

156 FERC ¶ 62,025

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Northbrook New York, LLC

Docket No. EC16-125-000

ORDER AUTHORIZING DISPOSITION
OF JURISDICTIONAL FACILITIES

(Issued July 8, 2016)

On June 1, 2016, Northbrook New York, LLC (Northbrook or Applicant) filed an application pursuant to section 203(a)(1)(A) of the Federal Power Act (FPA)¹ requesting authorization for the disposition of jurisdictional facilities. Applicant states that Glen Park Hydro LLC (Glen Park) will acquire all of the ownership interests in Applicant from Fort Chicago Holdings II U.S. LLC (Chicago Holdings) (Proposed Transaction). The jurisdictional facilities involved in the Proposed Transaction consist of Applicant's market-based rate tariff, wholesale power sale agreements, interconnection facilities, and related books and records.

Applicant states that it owns and operates a 33 megawatt (MW) hydroelectric generation facility located in Jefferson County, New York (Project) within the New York Independent System Operator, Inc. (NYISO) market, along with interconnection facilities necessary to make wholesale power sales from the Project. According to Applicant, the Project is interconnected with the transmission system owned by National Grid and operated by NYISO. Applicant states that the electric output from the Project is sold to Shell Energy North America (US), L.P. Applicant represents that it is a wholly owned subsidiary of Chicago Holdings and an indirect subsidiary of Veresen Inc. (Veresen).

Applicant states that Glen Park is a special purpose entity formed to own 100 percent of the membership interests in Northbrook. Applicant represents that prior to consummation of the Proposed Transaction, Glen Park will be a jointly owned company in which Glen Park Holdco LLC (Glen Park Holdco) will own the controlling 98.5 percent of the membership interests and EH Principals Group, LLC (EH Principals) will own 1.5 percent of the membership interests. Glen Park Holdco is a wholly owned subsidiary of Restless Hydro LLC, which is indirectly controlled by I Squared Capital, a private equity investment manager.

Applicant states that Glen Park is an affiliate of Little Falls Hydroelectric Associates, which owns a 13.6 MW hydroelectric power project and Lyonsdale

¹ 16 U.S.C. § 824b (2012).

Associates, LLC, which owns a 3 MW hydroelectric power project, both within the NYISO market. Applicant represents that it is not affiliated with any other entity that owns or controls, directly or indirectly, electric generation or transmission assets or natural gas transportation or distribution facilities that are located in the NYISO market.

According to Applicant, pursuant to a Purchase and Sale Agreement, Chicago Holdings will sell to Glen Park all of the ownership interests in Applicant. Applicant states that subsequent to consummation of the Proposed Transaction, Northbrook will continue to own its assets, including any of the FPA jurisdictional contracts and or facilities.

Applicant states that the Proposed Transaction is consistent with the public interest and will not adversely affect competition, rates, or regulations, and will not result in cross-subsidization of a non-utility associate company or a pledge or encumbrance of utility assets for the benefit of an associate company.

With respect to competition, Applicant states that Proposed Transaction presents no horizontal market power concerns in the NYISO market, the relevant geographic market. According to Applicant, the installed capacity in the NYISO market is approximately 45,000 MW, while Northbrook and its affiliates own in aggregate approximately 50 MW of generation capacity in that market. Applicant states that this represents approximately 0.11 percent of the installed capacity in the NYISO market, a *de minimis* amount. Therefore, according to Applicant, the Proposed Transaction does not present any horizontal market power concerns.

Applicant states that the Proposed Transaction presents no vertical market power concerns because it will not result in any new combination of electric transmission or gas transportation or distribution assets. According to Applicant, other than limited interconnection facilities, Applicant does not own or control any transmission facilities or natural gas transmission or distribution assets. Applicant further asserts that, other than limited interconnection facilities, none of Glen Park or its affiliates own or control transmission facilities or natural gas transmission or distribution assets in the NYISO market. Therefore, according to Applicant, the Proposed Transaction does not raise any vertical market power concerns.

With respect to rates, Applicant states that the Proposed Transaction will have no adverse effect. According to Applicant, it has no captive customers, nor does it have transmission customers. Applicant states that the Proposed Transaction will not affect the rates Northbrook is authorized to charge under its market-based rate tariff. Therefore, Applicant concludes that the Proposed Transaction will not have an adverse effect on rates.

With respect to regulation, Applicant states that the Commission will continue to

have the same jurisdiction over the Applicant after the Proposed Transaction is consummated as it had before. Applicant adds it does not have any retail customers and is not subject to rate regulation by any state public utility commission. Therefore, according to Applicant, the Proposed Transaction will have no adverse effect on regulation.

Applicant states that the Proposed 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. Applicant asserts that the Proposed Transaction falls within two of the “safe harbors” identified by the Commission as unlikely to raise the cross-subsidization concerns. Applicant more specifically states that the Proposed Transaction falls within the “safe harbor” in which no franchised public utility with captive customers is involved and the “safe harbor” for a transfer of assets between a public utility and non-affiliates.

Additionally, Applicant verifies that, based on the facts and circumstances known to it or that are reasonably foreseeable, the Proposed Transaction will not result in, at the time of the Proposed Transaction or in the future: (1) any transfers 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 issuances 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 own or provide 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 2, 2016 with comments, protests or interventions due on or before June 22, 2016. None were filed.

Information and/or systems connected to the bulk system involved in these transactions 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 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, North America Electric Reliability Corporation 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 Proposed 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.² 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 Proposed Transaction is consistent with the public interest and is authorized, subject to the following conditions:

- (1) The Proposed Transaction is authorized upon the terms and conditions and for the purposes set forth in the application;
- (2) Applicant 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 Proposed Transaction within 30 days of the date of the material change in circumstances;
- (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 determinations of costs, 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 estimate or determination of cost or any valuation of property claimed or

² *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005).

asserted;

- (5) If the Proposed Transaction results in changes in the status or upstream ownership of Applicant's affiliated qualifying facilities, 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) Applicant shall make any appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transaction; and
- (8) Applicant shall notify the Commission within 10 days of the date that the Proposed 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 (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)

EC16-125-000.DOC.....1-5