

145 FERC ¶ 62,017  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Niagara Generation, LLC

Docket No. EC13-141-000

ORDER AUTHORIZING DISPOSITION  
OF JURISDICTIONAL FACILITIES

(Issued October 8, 2013)

On August 29, 2013, Niagara Generation, LLC (Niagara Generation or Applicant) filed an application pursuant to section 203 (a)(1)(A) of the Federal Power Act (FPA)<sup>1</sup> requesting Commission authorization for the disposition of jurisdictional facilities in which USRG Finance Company, LLC (USRG Finance) will sell and Sterling Energy Group, Inc. (Sterling)<sup>2</sup> will purchase 100 percent of the ownership interests in Niagara Generation (Transaction). The jurisdictional facilities associated with the Transaction consist of Niagara Generation's market-base rate tariff, associated books, records, accounts, related agreements, and limited interconnection facilities.

Niagara Generation is a Delaware limited liability company and a direct wholly-owned subsidiary of USRG Finance. Niagara Generation owns and operates an approximately 53 megawatt (MW) generating facility (Niagara Generation Facility) located in Niagara Falls, New York. The Niagara Generation Facility is interconnected with the transmission system controlled by New York Independent System Operator, Inc. (NYISO). Niagara Generation is an exempt wholesale generator (EWG) and authorized to sell electric energy, capacity and ancillary services at market-based rates.

USRG Finance, a Delaware limited liability company, is directly owned by USRG Power & Biofuels Fund II, L.P. (USRG Fund II), which holds a 60.36 percent ownership

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<sup>1</sup> 16 U.S.C. § 824b (2000), as amended by the Energy Policy Act of 2005, Pub. L. No.109-58, § 1289, 119 Stat. 594 (2005).

<sup>2</sup> Applicant states that Sterling may not be a holding company within the meaning of section 203(a)(2); however, even assuming that it were considered a holding company, Sterling would be a holding company solely with its respect to its ownership in Crawfordsville Energy, LLC (Crawfordsville Energy), an exempt wholesale generator, and therefore the blanket authorization set forth in 18 C.F.R. § 33.1 (c)(8) would be applicable.

interest and USRG Niagara CB, LLC (USRG Niagara), which holds the remaining 39.64 percent ownership interest. USRG Niagara, in turn, is a wholly-owned subsidiary of USRG Power & Biofuels Fund II-A, L.P. (USRG Fund II-A and together with USRG Fund II, the USRG Funds).

USRG Power & Biofuels Fund II GP, LLC (USRG Fund II GP) has management control and an approximately 20 percent economic interest in Niagara Generation through each of the USRG Funds and their subsidiaries. The remaining interests in the USRG Funds are held by limited partner investors whose interests are passive and who do not exercise control, directly or indirectly over Niagara Generation.

USRG Fund II GP is held by various individual investors and entities, most of whom hold less than a 10 percent ownership interest. The following individuals and entities hold a 10 percent or greater ownership interest in USRG Fund II GP: (i) Rusheen Capital Partners, LLC (approximately 19.5 percent); Lee Bailey (approximately 14.3 percent); Millwood Energy Holdings, LLC (approximately 13 percent); and CrossRiver Capital, LLC (approximately 10.3 percent).

Sterling is an Indiana corporation privately owned by shareholders. It is an energy company with operations in power generation and oil and gas production and transmission. Sterling is held by a group of individual private investors and entities, most of whom hold less than a 5 percent ownership interest. The only individuals and entities that hold a 10 percent or greater ownership interest in Sterling are William J. Harrington, who holds approximately 47.5 percent and Fred L. Solomon, who holds approximately 31.6 percent.

Crawfordsville Energy, an Indiana limited liability company, is a direct wholly-owned subsidiary of Sterling. Crawfordsville Energy holds a purchase contract with the city of Crawfordsville, Indiana for the acquisition of a 25 MW power plant currently owned and operated by Crawfordsville Electric Light & Power. Crawfordsville Energy expects to close on this transaction by December 31, 2013. Crawfordsville is an EWG but does not yet own or control any generation assets.

Sterling holds a 99 percent ownership interest in Gulfstar Energy Group, LLC (Gulfstar), which is a Kentucky limited liability company. Gulfstar owns and operates an approximately 20-mile natural gas pipeline and gathering system in Butler and Warren County, Kentucky.

Pursuant to a Purchase and Sales Agreement, Sterling will purchase, and USRG Finance will sell, 100 percent of its ownership interests in Niagara Generation in exchange for a combination of preferred stock in Sterling, which can be converted to common stock at USRG's election, and a warrant to purchase additional common stock in Sterling. Additionally, USRG Finance will have the right to appoint a board member

to a newly created sixth seat on Sterling's board of directors. As a result of the Transaction, Niagara Generation will become a wholly-owned subsidiary of Sterling.

Applicant states that the Transaction is consistent with the public interest and will not adversely affect competition, rates or regulations. With respect to competition, Applicant states that the transfer of an approximately 53 MW generation facility in the NYISO market, (currently not operating) represents approximately 0.13 percent of the NYISO market, the relevant market. Applicant also states that because none of USRG Finance, Sterling or any of their affiliates holds any interests in any other generating facilities in the NYISO market or in any first-tier markets to NYISO, there will be no changes in these market shares as a result of the Transaction. Therefore, Applicant states that the Transaction will not raise any horizontal market power concerns.

In addition, Applicant states that the Transaction does not raise any vertical market power concerns. Applicant states that neither Sterling nor its affiliates own or control any transmission facilities in the NYISO market, and Niagara Generation only owns limited transmission facilities necessary to connect the Niagara Generation Facility to the transmission grid. In addition, Applicant states that neither Sterling nor its affiliates has any ownership interest in or control of fuel supplies, fuel delivery systems, other inputs to electricity markets or any new sites for electric generation that could raise barriers to entry in the NYISO market.

Applicant states that the Transaction will not have an adverse effect on rates because any sales of electric energy, capacity and ancillary services by Niagara Generation will be made at market-based rates. In addition, neither Niagara Generation nor Sterling has any transmission customers whose rates could be affected by the Transaction.

Applicant states that the Transaction will have no adverse effect on regulation. Applicant states that the 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. Applicant states that Niagara Generation's status as a public utility will not change as a result of the Transaction, and the Transaction will not result in any facilities being removed from the Commission's jurisdiction. Accordingly, the Transaction will not impair the Commission's jurisdiction over Niagara Generation.

Applicant states that the 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. Applicant asserts that the Transaction falls within one of the "safe harbors" adopted by the Commission for which detailed explanation and evidentiary support to demonstrate a lack of cross-subsidization is not required. Applicant more specifically states that the Transaction does not involve a franchised public utility with captive customers.

Additionally, Applicant verifies that based on the 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: (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.

This filing was noticed on August 29, 2013, with comments, protests or interventions due on or before September 19, 2013. None were filed. 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). 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 power system involved in this Proposed 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.

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.<sup>3</sup> The foregoing authorization may result in a change in status. Accordingly, Applicants are advised that it must comply with the requirements of Order No.652. In addition, Applicants shall make appropriate filings under section 205 of the FPA, to implement the Transaction.

After consideration, it is concluded that the Transaction is consistent with the public interest and is hereby 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) 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 determination of cost 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 Transaction results in changes in the status or the upstream ownership of Applicant's affiliated Qualifying Facilities, if any, an appropriate filing for recertification pursuant to 18 C.F.R. § 292.207 shall be made;
- (6) Applicant shall make appropriate filings under section 205 of the FPA, as necessary, to implement the Transaction;
- (7) Applicant must inform the Commission of any changes in circumstances that would reflect a departure from the facts the Commission relied upon in authorizing the Transaction; and

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<sup>3</sup> *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).

- (8) Applicant shall notify the Commission within 10 days of the date that the disposition of jurisdictional facilities 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. 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.

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

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