

157 FERC ¶ 62,051

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Mankato Energy Center, LLC
Southern Power Company

Docket No. EC16-176-000

ORDER AUTHORIZING ACQUISITION AND DISPOSITION
OF JURISDICTIONAL FACILITIES

(Issued October 21, 2016)

On September 1, 2016, Mankato Energy Center, LLC (Mankato) and Southern Power Company (Southern Power) (collectively, Applicants) filed an application pursuant to sections 203(a)(1)(A), 203(a)(1)(B) and 203(a)(2) of the Federal Power Act (FPA)¹ requesting Commission authorization for Southern Power to acquire 100 percent of the membership interests in Mankato from New Steamboat Holdings, LLC (Seller) (Proposed Transaction). The jurisdictional facilities involved in the Proposed Transaction are interconnection facilities, Mankato's market-based rate tariff, a rate schedule, a power purchase agreement, and related contracts, books, and records.

Applicants state that Mankato is an indirect, wholly owned subsidiary of Seller which is indirectly wholly owned by Calpine Corporation (Calpine). Mankato owns and operates a 300 megawatt (MW) combined-cycle power plant (Mankato Facility) located in the Town of Mankato, Blue Earth County, Minnesota. The Mankato Facility is interconnected to the transmission network controlled by Midcontinent Independent System Operator, Inc. (MISO). Mankato has a rate schedule on file with the Commission establishing a cost-based revenue requirement for Reactive Power Service (Reactive Rate Schedule) provided pursuant to Schedule 2 of MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (MISO Tariff). Applicants represent that output of the Mankato Facility is fully committed to Northern States Power Company (Northern States) pursuant to a long term agreement.

Applicants state that Southern Power is a wholly owned subsidiary of Southern Company, a public utility holding company. Applicants assert that neither Southern Power nor any of its affiliates owns or control jurisdictional generation facilities, directly or indirectly, within the MISO market.

Applicants represent that Southern Power is affiliated with Alabama Power Company, Georgia Power Company, Gulf Power Company, and Mississippi Power

¹ 16 U.S.C. § 824b (2012).

Company (collectively, the Southern Retail Operating Companies). The Southern Retail Operating Companies own or control, directly or indirectly, approximately 46,479 MW of generation capacity and own and operate electric transmission and distribution lines within the Southern balancing authority area.

According to Applicants, Southern Company Gas is a wholly owned subsidiary of Southern Company that is engaged in the distribution of natural gas. Southern Company Gas owns and controls intrastate natural gas transportation, storage, and local distribution facilities, including facilities in proximity to the relevant market. Applicants note that one of Southern Company Gas' subsidiaries owns limited intrastate natural gas storage facilities located near Erath, Louisiana, within the MISO footprint but remote from the location of the Mankato Facility.

According to Applicants, pursuant to the Purchase and Sale Agreement, Southern Power will acquire 100 percent of the equity interests in Mankato. Upon consummation of the Proposed Transaction, Southern Power will become the sole equity owner of Mankato.

According to Applicants, the Proposed Transaction is consistent with the public interest and will not have an adverse effect on competition, rates, or regulation and will not result in cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company.

Applicants state that the Proposed Transaction will have no adverse effect on competition. With respect to horizontal competition, Applicants assert that Mankato and Southern Power and its affiliates do not currently conduct business in the same geographic market. Applicants further state that all of the output from the Mankato Facility is committed to an unaffiliated entity pursuant to a long-term agreement that will not change as a result of the Proposed Transaction. Therefore, according to Applicants, the Proposed Transaction will not have an adverse impact on horizontal competition.

With respect to vertical competition, Applicants represent that neither Mankato nor Southern Power and its affiliates, own or control transmission facilities in the MISO market. Applicants state that the Southern Retail Operating Companies' transmission facilities are all located outside the MISO market, and these facilities are subject to an open access transmission tariff on file with the Commission. Applicants state that the Proposed Transaction does not involve inputs to electricity products and none of Southern Power or its affiliates own or control inputs that could be used to erect barriers to entry. Therefore, according to Applicants, the Proposed Transaction will not have an adverse impact on vertical competition.

According to Applicants, the Proposed Transaction will have no adverse effect on rates. Applicants represent that none of Southern Power or its subsidiaries have any

captive retail or wholesale customers or provide unbundled transmission service. According to Applicants, wholesale sales by Mankato will be made pursuant to its market-based rate tariff. Further, Applicants state that the only cost-based rate schedule involved in the Proposed Transaction is the Reactive Rate Schedule. Applicants assert that neither the Reactive Rate Schedule nor the MISO Tariff contains any mechanism that would allow for the pass-through of costs associated with the Proposed Transaction without Commission authorization under Section 205 of the FPA. Therefore, according to Applicants, the Proposed Transaction will not have an adverse impact on rates.

Applicants state that the Proposed Transaction will not have an adverse effect on regulation at the federal or state level as Mankato's regulatory status will remain unchanged and no gaps in regulation will be created. Applicants further assert that the Proposed Transaction will not affect the extent to which any state authority can regulate retail rates.

According to Applicants, 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. According to Applicants, the Proposed Transaction falls within two of the "safe harbors" established by the Commission and thus does not present any issue with respect to cross-subsidization. Specifically, Applicants state that the Proposed Transaction is a bona fide, arm's-length, bargained-for exchange between non-affiliated entities and does not involve a franchised utility with captive customers.

Applicants verify that, based on facts and circumstances known to them or that are reasonably foreseeable, the Proposed Transaction will not result in, at the time of the Proposed 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 September 2, 2016, with comments, protests or

interventions due on or before September 22, 2016. On September 21, 2016, Xcel Energy Services Inc. filed a timely notice of intervention 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.²

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.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 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

² 18 C.F.R. § 385.214 (2016).

³ *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).

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 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 Proposed 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 (2016) 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 Proposed Transaction; and
- (8) Applicants 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 (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

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