

150 FERC ¶ 62,129

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Longview Power, LLC

Docket No. EC15-65-000

ORDER AUTHORIZING DISPOSITION
OF JURISDICTIONAL FACILITIES

(Issued March 9, 2015)

On January 27, 2015, Longview Power, LLC (Longview or Applicant) filed an application pursuant to section 203(a)(1)(A) of the Federal Power Act (FPA)¹ requesting Commission authorization for certain additional aspects of a restructuring transaction (Restructuring) in which the current equity interests in Applicant's direct parent, Longview Intermediate Holdings C, LLC (Longview C) will be cancelled, and the debt held by Applicant's lenders will be converted into equity interests in a reorganized Longview C (Reorganized Longview C). Specifically, Applicant is seeking Commission authorization for Centerbridge Partners, L.P. (Centerbridge), together with its affiliates, to acquire up to a 35 percent equity interest in Reorganized Longview C, and for KKR Credit Advisors (US) LLC (KKR Credit) to increase the maximum equity interest it may acquire in Reorganized Longview C as part of the Restructuring from 35 percent to 45 percent. The jurisdictional facilities involved in the Restructuring are Applicant's market-based rate tariff and related contracts, books, and records; the Reactive Service Rate Schedule and related books and records; and the transmission facilities that interconnect the Longview Facility to the grid.

On January 17, 2014, Applicant filed an application with the Commission seeking FPA Section 203(a)(1)(A) authorization for the Restructuring (First Restructuring Application). Pursuant to the Restructuring, Applicant stated that the current equity interests in Applicant's direct parent, Longview C, will be cancelled and the debt held by Applicant's lenders under two separate credit facilities will be converted into equity interests in Reorganized Longview C. As a result of the Restructuring, Applicant stated that it will become an indirect, wholly-owned subsidiary of Reorganized Longview C, the equity of which will be almost wholly owned by the lenders under those credit facilities (Lender-Owners).

¹ 16 U.S.C. § 824b (2014).

In the First Restructuring Application, Applicant identified three Lender-Owners that it anticipated would each hold a 10 percent or greater equity interest in Reorganized Longview C as a result of the Restructuring, funds and investment accounts affiliated with American Securities, LLC (American Securities); Sankaty Advisors, LLC (Sankaty); and KKR Credit. Applicant noted that the exact percentage equity interest that these Lender-Owners would hold in Reorganized Longview C had not yet been determined, but Applicant asserted that none of these entities, together with its respective affiliates, would hold more than 35 percent of Reorganized Longview C's equity as of the effective date of the Restructuring.

However, as a result of the debt trading that has occurred since Longview filed the First Restructuring Application, Applicant now anticipates that one additional Lender-Owner, funds and investment accounts affiliated with Centerbridge, will also acquire a 10 percent or greater equity interest in Reorganized Longview C as a result of the Restructuring. Additionally, Applicant asserts that Sankaty has determined to acquire less than 10 percent of the equity interest in Reorganized Longview C. Consequently, Applicant states that it now expects that only American Securities, KKR Credit, and Centerbridge (collectively, the Greater Than 10 Percent Lender-Owners) will acquire a 10 percent or greater equity interest in Reorganized Longview as a result of the Restructuring.

Applicant states that it is a Delaware limited liability company and owner of the Longview Facility, a 755 megawatt (MW) electric generation facility located in Maidsville, West Virginia. According to Applicant, the Longview Facility is interconnected with the West Penn Power Company transmission system, which is under the operational control of PJM Interconnection, L.L.C. (PJM), the relevant geographic market. Applicant asserts it has self-certified as an Exempt Wholesale Generator (EWG) and has Commission authorization to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates. Applicant further states that it provides Reactive Supply and Voltage Control from Generation Sources Service under Schedule 2 of the PJM Open Access Transmission Tariff pursuant to a cost-based rate schedule (Reactive Service Rate Schedule) on file with the Commission.

Applicant states that it is a direct, wholly-owned subsidiary of Longview C, which in turn is wholly owned by Longview Intermediate Holdings B, LLC (Longview B). Longview B is 93 percent owned by Longview Intermediate Holdings A, LLC (Longview A) and 7 percent by Siemens Financial Services Inc. (SFS). SFS is an indirect, wholly-owned subsidiary of Siemens AG, a German stock company. An upstream affiliate of Longview A is affiliated with First Reserve Corporation (First Reserve). First Reserve is a global private equity firm focusing on the energy industry and owns 381 MW of generating capacity in PJM Interconnection, L.L.C..

According to Applicant, each Greater Than 10 Percent Lender-Owner is a bank, financial institution, institutional or infrastructure investor, investment company, investment fund, or related entity that is not primarily engaged in energy-related business activities.

Applicant states that Centerbridge is an investment management firm focused on private equity and distressed investment opportunities. Affiliates of Centerbridge control private investment vehicles, including Centerbridge Credit Partners Master, L.P., Centerbridge Credit Partners, L.P., and Centerbridge Special Credit Partners, L.P. (collectively, Centerbridge Funds), and generally make all investment, voting, and similar decisions on their behalf. Applicant states that each of the Centerbridge Funds is organized as a limited partnership and operates as a private investment vehicle. Applicant anticipates that the Centerbridge Funds will be the entities that directly hold the equity in Reorganized Longview C. Applicant asserts that, as of January 7, 2015, Centerbridge and the Centerbridge Funds are not affiliated with any generation capacity or transmission facilities in the United States.

Applicant states that KKR Credit, directly or through its investment advisory subsidiaries, is the advisor to a number of funds and accounts on behalf of which Applicant now seeks Commission authorization for KKR Credit to hold up to 45 percent of the equity of Reorganized Longview C. The KKR Credit-advised funds and accounts which will hold the equity, directly or through one or more subsidiary or sister investment vehicles, are the following²: (i) KKR Credit Relative Value Master Fund L.P.; (ii) KKR Financial Holdings LLC; (iii) 8 Capital Partners L.P.; (iv) KKR Debt Investors II (2006) (Ireland) L.P.; (v) KKR-PBPR Capital Partners L.P.; and (vi) Spruce Investors Limited (collectively, the KKR Vehicles)³. Each of the KKR Vehicles is owned by (i) KKR Credit, directly or indirectly, as general partner, and (ii) various passive limited partner investors. In addition, KKR Credit manages separate accounts owned by third-party investors in which a portion of the investment in Reorganized Longview's equity is held. Each of these KKR Vehicles is managed by KKR Credit or one of its wholly-owned investment advisor subsidiaries. KKR C is an indirect subsidiary of KKR & Co. L.P. (KKR & Co.), a publicly traded partnership listed on the New York Stock Exchange. KKR Management LLC serves as the general partner of KKR & Co., which is governed by a board of directors consisting of a majority of independent directors. KKR Management LLC does not hold any economic interests in KKR & Co. and is owned by senior KKR & Co. principals, including Henry Kravis and George Roberts, the founders and leaders of the business. Other funds managed by KKR & Co. indirectly own 95

² The KKR Vehicles are listed in the First Restructuring Application

percent of the active ownership interests in Gamma Genco CV LLC, which indirectly owns all of the membership interests in:

- (i) various limited liability companies that own a 30 MW solar generation facility near Galt, California, within the Sacramento Municipal Utility District (SMUD) balancing authority area (BAA);
- (ii) various limited liability companies that own and operate a 15 MW solar generation facility near Elk Grove, California, within the SMUD BAA
- (iii) various limited liability companies that own and operate a 9.4 MW solar generation facility near Sloughouse, California, within the SMUD BAA; and
- (iv) various limited liability companies that own and operate a 15 MW solar generation facility near Elk Grove, California, within the SMUD BAA.

Other funds managed by KKR & Co. indirectly own 100 percent of the active ownership interests in Gamma Genco CV II LLC, which indirectly owns all of the membership interests in two limited liability companies that each own a 20 MW solar-powered qualifying facility (QF) in Kern County, California, within the California Independent System Operator, Inc. (CAISO) BAA. Gamma II also indirectly owns all of the membership interests in certain limited liability companies that own the following QFs:

- (i) a 17.5 MW solar-powered QF near Adelanto, California, in the CAISO BAA;
- (ii) a 5 MW solar-powered QF near Mojave, California, in the CAISO BAA;
- (iii) a 10 MW solar-powered QF near Mojave, California, in the CAISO BAA; and
- (iv) a 15 MW solar-powered QF near Gila Bend, Arizona, in the Arizona Public Service Company BAA.

In addition, on October 3, 2014, Atlanta Renewables, S. A R.L. (Atlanta Renewables), an affiliate of KKR Credit, purchased one-third of the interests in Acciona Energía Internacional, S.A. (AEI), and thereby indirectly acquired one-third of the interests in AEI's wholly-owned subsidiary, Acciona Energy North America Corporation (AENAC). Those interests include AENAC's interests in:

- (i) Dempsey Ridge Wind Farm, LLC, an EWG with market-based rate authorization that owns a 132 MW wind-powered generation facility in Roger Mills County, Oklahoma, within the Southwest Power Pool Integrated Marketplace (SPP), as well as a limited and discrete generator lead line;

- (ii) EcoGrove Wind LLC, an EWG with market-based rate authorization that owns a 100.5 MW wind-powered generation facility, located in Stephenson County, Illinois, within the PJM BAA;
- (iii) Red Hills Wind Project, L.L.C., an EWG with market-based rate authorization that owns a 123 MW wind-powered generation facility near Elk City, Oklahoma, within the SPP; and
- (iv) Acciona Wind Energy USA LLC, on behalf of its membership interests in
 - a. Blue Canyon Windpower LLC, an EWG with market-based rate authorization that owns a 74.25 MW wind-powered generation facility located in Caddo and Comanche Counties, Oklahoma, within SPP;
 - b. Tatanka Wind Power, LLC, an EWG with market-based rate authorization that owns a 180 MW wind-powered generation facility in Dickey and McIntosh Counties, North Dakota, and McPherson County, South Dakota, within the Midcontinent Independent System Operator, Inc., (MISO) BAA; and
 - c. Nevada Solar One, LLC, which has market-based rate authorization and controls a 69 MW solar thermal QF in Clark County, Nevada, within the Nevada Power Company BAA.

This transaction also resulted in Atlanta Renewables indirectly acquiring one-third of the interests in Velva Windarm, LLC, which owns a 12 MW wind-powered QF in McHenry County, North Dakota, within the MISO BAA.

Investment vehicles affiliated with KKR & Co. also own 37.05 percent of Texas Energy Future Capital Holdings, LLC, which controls Texas Energy Future Holdings Limited Partnership (Texas Energy Future). Texas Energy Future indirectly owns Oncor Electric Utility Company (Oncor) and Luminant Energy Company LLC, each a Commission-jurisdictional public utility, as well as certain other subsidiaries that operate within the Electric Reliability Council of Texas (ERCOT) region. Oncor is an electric transmission and distribution utility that delivers power pursuant to cost-based rates approved by the Public Utility Commission of Texas and operates transmission and distribution lines within the ERCOT region. Oncor provides open access wholesale interconnection and transmission service under tariffs on file with the Commission for certain transactions that are subject to the jurisdiction of the Commission under Sections 210, 211 and 212 of the FPA. In addition, KKR & Co. and its affiliates indirectly own a 23.44 percent interest in Colonial Pipeline Company (Colonial), which was acquired in partnership with the National Pension Service of Korea. Applicant states that Colonial pipeline system delivers liquid petroleum products (gasoline, diesel fuel, home heating oil, jet fuel and fuels for the U.S. military) from supply centers in the Gulf Coast to customers located along the Eastern seaboard of the United States.

Applicant states that, in the First Restructuring Order, the Commission authorized funds and investment accounts managed by American Securities to hold up to a 35

percent of the equity interest in Reorganized Longview C. Funds managed by American Securities and its subsidiaries own Lakeside Energy LLC (Lakeside Energy), a private equity firm that acquires, finances, owns, and operates energy companies and assets in North America. According to Applicant, the Commission authorized Lakeside Energy, certain of its affiliates, and NEP Holdco 1, L.L.C. (NEP Holdco) to consummate a transaction whereby NEP Holdco would acquire from Lakeside Energy all of the outstanding membership interests in its subsidiary Lakeside Generation LLC (Lakeside Generation).⁴ Through Lakeside Generation, Lakeside Energy indirectly owns 100 percent of:

- (i) Lakeside Beaver Falls LLC, an EWG with market-based rate authorization that owns and operates a 95 MW combined-cycle generating facility located in Beaver Falls, New York, within the New York Independent System Operator, Inc. (NYISO) BAA;
- (ii) Lakeside Syracuse LLC, an EWG with market-based rate authorization that owns and operates a 109 MW combined-cycle generating facility located in Solvay, New York, within the NYISO BAA; and
- (iii) Hazleton Generation LLC, an EWG with market-based rate authorization that owns and operates a 150 MW natural gas and oil-fueled generating facility located in Hazle Township, Pennsylvania, within the PJM BAA.

Applicant notes that, as of the date of this Application, the parties involved in this transaction between Lakeside Generation and NEP Holdco have not notified the Commission of the consummation of the transaction; therefore, Applicant treats Lakeside Generation as an affiliate of American Securities for the purposes of market power analysis in this Application.

Applicant states that the Restructuring 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.

With respect to horizontal competition, Applicant states that the Restructuring meets the *de minimis* standard. Applicant explains that, following the Restructuring, Longview and its affiliates will have a combined electric generating capacity of 1,025.5 MW in the PJM BAA, approximately 0.60% of the total installed generating capacity in that market. Applicants perform a 2AB analysis which shows that the Restructuring will result in a Herfindahl-Hirschman Index (HHI) increase of only 0.135 points. When incorporating Lakeside Energy's aggregate 204 MW of generation capacity in the

⁴ *Lakeside Energy LLC*, 150 FERC ¶ 62,005 (2015).

NYISO BAA and Atlanta Renewables' aggregate 192 MW of generation capacity in the MISO BAA into the analysis, Longview and its affiliates could theoretically have a combined electric generating capacity of 1,421.5 MW in PJM, approximately 0.83% of the total installed capacity in that market. Under these conservative assumptions, a 2AB analysis shows that the Restructuring will result in an HHI increase of only 0.342 points. For these reasons, Applicant argues that the Restructuring does not raise any horizontal market power concerns.

Applicant states that the Restructuring will have no adverse effect on vertical market power because there will not be a transfer of control of any electric transmission facilities, other than those limited facilities used to interconnect the Longview Facility to the transmission grid. Applicant acknowledges that it will become affiliated with Colonial Pipeline. However, Applicant states that the wholesale oil market is competitive and the affiliation with Colonial Pipeline does not raise any vertical market power issues. Thus, according to Applicant, there are no vertical market power concerns raised as a result of the Restructuring.

With regard to the effect on rates, Applicant states that it will continue to make wholesale power sales pursuant at market-based rates as authorized by the Commission. As a result of the Restructuring, Applicant will become affiliates of certain entities that make sales of power pursuant to state commission-approved cost-based rates in the ERCOT region, own or operate QFs and sell power from those QFs pursuant to long-term power purchase agreements, or otherwise make wholesale sales at market-based rates. Applicant asserts that the Restructuring will have no impact on these rates for wholesale power charged by these affiliates. Applicant further states that it will continue to make sales pursuant to its Reactive Service Rate Schedule, a fixed rate contract, and there is no mechanism for it to pass through any transaction-related costs to customers pursuant to that Rate Schedule. Applicant also states that the Restructuring will have no adverse effect on rates for transmission because neither Applicant nor any of its current or prospective affiliates directly or indirectly own or control any transmission facilities (other than those necessary to interconnect generating facilities to the grid), except for the certain facilities in the ERCOT region owned by Oncor. The Applicant states that the Restructuring will have no effect on the rates charged by Oncor for transmission service. Therefore Applicant asserts that there are no transmission customers that could be impacted by the Restructuring.

Longview states that the Restructuring will not impair the effectiveness of regulation because it will not affect the manner or extent to which the Commission, any state, or any other federal agency may regulate Applicant and its current affiliates or entities that would become affiliates of Applicant upon consummation of the Restructuring. Furthermore, Applicant states that its status as a market-based rate seller and the extent to which it is subject to the jurisdiction of the Commission will not change as a result of the Restructuring.

Applicant states that, based on facts and circumstances known to it or that are reasonably foreseeable, the Restructuring will not result in, at the time of the Restructuring 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 January 28, 2015. Comments, protests or interventions were due on or before February 17, 2015. On February 18, 2015, American Securities, LLC, Centerbridge Partners, L.P., and KKR Credit Advisors (US) LLC filed a timely motion to intervene raising no issues. 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 (2014)). Any opposed or untimely filed motion to intervene is governed by the provision of Rule 214.

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.

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 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.

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.⁵ The foregoing authorization may result in a change in status. Accordingly, Longview is advised that it must comply with the requirements of Order No. 652. In addition, Longview shall make appropriate filings under section 205 of the FPA, to implement the Transaction.

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

- (1) The Restructuring is authorized upon the terms and conditions 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 determinations of costs, 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 Restructuring results in changes in the status or the upstream ownership of Longview's affiliated qualifying facilities, an appropriate filing for recertification pursuant to 18 C.F.R. § 292.207 (2014) shall be

⁵ 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).

made;

- (6) Longview shall make appropriate filings under section 205 of the FPA, as necessary, to implement the Restructuring;
- (7) Longview must inform the Commission of any change in circumstances that would reflect a departure from the facts the Commission relied upon in authorizing the Restructuring; and
- (8) Longview shall notify the Commission within 10 days of the date that the acquisition of the jurisdictional facilities has been consummated and inform the Commission of the actual equity interest acquired by each Greater Than 10 percent Lender-Owner

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 (2014). 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 (2014).

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

Document Content(s)

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