157 FERC ¶ 62,162

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Eurus Combine Hills I LLC
Crescent Ridge LLC

Docket No. EC17-20-000

ORDER AUTHORIZING DISPOSITION OF JURISDICTIONAL FACILITIES

(Issued November 30, 2016)

On October 19, 2016, Eurus Combine Hills I LLC (Combine Hills I) and Crescent Ridge LLC (Crescent Ridge) (collectively, Applicants) filed an application under section 203(a)(1) of the Federal Power Act (FPA)[1] requesting authorization for the disposition of jurisdictional facilities resulting from two transactions (Proposed Transactions) that will result in Eurus Energy America LLC (Eurus America) owning 100 percent of the managing Class B and passive Class A membership interests in Combine Hills I, and a wholly owned, indirect subsidiary of Leeward Renewable Energy, LLC (Leeward) owning 100 percent of the managing Class B membership interests in Crescent Ridge. The affected jurisdictional facilities consist of Applicants' market-based rate tariffs and related agreements, interconnection facilities, and/or books and records.

Applicants state that Combine Hills I owns and operates an approximately 41 megawatt (MW) wind generation project (CHI Facility) located in Oregon, within the Bonneville Power Administration (BPA) balancing authority area (BAA). Combine Hills I is an exempt wholesale generator (EWG) with market-based rate authority. Combine Hills I sells all of the output of the CHI Facility under a long-term power purchase agreement with PacifiCorp, an unaffiliated entity.

According to Applicants, membership interests in Combine Hills I are divided into two classes: nonmanaging, passive, non-controlling Class A membership interests, and managing Class B membership interests. Applicants state that Eurus America and Combine Hills 1 Member LLC (CH 1 Member), a wholly owned, indirect subsidiary of Leeward, each own 50 percent of the managing Class B membership interests and 50 percent of the passive Class A membership interests, and are the "Managing Members" of Combine Hills I with the authority to control the day-to-day operation of Combine Hills I and its jurisdictional facilities.

[1] 16 U.S.C. § 824b (2012).

Crescent Ridge owns and operates a 54.5 MW wind generation project located in Illinois (CR Facility), within the PJM Interconnection, L.L.C. (PJM) market. Crescent Ridge is an EWG and qualifying small power production facility with market-based rate authority. Crescent Ridge sells the entire output of the CR Facility on a wholesale basis into the PJM market.

Crescent Ridge Holdings LLC (CR Holdings) wholly owns Crescent Ridge. Ownership of CR Holdings is divided into two classes: passive, noncontrolling Class A membership interests and managing Class B membership interests. Crescent Ridge Member LLC (CR Member), a wholly owned indirect subsidiary of Leeward, owns 75 percent of the managing Class B membership interests in CR Holdings. Wind Partner 2003 LLC (Eurus Partner 2003), a wholly owned subsidiary of Eurus America, owns the remaining 25 percent. IJA Portfolio LLC, an indirect subsidiary of Leeward and JPM Capital Corporation, owns the non-managing, passive Class A membership interests of Crescent Ridge.

Eurus America is a wholly owned subsidiary of Eurus Energy America Corporation, which is wholly owned by Eurus Energy Holdings Corporation (Eurus Holdings). Toyota Tsusho Corporation (Tsusho) and Tokyo Electric Power Company, Incorporated (Tokyo Electric) own 60 and 40 percent of Eurus Holdings, respectively.

According to Applicants, Tsusho is a publicly traded corporation. Its largest shareholder is Toyota Motor Corporation, which owns an approximately 21.7 percent interest in Tsusho. In addition, Toyota Industries Corporation owns an approximately 11.2 percent interest in Tsusho. Applicants state that no other shareholder owns ten percent or more of the outstanding membership interests in Tsusho.

Applicants state that Tokyo Electric is Japan's largest electric utility serving almost 45 million people in and around Tokyo. The Nuclear Damage Compensation and Decommissioning Facilitation Corporation (Corporation) owns more than 50 percent of Tokyo Electric. In turn, the Japanese government and Japanese nuclear plant operators each own 50 percent of the Corporation, and Tokyo Electric is the only nuclear plant operator that owns a 10 percent or greater interest in the Corporation.

Applicants state that, with respect to Combine Hills I and pursuant to the draft membership interest purchase agreements (Membership Agreements), Eurus America will purchase 50 percent of the managing Class B membership interests and 50 percent of the passive Class A membership interests in Combine Hills I from CH 1 Member, (CHI Transaction). Upon consummation of the CHI Transaction, Combine Hills I will be a wholly owned subsidiary of Eurus America. With respect to Crescent Ridge, and pursuant to the Membership Agreements, CR Member, a wholly owned indirect subsidiary of Leeward, will purchase 25 percent of the Class B membership interests in Crescent Ridge from Eurus Partner 2003 (CR Class B Transaction). Upon consummation

of the CR Class B Transaction, Leeward will indirectly own 100 percent of the managing Class B membership interests in Crescent Ridge. According to Applicants, the Class A non-managing membership interests in Crescent Ridge will not be affected by the CR Class B Transaction.

Applicants state that the Proposed Transactions are consistent with the public interest because they 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.

With respect to horizontal market power, Applicants state that the BPA BAA is the relevant geographic market for the CHI Transaction, and the PJM market is the relevant geographic market for the CR Class B Transaction, because those are the markets to which the CHI Facility and CR Facility are electrically interconnected, respectively. According to Applicant, the Eurus America currently indirectly owns a 10 percent or greater equity interest in Combine Hills I and Leeward currently indirectly owns a 10 percent or greater equity interest in Crescent Ridge. Therefore, Applicants state that consummation of the Proposed Transactions will not result in any new affiliations or combination of electric generation assets that could have an impact on the competitive situation in the relevant markets for the Proposed Transactions. Accordingly, Applicants submit that the Proposed Transactions do not have an adverse impact on horizontal market power in the relevant markets.

Applicants state that the Proposed Transactions do not raise any concerns with regard to vertical market power. The Proposed Transactions do not involve any transmission facilities, other than the limited and discrete interconnection equipment necessary to connect the CHI Facility and CR Facility to the grid, or any essential inputs to electricity products or electric power production. Further, none of Applicants or any of their affiliates own a 10 percent or greater voting interest in or control any electric transmission facilities in the United States, other than limited and discrete interconnection facilities necessary to connect individual generating facilities to the grid, facilities for which the Commission has granted a waiver of the requirement to file an open access transmission tariff (OATT) or that qualify for the blanket OATT waiver pursuant to the Commission's regulations. Therefore, Applicants submit that the Proposed Transactions will not have an adverse effect on vertical market power.

Applicants state that the Proposed Transactions raise no concerns with regard to rates. Neither Combine Hills I nor Crescent Ridge has any captive wholesale requirements customers. The Proposed Transactions will not involve any transmission rates or transmission customers. Both before and after the Proposed Transactions are consummated, all wholesale sales of electric energy, capacity and ancillary services by Combine Hills I and Crescent Ridge will be made pursuant to their respective market-based rate tariffs. The rates that will be charged under the respective market-based tariffs

will not change as a result of the Proposed Transactions. Accordingly, Applicants submit that the Proposed Transactions will not have an adverse effect on wholesale ratepayers or transmission customers.

According to Applicants, the Proposed Transactions will not affect the manner or extent to which the Commission, any state, or any other federal agency may regulate either Applicant. Upon completion of the Proposed Transactions, Combine Hills I and Crescent Ridge will continue to be subject to the jurisdiction of the Commission (and any other regulatory agency or office) to the same extent as before the Proposed Transactions. Applicants do not make and do not intend to make any retail sales subject to the ratemaking jurisdiction of any state commission. Accordingly, Applicants state that the Proposed Transactions will not have an adverse impact on federal or state regulation.

According to Applicants, the Proposed Transactions fall 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. Specifically, Applicants state that the Proposed Transactions fall within the "safe harbor" for transactions that do not involve a franchised public utility with captive customers.

Applicants verify that, based on facts and circumstances known to them or that are reasonably foreseeable, the Proposed Transactions will not result in, at the time of the Proposed Transactions 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 October 20, 2016, with comments, protests, or interventions due on or before November 9, 2016. None were received.

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, 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 Transactions are consistent with the public interest and are authorized, subject to the following conditions:

(1) The Proposed Transactions are 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 Proposed Transactions within 30 days from the date of the material change in circumstances;

(3) The foregoing authorization is without prejudice to the authority of the

[2] 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).

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 Proposed Transactions result 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 (2016) shall be made;

(6) The Commission retains authority under section 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 Proposed Transactions; and

(8) Applicants shall notify the Commission within 10 days of the date that the Proposed Transactions have 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 (2016). 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 (2016).

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

Document Content(s)