

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

High Lonesome Holdings, LLC
High Lonesome Mesa Wind Holdings, LLC

Docket No. EC16-83-000

ORDER AUTHORIZING DISPOSITION
OF JURISDICTIONAL FACILITIES

(Issued March 30, 2016)

On February 29, 2016, as amended on March 10, 2016, High Lonesome Holdings, LLC (High Lonesome Holdings) and High Lonesome Mesa Wind Holdings, LLC (Purchaser, and together with High Lonesome Holdings, Applicants) filed an application pursuant to sections 203(a)(1) and 203(a)(2) of the Federal Power Act (FPA)¹ requesting Commission authorization for a transaction whereby High Lonesome Holdings will transfer 100 percent of the direct ownership interests in High Lonesome Mesa, LLC (High Lonesome Mesa) and its jurisdictional facilities to Purchaser (Transaction). The jurisdictional facilities affected by the Transaction consist of High Lonesome Mesa's market-based rate tariff and any related agreements, various books and records, and the interconnection facilities associated with a 100 megawatt (MW) wind-powered generation facility (Facility).

Applicants state that High Lonesome Mesa is a limited liability company under the laws of Delaware that leases and operates the Facility located in Torrance County, New Mexico, which is located within the balancing authority area (BAA) of Public Service Company of New Mexico (PNM). Applicants state that High Lonesome Mesa is an exempt wholesale generator and has Commission authorization to sell energy, capacity, and ancillary services at wholesale at market-based rates. Applicants assert that all of the electrical output of the Facility is sold to Arizona Public Service Company (APS) pursuant to a long-term power purchase agreement in effect through July 2039. According to Applicants, all of the membership interests of High Lonesome Mesa are now owned by High Lonesome Holdings a limited liability company under the laws of Delaware. High Lonesome Holdings is directly owned by Macquarie Energy North America Investments, LLC (MENAI) (77.47 percent) and HAT Holdings I LLC (HAT Holdings) (22.53 percent).

Applicants state that MENAI is a limited liability company under the laws of Delaware that is an indirect, wholly owned subsidiary of Macquarie Bank Limited

¹ 16 U.S.C. § 824b (2012).

(MBL), which in turn is wholly owned by Macquarie Group Limited (MGL). Applicants state that MGL is a global provider of banking, financial, advisory, investment, and funds management services. Applicants further state that HAT Holdings, a limited liability company under the laws of Maryland, is a direct, wholly owned subsidiary of Hannon Armstrong Capital, LLC (HA Capital LLC), which in turn is a wholly owned subsidiary of Hannon Armstrong Sustainable Infrastructure, L.P. (Hannon LP), a limited partnership under the laws of Delaware. Applicants state that Hannon LP is owned 99 percent by Hannon Armstrong Sustainable Infrastructure Capital, Inc. (Hannon Armstrong), and 1 percent by various individuals and investment funds.

Applicants state that Purchaser is a direct, wholly owned subsidiary of ESI Energy, LLC, which in turn is a direct, wholly owned subsidiary of NextEra Resources, a limited liability company under the laws of Delaware. Applicants state that NextEra Resources is a direct, wholly owned subsidiary of NextEra Energy Capital Holdings, Inc., a Corporation under the laws of Florida, which, in turn, is a direct, wholly owned subsidiary of NextEra Energy, Inc. (NextEra), a utility holding company incorporated in Florida. Applicants assert that, NextEra Resources, the competitive power subsidiary of NextEra, currently owns or controls generating facilities in 25 states and Canada, with a combined net generating capacity of over 19,000 MW. Applicants add that NextEra Resources' subsidiaries own various interconnection facilities used solely for connecting generating facilities to the transmission grid, and three of its subsidiaries (Peetz Logan Interconnect, LLC (Peetz Logan), Sagebrush, a partnership under the laws of California (Sagebrush), and Sky River LLC (Sky River)) have filed open access transmission tariffs (OATTs) after receiving requests for service from a third party.

Applicants state that NextEra also owns Florida Power & Light Company (FPL), a franchised public utility that provides wholesale and retail electric service to customers in the State of Florida. Applicants state that FPL owns approximately 24,100 MW of generation in peninsular Florida. FPL's transmission facilities are located within the State of Florida and are administered pursuant to the FPL OATT on file with the Commission. Applicants further state that NextEra owns NextEra Energy Transmission, LLC (NEET), which in turn owns New Hampshire Transmission, LLC (NHT), a public utility that owns the Seabrook Substation located in Seabrook, New Hampshire. NHT provides wholesale transmission service to its affiliate, NextEra Energy Seabrook, LLC, through a Local Network Service Tariff on file with the Commission. Applicants assert that ISO New England, Inc. (ISONE) has operational control of the regional transmission facilities associated with the Seabrook Substation. Finally, Applicants state that NEET also owns NextEra Energy Transmission West, LLC, which is developing two transmission projects in the California Independent System Operator Corp. (CAISO) region.

Applicants state that Purchaser has the following two affiliates that own or control electric generation within the PNM BAA, the relevant geographic market for the

Transaction. First, Applicants state that FPL Energy New Mexico Wind, LLC (New Mexico Wind) owns and operates an approximately 204 MW wind generation facility located in Quay and DeBaca Counties, New Mexico. Applicants state that New Mexico Wind is authorized by the Commission to sell power at market-based rates. Applicants assert that all of the output of New Mexico Wind is fully committed under a long-term power purchase agreement (PPA) to PNM. Second, Applicants state that Red Mesa Wind, LLC (Red Mesa) owns and operates a 102 MW renewable wind generating facility located in Cibola County, New Mexico. Applicants state that Red Mesa is authorized by the Commission to sell power at market-based rates. Applicants assert that all of the output of Red Mesa is fully committed under a long-term PPA to PNM. Furthermore, Applicants state that NextEra Energy Power Marketing, LLC (NEPM) and NEPM II, LLC (NEPM II) are affiliated power marketers that are authorized by the Commission to sell power at market-based rates. Applicants note that NEPM and NEPM II, however, do not own, control or operate any generation in the region.

Applicants state that Purchaser is affiliated with a number of Hinshaw Pipelines that are exempt from Commission jurisdiction pursuant to section 1(c) of the Natural Gas Act.²

Applicants state that, pursuant to the Transaction, High Lonesome Holdings will sell, and Purchaser will buy, 100 percent of the membership interests in High Lonesome Mesa. Applicants state that, after consummation of the Transaction, Purchaser will directly own the membership interests in High Lonesome Mesa and indirectly own 100 percent of High Lonesome Mesa's wholly owned subsidiary, High Lonesome Mesa Investments, LLC.

Applicants state that the Transaction is consistent with the public interest because it will not have an adverse effect 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 raises no horizontal market power concerns. Applicants reiterate that the energy and capacity owned by Purchaser's generation affiliates and the Facility are fully committed under long-term PPAs; New Mexico Wind and Red Mesa have long-term PPAs with PNM, while High Lonesome Mesa has a long-term PPA with APS. Thus, Applicants conclude that, because all affiliated generation in the market is fully committed and the generation being acquired also is fully committed, there is no effect on competition.

Applicants state that the Transaction raises no vertical market power concerns, because the Transaction does not involve the combination of control over generation with

² These pipelines are described in detail in the application.

control over transmission or other vertical inputs to generation. Applicants state that, following the Transaction, High Lonesome Mesa will be affiliated with FPL, NHT, Peetz Logan, Sky River, and Sagebrush, each of which own or control electric transmission facilities in the United States. However, Applicants argue that such affiliations do not raise any competitive concerns because service on the transmission facilities owned or controlled by FPL, Peetz Logan, Sky River, and Sagebrush is provided pursuant to Commission-accepted OATTs; service over the transmission facilities owned by NHT is provided pursuant to a Commission-accepted Local Network Service Tariff; and ISONE has operational control of the regional transmission facilities associated with the Seabrook Substation.

Applicants state that the Transaction will not have an adverse effect on the rates charged to either wholesale sales or transmission service customers. Applicants assert that, following consummation of the Transaction, all of the sales of electric energy from the Facility will be made at market-based rates. Additionally, Applicants assert that while certain affiliates of Purchaser currently provide unbundled transmission services, costs attributable to the Transaction will not be flowed through to transmission customers, and therefore their rates will not be affected by the Transaction.

Applicants state that the Transaction will have no effect on regulation, because the Commission will continue to have the same jurisdiction over wholesale sales of electric energy by High Lonesome Mesa as it had before. Applicants add that the Transaction has no effect on state commission regulation and does not require any state commission approval.

According to Applicants, the Transaction falls within one of the “safe harbors” established by the Commission for which detailed explanation and evidentiary support to demonstrate a lack of cross-subsidization is not required. Applicants specifically state that the Transaction falls within the “safe harbor” for transactions where no franchised public utility with captive customers is involved.

Additionally, 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, any cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets 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 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 service agreements subject to review under sections 205 and 206 of the FPA.

The filing was noticed on March 1, 2016 and March 11, 2016, with comments, protests, or interventions due on or before March 21, 2016. None were received.

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 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.³ 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

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).

public interest and is 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 from 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 asserted;
- (5) If the Transaction results in changes in the status or upstream ownership of Applicants' 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) Applicants shall make any 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 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