

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

WG Partners Acquisition, LLC
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Lea Power Partners, LLC
Waterside Power, LLC
Badger Creek Limited
Chalk Cliff Limited
Double C Generation Limited Partnership
High Sierra Limited
Kern Front Limited
McKittrick Limited
Bear Mountain Limited
Live Oak Limited

Docket No. EC16-184-

ORDER AUTHORIZING ACQUISITION
OF JURISDICTIONAL FACILITIES

(Issued October 31, 2016)

On September 19, 2016, as amended on October 12, 2016 and on October 17, 2016, WG Partners Acquisition, LLC (WG Partners Acquisition or Buyer), Lea Power Partners, LLC (Lea Power), Waterside Power, LLC (Waterside Power), Badger Creek Limited (Badger Creek), Chalk Cliff Limited (Chalk Cliff), Double C Generation Limited Partnership (Double C), High Sierra Limited (High Sierra), Kern Front Limited (Kern Front), McKittrick Limited (McKittrick), Bear Mountain Limited (Bear Mountain), and Live Oak Limited (Live Oak) (exclusive of WG Partners Acquisition, Project Companies) (collectively, WG Partners Acquisition and Project Companies, Applicants) filed an application (Application) pursuant to section 203(a)(1) of the Federal Power Act (FPA)¹ requesting authorization for WG Partners Acquisition to purchase from FREIF NAP I Holdings II, LLC (Seller) 100 percent of Seller's ownership interests in FREIF NAP I Holdings III, LLC, including certain jurisdictional assets located within the California Independent System Operator Corporation (CAISO) market, the Southwest Power Pool (SPP) market and the ISO New England (ISO-NE) market (Proposed Transaction). The jurisdictional facilities affected by the Proposed Transaction consist of market-based rate tariffs, limited interconnection facilities, and power purchase agreements or tolling agreements.

Applicants state that WG Partners Acquisition is an indirect joint venture holding company formed by Harbert Power Fund V, LLC (HPF V), UBS Asset

¹ 16 U.S.C. § 824b (2012).

Management Funds Ltd (UBSI), on behalf of UBS International Infrastructure Fund II (UBS IIF II), and The Northwestern Mutual Life Insurance Company (NML). The ownership interests in WG Partners Acquisition are as follows: HPF V with approximately 49 percent of the ownership interests, UBS IIF II with approximately 33 percent, and NML with approximately 18 percent. WG Partners Acquisition was formed for the purpose of acquiring Seller's ownership interests in the Project Companies and does not own or control any jurisdictional assets.

Applicants state that HPF V is organized as an investment fund and is managed by Harbert Power MM V, LLC (Harbert Power MM V). HPF V was formed to invest in exempt wholesale generators (EWGs), qualifying facilities (QFs), and related power assets. Applicants explain that certain institutional investors, including pension funds, insurance companies, foundations and affiliates' partners, have committed capital to HPF V in exchange for passive membership interests. Harbert Power MM V is a wholly owned subsidiary of Harbert Management Corporation (HMC), an institutional investment manager, which business activities are limited to the management of HPF V.

Applicants state that UBS IIF II is an investment vehicle with an objective to invest in core infrastructure assets in diversified sectors including energy infrastructure, utilities, telecommunications, transport infrastructure and social infrastructure. The general partner of UBS IIF II has appointed UBSI to manage investment activities of the partnership by utilizing the services of the Infrastructure and Private Equity (I&PE) team. The I&PE team manages direct investments across the sectors of gas transmission, electricity generation, telecommunications, waste management, water utility, and wind.

NML is a mutual insurance company, and NML and its subsidiaries offer a range of life insurance, disability insurance, annuities, long-term care insurance, investment products and advisory and trust services. As a mutual insurance company, NML has no shareholders, but rather it is operated for the benefit of its policy owners. NML has invested equity in a range of energy and power assets and holds, directly or indirectly, equity interests in electric generation and transmission assets.

Applicants describe the Project Companies as follows:

1. Badger Creek is an EWG with market-based rate authority. Badger Creek owns and operates a 46 megawatt (MW) natural gas-fired generating facility located in Bakersfield, California (Badger Creek Facility). The Badger Creek Facility is interconnected to the transmission system owned by Pacific Gas and Electric Company (PG&E) and operated by CAISO. The entire capacity of the Badger Creek Facility is committed to PG&E pursuant to a seven-year tolling agreement that expires on April 30, 2021.
2. Chalk Cliff is an EWG with market-based rate authority. Chalk Cliff owns and operates a 46 MW natural gas-fired generating facility located

- in Bakersfield, California (Chalk Cliff Facility). The Chalk Cliff Facility is interconnected to the transmission system owned by PG&E and operated by CAISO. The entire capacity of the Chalk Cliff Facility is committed to PG&E pursuant to a seven-year tolling agreement that expires on April 30, 2021.
3. Double C is an EWG with market-based rate authority. Double C owns and operates a 49.8 MW natural gas-fired generating facility located in Bakersfield, California (Double C Facility). The Double C Facility is interconnected to the transmission system owned by PG&E and operated by CAISO. The entire capacity of the Double C Facility is committed to PG&E pursuant to a nine-year tolling agreement that expires on December 1, 2020.
 4. High Sierra is an EWG with market-based rate authority. High Sierra owns and operates a 49.8 MW natural gas-fired generating facility located in Bakersfield, California (High Sierra Facility). The High Sierra Facility is interconnected to the transmission system owned by PG&E and operated by CAISO. The entire capacity of the High Sierra Facility is committed to PG&E pursuant to a nine-year tolling agreement that expires on November 30, 2020.
 5. Kern Front is an EWG with market-based rate authority. Kern Front owns and operates a 49.8 MW natural gas-fired generating facility located in Bakersfield, California (Kern Front Facility). The Kern Front Facility is interconnected to the transmission system owned by PG&E and operated by CAISO. The entire capacity of the Kern Front Facility is committed to PG&E pursuant to a nine-year tolling agreement that expires on November 30, 2020.
 6. McKittrick is an EWG with market-based rate authority. McKittrick owns and operates a 46 MW natural gas-fired generating facility located in Bakersfield, California (McKittrick Facility). The McKittrick Facility is interconnected to the transmission system owned by PG&E and operated by CAISO. The entire capacity of the McKittrick Facility is committed to PG&E pursuant to a nine-year tolling agreement that expires on April 30, 2021.
 7. Bear Mountain is an EWG with market-based rate authority. Bear Mountain owns and operates a 46 MW natural gas-fired generating facility located in Bakersfield, California (Bear Mountain Facility). The Bear Mountain Facility is interconnected to the transmission system owned by PG&E and operated by CAISO. The entire capacity of the Bear Mountain Facility is committed to PG&E pursuant to a seven-year tolling agreement that expires on April 30, 2021.
 8. Live Oak is an EWG with market-based rate authority. Live Oak owns and operates a 46 MW natural gas-fired generating facility located in Bakersfield, California (Live Oak Facility). The Live Oak Facility is

interconnected to the transmission system owned by PG&E and operated by CAISO. The entire capacity of the Live Oak Facility is committed to PG&E pursuant to a seven-year tolling agreement that expires on April 30, 2021.

9. Lea Power is an EWG with market-based rate authority. Lea Power owns and operates a 674 MW natural gas-fired generating facility located in Lea County, New Mexico (Hobbs Generating Station). The Hobbs Generating Station is interconnected to the transmission system owned by Southwestern Public Service Company (SPS) and operated by SPP. The entire capacity of the Hobbs Generating Station is committed to SPS pursuant to a power purchase agreement that is in effect until 2033.
10. Waterside Power is an EWG with market-based rate authority. Waterside Power owns and operates a 69.6 MW liquid fuel-fired electric generating facility located in Stamford, Connecticut (Waterside Facility). The Waterside Facility is interconnected to the transmission system owned by Connecticut Light and Power (CL&P) and operated by ISO-NE. All of the output of the Waterside Facility is currently sold in the wholesale markets administered by ISO-NE under a contract for differences with CL&P that extends through May 31, 2024.

Applicants state that Borger Energy Associates, LP (Borger) and Corona Energy Partners, LTD (Corona), whose indirect ownership interests are being transferred to WG Partners Acquisition², own electric generating facilities that are QFs, but Borger and Corona are neither Applicants nor do they have market-based rate authority:

Borger owns and operates a 230 MW natural gas-fired cogeneration facility located near Borger, Texas (Borger Facility). The Borger Facility is interconnected to the transmission system owned by SPS and operated by SPP. Borger sells all of the electric output from the Borger Facility to SPS under a long-term contract in effect through 2024.

Corona owns and operates a 47 MW natural gas-fired cogeneration facility located in Corona, California (Corona Facility). The Corona Facility is interconnected to the transmission system owned by Southern California Edison Company (SCE) and operated by CAISO. Corona sells all of the electric output from the Corona Facility to SCE under a long-term contract.

Seller is a wholly owned, direct subsidiary of FREI Bravo AIV, L.P. (FREI). Applicants state that FREI is managed and controlled by its general partner, First Reserve Energy Infrastructure GP, L.P., which is managed and controlled by its

² While the interests in Borger and Corona are being transferred to WG Partners Acquisition, that transfer is not part of the Proposed Transaction. Applicants do not request authorization under section 203 of the FPA for the transfer of those interests nor does this order grant such authorization.

general partner, First Reserve Energy Infrastructure G.P. Limited (FREI GP Limited). FREI GP Limited is owned by its shareholders (GP Shareholders). The GP Shareholders are natural persons, each of whom owns less than 10 percent of the outstanding share capital of FREI GP Limited.

Under the Proposed Transaction, Seller will sell to WG Partners Acquisition 100 percent of its ownership interests of FREIF NAP I Holdings III that includes the transfer of 100 percent of the indirect ownership interests in the Project Companies. Upon closing of the Proposed Transaction, the Project Companies will be indirectly owned subsidiaries of WG Partners Acquisition.

Applicants state that the Proposed Transaction is consistent with the public interest and will have no adverse effect on competition, rates, or regulation and will not result in cross-subsidization. The parties to the Proposed Transaction own assets in CAISO, SPP, and ISO-NE, but CAISO and SPP are the only two markets in which there is an overlap of owned capacity. There is no overlap of owned capacity in the ISO-NE market. With respect to horizontal market power, Applicants state that, within the CAISO market, WG Partners Acquisition, through its affiliates, owns or controls 760 MWs, and it will acquire an additional 426.4 MWs, totaling 1,186.4 MWs. Therefore, following the consummation of the Proposed Transaction and the acquisition of the interests in Corona, WG Partners Acquisition's combined capacity will be 1.4950 percent of the total installed capacity within the CAISO market (i.e. 1,186.4 divided by 79,359 MWS), which is, according to Applicants, *de minimis*. Applicants assert that even if the 96 MWs of capacity in Las Vegas, Nevada controlled by WG Partners Acquisition's affiliates were considered as potential imports into the CAISO market, WG Partners Acquisition's combined capacity following the consummation of the Proposed Transaction will be 1.6159 percent of the total installed capacity within the CAISO market (i.e. 1,282.4 divided by 79,359 MWs), which is, according to Applicants, *de minimis*.

With respect to within the SPP market, Applicants state that WG Partners Acquisition, through its affiliates, owns or controls 39.4 MWs, and it will acquire an additional 904 MWs, totaling 943.4 MWs. Therefore, following the consummation of the Proposed Transaction and the acquisition of the interests in Borger, WG Partners Acquisition's combined capacity within the SPP market will be 1.4028 percent of the total installed capacity within the SPP market (i.e. 943.4 divided by 67,251 MWS), which is, according to Applicants, *de minimis*. Therefore, according to Applicants, the Proposed Transaction does not raise any horizontal market power concerns.

With respect to vertical market power, none of the Applicants nor their affiliates own or control any transmission facilities used to provide transmission service, except for limited interconnection facilities necessary for connecting to the transmission grid. Additionally, the Proposed Transaction does not involve any essential inputs to electricity production in any relevant market that would allow the Applicants to erect barriers to

entry to new generation in such markets. Therefore, according to Applicants, the Proposed Transaction does not raise any vertical market power concerns.

With respect to rates, Applicants state that the Proposed Transaction only involves changes in the upstream ownership of the entities that are being purchased and will not adversely affect wholesale sales or transmission rates. Wholesale sales of electric energy, capacity, and ancillary services by any of the acquired entities will continue to be made either under their current long-term agreements or at market-based rates pursuant to tariffs on file with the Commission. Additionally, the Proposed Transaction does not involve any entity that is a traditional utility with captive retail or wholesale customers, or that provides unbundled transmission services. Therefore, according to Applicants, the Proposed Transaction will have no effect on rates.

With respect to regulation, Applicants state that the Proposed Transaction will not diminish the Commission's regulatory authority or create a regulatory gap or shift regulatory authority between the Commission and any state commission. In addition, Applicants state that each Project Company's status as a public utility will not change as a result of the Proposed Transaction and the Proposed Transaction will not result in any facilities being removed from the Commission's jurisdiction. Therefore, according to Applicants, the Proposed Transaction will have no adverse effect on federal or state regulation.

Applicants state 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. Applicants further state that the Proposed Transaction qualifies for the safe harbor for transactions that do not involve a franchised public utility with captive customers. Additionally, Applicants represent that, based on facts and circumstances known to Applicants 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 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 services agreements subject to review under sections 205 and 206 of the FPA.

The filings were noticed on September 20, 2016, October 14, 2016, and October 21, 2016 with comments, protests or interventions due on or before October 11, 2016, October 24, 2016 and October 27, 2016, respectively. None

were filed.

Information and/or systems connected to the bulk power 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 databases, 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.

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 hereby 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) 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 *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).

- (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 the 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 the 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