets. Applicants note that the Transaction will not provide Verso or any of the Verso Public Utilities with any additional control over any inputs to electric generation, including any coal supplies. Moreover, Applicants state that none of the New Stockholders will gain, as a result of the Transaction, any control over any inputs to generation, including any coal supplies, that are owned or controlled by Verso or any of its affiliates. According to Applicants, the Transaction will not result in any increase in market concentration with respect to any inputs to generation, including coal supplies. Applicants also state that the Transaction will have no impact on the role of Consolidated Water Power as a regulated utility providing retail electric service to paper mills operated by its parent, NewPage Wisconsin. Therefore, Applicants assert the Transaction does not present any vertical market power issues.

With respect to rates, Applicants state the Transaction cannot have an adverse effect on rates because neither Applicants nor their affiliates have cost-based wholesale power sales customers. Applicants state that the Transaction will have no effect on the retail rates charged by Consolidated Water Power. According to Applicants, the market-based rate sales of Verso's subsidiaries, including the Verso Public Utilities, do not raise any concerns about a transaction's possible adverse effect on rates. Applicants and their affiliates do not have any transmission customers, including any customers that are served on the discrete and limited facilities necessary to interconnect certain of the affiliates' electric generating facilities to the transmission grid. Therefore, Applicants state, the Transaction will have no adverse effect on rates.

With respect to regulation, Applicants state that the Transaction will not have an adverse effect on regulation. Applicants state that the Transaction will not impair the ability of the Commission or any state regulatory authority to regulate any of the Applicants or their affiliates. Applicants state that the Commission will continue to have the same jurisdiction over Applicants and their jurisdictional facilities that it had prior to the Transaction. In addition, the Commission will continue to exercise the same

jurisdiction over Applicants' affiliates. The Transaction will have no effect on state commission regulation and is not subject to approval by any state commission. Therefore, Applicants represent that the Transaction will not have an adverse effect on regulation.

Applicants state that the Transaction will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company. Applicants assert that the Transaction falls within one of the "safe harbors" adopted by the Commission for which detailed explanation and evidentiary support to demonstrate a lack of cross-subsidization is not required. Applicants more specifically state that the Transaction does not involve a franchised public utility with captive customers.

Additionally, Applicants verify that, based on the facts and circumstances known to them or that are reasonably foreseeable, the Transaction will not result in, at the time of the Transaction nor in the future: (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 contract 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 services agreements subject to review under Sections 205 and 206 of the FPA.

This filing was noticed on June 6, 2016 and June 21, 2016 with comments, protests or interventions due on or before June 23, 2016 and June 27, 2016. None were filed.

Information and/or systems connected to the bulk power system involved in this Proposed 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 databases, 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 this 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 reliability and cybersecurity standards.

When a controlling interest in a public utility is acquired by another company, whether a domestic company or a foreign company, the Commission's ability to adequately protect public utility customers against inappropriate cross-subsidization may be impaired absent access to the parent company's books and records. Section 301 (c) of the FPA gives the Commission authority to examine the books and records of any person who controls, directly or indirectly, a jurisdictional public utility insofar as the books and records relate to transactions with or the business of such public utility. The approval of the transaction is based on such examination ability.

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.<sup>4</sup> To the extent that a transaction authorized under FPA section 203 results in a change in status, sellers that have market-based rates are advised that they must comply with the requirements of Order No. 652.

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 and for the purposes set forth in the application;
- (2) Applicants must inform the Commission of any material change in circumstances that departs from the facts or representations that the Commission relied upon in authorizing the Transaction within 30 days of the date of the material change in circumstances. Further, within 10 days of such occurrence, Applicants must separately inform the Commission of any New Stockholders that receive 10 percent or more of the common equity stock or any equity interest in Verso;
- (3) 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;
- (4) Nothing in this order shall be construed to imply acquiescence in any

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<sup>4</sup> *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).

estimate or determination of cost or any valuation of property claimed or asserted;

- (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 (2015) shall be made;
- (6) The Commission retains authority under sections 203(b) and 309 of the FPA, to issue supplemental orders as appropriate;
- (7) Applicants shall make appropriate filings under section 205 of the FPA, as necessary, to implement the Transaction; and
- (8) Applicants shall notify the Commission within 10 days of the date that the disposition of jurisdictional facilities has been consummated and shall include in such notification filing a list of the New Stockholders that initially have received 5 percent or more of the equity interests in the reorganized Verso, together with the percentage share received by each such New Stockholder.

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 (2015). 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 (2015).

Steve P. Rodgers, Director  
Division of Electric Power  
Regulation – West



Document Content(s)

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