

152 FERC ¶ 62,194

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Blue Cube Operations LLC

Docket No. EC15-168-000

ORDER AUTHORIZING DISPOSITION
OF JURISDICTIONAL FACILITIES

(Issued September 22, 2015)

On July 14, 2015, Blue Cube Operations LLC (Blue Cube or Applicant) filed an application under section 203 of the Federal Power Act (FPA)¹ requesting Commission authorization for the disposition of jurisdictional facilities resulting from a proposed transaction in which The Dow Chemical Company (Dow) will transfer its ownership and control of Blue Cube to Olin Corporation (Olin) (Proposed Transaction). The jurisdictional facilities associated with the Proposed Transaction are Blue Cube's market-based rate tariff, related books and records, and any wholesale sales agreements entered into by Blue Cube pursuant to its market-based rate authorization.

Applicant states that Blue Cube owns approximately 563 megawatts (MW) of generation capacity located in Freeport, Texas, within the Electric Reliability Council of Texas (ERCOT), as well as an undivided 19.86 percent interest in approximately 1,382 MW of electric generation capacity located in Plaquemine, Louisiana, within the Midcontinent Independent System Operator, Inc. (MISO) market.

According to Applicant, all of the generation capacity at both the Freeport and Plaquemine sites has been certified as Qualifying Cogeneration Facilities. Applicant adds that the generation is used primarily to support chemical manufacturing and industrial operations at the Freeport and Plaquemine sites. However, excess energy and capacity is periodically sold to third parties when not required for plant operations. Applicant states that wholesale sales made from the Freeport facilities are made into ERCOT and are not subject to the Commission's jurisdiction. Applicant adds that wholesale sales made from the Plaquemine facilities are subject to the Commission's jurisdiction and have historically been made pursuant to market-based rate authorizations granted to Dow and its wholly owned subsidiary, Dow Pipeline Company.

Applicant states that Blue Cube has been granted market-based rate authority by

¹ 16 U.S.C. § 824b (2012).

the Commission. Applicant adds that Blue Cube intends to rely on such authority to the extent that it elects to make wholesale sales of capacity, energy, or ancillary services from the generation facilities it leases at the Plaquemine site.

According to Applicant, Blue Cube is a wholly owned subsidiary of Dow, a Delaware corporation. Dow and certain of its subsidiaries operate chemical and industrial manufacturing facilities at a number of plant sites in the United States. Applicant states that Dow and certain of its affiliates own generation that they primarily use to support chemical manufacturing and industrial operations at the plant sites where the generation resources are located. Applicant states that other than limited interconnection facilities, neither Dow nor any of its affiliates or subsidiaries own, operate, or control electric transmission facilities in the United States. Likewise, neither Dow nor any of its affiliates or subsidiaries hold a franchise or service territory for the transmission, distribution, or sale of electric power in the United States.

Applicant states that Dow owns certain intrastate natural gas pipeline and storage facilities in Texas, which it uses primarily for aggregating and delivering natural gas supplies to a Dow affiliated industrial complex. Several of Dow's affiliates and subsidiaries also own and operate intrastate natural gas pipeline and storage facilities. Other than such intrastate natural gas facilities, neither Dow nor any of its affiliates or subsidiaries own or control inputs to electric power production, including other intrastate natural gas transportation, intrastate natural gas storage, or distribution facilities sites for potential generation capacity development, physical coal supply sources or ownership or control over who may access transportation of coal supplies.

Applicant states that Olin is a Virginia corporation with its principal executive offices located in Missouri. Olin is not a public utility and is not currently affiliated with any public utility. Likewise, Olin does not own any electric generation or transmission facilities in the United States, nor is it affiliated with any entity that owns, operates, or controls such facilities. Olin also does not hold a franchise or service territory for the transmission, distribution, or sale of electric power in the United States, nor is it affiliated with any entity that holds such a franchise or service territory. Applicant adds that neither Olin nor any of its affiliates or subsidiaries own or control inputs to electric power production at most Olin sites, including: (1) intrastate natural gas transportation, intrastate natural gas storage, or distribution facilities; (2) sites for potential generation capacity development; or (3) physical coal supply sources or ownership or control over who may access transportation of coal supplies. Applicant states that the exceptions to these arrangements are not located in the MISO market, the relevant geographic market for the Proposed Transaction in which the Plaquemine facilities are located.

Applicant states that the details of the Proposed Transaction are set forth in the merger agreement dated March 26, 2015 (Agreement). According to Applicant, the consideration for the Proposed Transaction was the result of arm's length negotiations

among the parties to the Proposed Transaction. As part of the Proposed Transaction, a wholly owned subsidiary of Dow, Blue Cube Spinco Inc. (Spinco) was formed. Applicant states that Spinco will indirectly hold all of Blue Cube's ownership interests, and then Spinco will be merged with a new, wholly owned subsidiary of Olin. Spinco will emerge as the surviving entity and will continue to exist as a wholly owned subsidiary of Olin. Likewise, Blue Cube will continue to exist as a wholly owned indirect subsidiary of both Spinco and Olin.

According to Applicant, the Proposed Transaction is consistent with the public interest and will have no adverse effect on competition, rates, or regulation. Applicant states that the Proposed Transaction raises no concerns with respect to horizontal market power. Neither Olin nor any of its affiliates or subsidiaries currently own generation resources in the United States, therefore Applicant states that there is no generation overlap in the relevant market.

Applicant states that the Proposed Transaction will not have an adverse effect with respect to vertical market power. Applicant states that neither Olin nor any of its affiliates or subsidiaries own or control inputs to electric power production in the MISO market. Applicant adds that neither Olin nor its affiliates own or control any electric transmission facilities in the United States. Further, neither Applicant nor its affiliates own or control any electric transmission facilities in the United States, other than limited interconnection facilities.

According to Applicant, the Proposed Transaction will not have an adverse effect with respect to rates. Applicant states that Blue Cube does not use the generation capacity it owns or controls to serve any wholesale requirements customers under cost-based contracts with formulaic provisions that would automatically track changes in costs resulting from the Proposed Transaction. Likewise, Blue Cube does not provide transmission service to any transmission customers.

Applicant states that the Proposed Transaction will not have an adverse effect with regard to regulation, at either the federal or state level. According to Applicant, Blue Cube will remain subject to Commission jurisdiction to the same extent following completion of the Proposed Transaction.

Applicant states that, based on facts and circumstances known to Applicant or that are reasonably foreseeable, the Proposed Transaction will not, at the time of the closing of the Proposed Transaction or in the future, result in: (i) 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; (ii) 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;

(iii) 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 (iv) any new affiliate contract between a non-utility 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 filing was noticed on July 15, 2015, with comments, protests, or interventions due on or before August 4, 2015. Olin submitted a timely motion to intervene in support of the Proposed Transaction.

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 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).

foregoing authorization may result in a change in status. Accordingly, the Applicants that have market-based rates are advised that they must comply with the requirements of Order No. 652. In addition, Applicant shall make appropriate filings under section 205 of the FPA to implement the Proposed Transaction.

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 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 Proposed Transaction results in changes in the status or upstream ownership of the Applicant's affiliated qualifying facilities, an appropriate filing for recertification pursuant to 18 C.F.R. § 292.207 (2014) shall be made;
- (6) Applicant must inform the Commission of any material change in circumstances that depart 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;
- (7) Applicant shall make appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transaction; and
- (8) Applicant shall notify the Commission within 10 days of the date that the disposition of jurisdictional facilities has been consummated.

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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

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