

156 FERC ¶ 62,235

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSIONFPL Energy Marcus Hook, L.P.
FPL Energy MH50, L.P.
NatGas Holdings 2, L.L.C.

Docket No. EC16-159-000

ORDER AUTHORIZING THE ACQUISITION AND DISPOSITION
OF JURISDICTIONAL FACILITIES

(Issued September 29, 2016)

On July 29, 2016, FPL Energy Marcus Hook, L.P. (Marcus Hook), FPL Energy MH50, L.P. (MH50), and NatGas Holdings 2, L.L.C. (NatGas) (collectively, Applicants) filed an application pursuant to sections 203(a)(1)(A) and 203(a)(2) of the Federal Power Act (FPA)¹ requesting authorization for the disposition of jurisdictional facilities resulting from a change in upstream ownership of Marcus Hook and MH50 (Proposed Transaction). Upon consummation of the Proposed Transaction, NatGas will indirectly, wholly own Marcus Hook and MH50. The jurisdictional facilities affected by the Proposed Transaction consist of generation projects owned by Marcus Hook and MH50, interconnection facilities, associated books, records, contracts, market-based rate tariffs, and reactive supply and voltage control cost-based rate schedules.

Applicants state that the Proposed Transaction may not require Commission approval under FPA section 203(a)(2); however out of an abundance of caution, they nevertheless ask the Commission to authorize the Proposed Transaction. This order authorizes the Proposed Transaction without making any determination of jurisdiction.²

Applicants state that Marcus Hook is a limited partnership under the laws of Delaware. Marcus Hook owns a 786 megawatt (MW) natural gas-fired generation facility located in Marcus Hook, Pennsylvania and in New Castle County, Delaware (Marcus Hook Project). The Marcus Hook Project is interconnected with the PJM Interconnection, L.L.C. (PJM) transmission system, within the PJM East submarket. Marcus Hook is an exempt wholesale generator (EWG) and is authorized to sell energy, capacity, and ancillary services at market-

¹ 16 U.S.C. § 824b (2012).

² See *Ocean State Power*, 47 FERC ¶ 61,321 (1989).

based rates. Applicants state that Marcus Hook has entered into a long-term contract to sell 685 MW of capacity from the facility to Long Island Power Authority. Marcus Hook has a rate schedule for Reactive Supply and Voltage Control from Generation Sources Service from its facility.

Applicants state that MH50 is a limited partnership under the laws of Delaware. MH50 owns a 48 MW natural gas-fired cogeneration facility located in Marcus Hook, Pennsylvania (MH50 Project) within the PJM East submarket and is interconnected with the PJM transmission system,. MH50 is an EWG and is authorized to sell energy, capacity, and ancillary services at market-based rates. MH50 has a rate schedule for Reactive Supply and Voltage Control from Generation Sources Services from its facility.

Applicants state that Marcus Hook is 1 percent owned by FPL Energy MH700, LLC (MH700), its general partner, and 99 percent owned by FPL Energy Marcus Hook LLC (MH LLC), its limited partner. MH700 is wholly owned by MH LLC. MH50 is 1 percent owned by FPL Energy MH50 GP, LLC (MH50 GP), its general partner, and 99 percent owned by FPL Energy MH50 LP, LLC (MH50 LP), its limited partner. Applicants state that Marcus Hook and MH50 are wholly owned, indirect subsidiaries of ESI Energy (Seller), which is wholly-owned by NextEra Energy Resources, LLC (NextEra Resources), which in turn is a wholly owned, indirect subsidiary of NextEra Energy, Inc. (NextEra). NextEra Resources' subsidiaries own or control generating facilities throughout the United States including 792 MW of capacity in addition to the Marcus Hook Project and the MH50 Project.

Applicants also state that NextEra Resources' subsidiaries own various interconnection facilities used solely for connecting generating facilities to the transmission grid. NextEra also owns Florida Power & Light Company (Florida Power), a franchised public utility that provides wholesale and retail electric service to customers in the state of Florida. Additionally, NextEra owns NextEra Energy Transmission, LLC (NEET), which in turn owns New Hampshire Transmission, LLC, a public utility that owns the Seabrook Substation located in Seabrook, New Hampshire. According to Applicants, NEET does not own, control or have under development any transmission facilities in the PJM market other than potential projects pursuant to competitive solicitations.

Applicants state that NatGas is a newly-formed limited liability company under the laws of Delaware and is a wholly owned subsidiary of NatGas Fund Holdings LLC (NatGas Fund), which in turn is wholly owned by SEIF II U.S. Partnership Holdings II, L.L.C. (SEIF II). According to Applicants, at the time the Proposed Transaction closes, NatGas will be approximately 33.3 percent owned by NatGas Fund and approximately 66.7 percent owned by NatGas Co-Invest

Holdings 3, L.P. (NatGas Co-Invest), with the limited partners of NatGas Co-Invest holding passive interest in NatGas with no voting rights. The general partner of NatGas Co-Invest is indirectly managed and controlled by Starwood Energy Group Global, L.L.C. (Starwood Energy). Applicants state that Cornerstone Gas, L.L.C (Cornerstone Gas), a newly-formed limited liability company under the laws of Delaware, is a wholly owned subsidiary of Cornerstone Gas Holdings L.L.C (Cornerstone Holdings), which in turn is wholly owned by NatGas. SEIF II is an indirect subsidiary of funds managed and controlled by Starwood Energy.

Applicants state that through certain entities it controls, Starwood Energy is the sole manager of certain private equity funds that invest in power generation and transmission projects (collectively, Starwood Funds). Investors in the Starwood Funds hold limited partnership interests in the Starwood Funds, either directly or through holding company structures. Applicants state that Starwood Energy is not itself a “public utility” as defined under the FPA; similarly, none of the Starwood Funds is a “public utility.” Instead, Applicants state that the Starwood Funds are investors in various energy-related business entities. According to Applicants, Starwood Energy is a private equity fund, focusing on energy infrastructure investments, including acquiring and holding interests in power generation and transmission projects. Applicants note that Starwood Energy is privately owned and controlled by a group of natural persons (or trusts or similar vehicles for the benefit of one or more individual persons), none of whom directly or indirectly controls or is affiliated with any electric generator or “public utility” other than through the Starwood Funds.

Applicants state that except for two investors, which will own a minority interest, no unaffiliated limited partner investor will hold more than 10 percent equity interest in NatGas and all of the limited partner investors in NatGas will be passive and non-managing. The limited partner investors are expected to have no more than limited voting and consent rights that are customary and necessary to protect their investment interests, such as with respect to incurrence or forgiveness of debt, changes to the business, the disposal of substantially all of the assets, the filing of a petition for bankruptcy, and other actions of a similar business, financial or organizational nature. Accordingly, the indirect passive interests of the limited partner investors in NatGas will not give them any authority to manage, control or direct the day-to-day wholesale power sales or operations of the projects owned by Marcus Hook and MH50. According to Applicants, the limited partner investors are not affiliated with NatGas.

Applicants state that in the PJM market, NatGas is affiliated with Hazleton Generation LLC, a limited liability company under the laws of Delaware that owns and operates a 146 MW natural gas and oil-fired electric generating facility

located in Hazle Township, Luzerne County, Pennsylvania (Hazleton Facility) within the 5004/5005 submarket of PJM. Outside of the PJM market, NatGas is affiliated with generation located in the New York Independent System Operation, Inc., Electric Reliability Council of Texas (ERCOT), California Independent System Operator Corporation markets and the Gainesville balancing authority area.

According to Applicants, pursuant to a Purchase and Sale Agreement, NatGas will purchase from ESI Energy 100 percent of the equity interests in MH LLC, MH50 GP, and MH50 LP. Applicants state that upon consummation of the Proposed Transaction, NatGas will indirectly own 100 percent of the partnership interests in Marcus Hook and MH50. Specifically, NatGas will directly acquire MH50 LP and MH50 GP; and Cornerstone (an indirect subsidiary of NatGas) will directly acquire MH LLC. Upon consummation of the Proposed Transaction, ESI Energy LLC will no longer hold any interests in Marcus Hook and MH50.

Applicants state that the Proposed Transaction is consistent with the public interest and will not adversely affect competition, rates or regulations. With respect to competition, Applicants state that the Proposed Transaction presents no horizontal market power concerns in the PJM market, the relevant market. Applicants state that the only generation capacity currently affiliated with NatGas in the PJM market is the Hazleton Facility located in the 5004/5005 submarket. Following the Proposed Transaction, NatGas and its affiliates will own a total of 979 MW of generating capacity, which represents approximately 0.5 percent of the 178,492 MW of total installed capacity in the PJM market, and 1.7 percent of the 58,479 MW of total installed capacity in the 5004/5005 submarket, which Applicants state is *de minimis*. Therefore, according to Applicants, the Proposed Transaction raises no horizontal market power issues.

Applicants state that the Proposed Transaction presents no vertical market power concerns. Applicants state that neither NatGas nor any of its affiliates own essential inputs to electric power generation such as intrastate natural gas transportation, distribution or storage facilities, or sources of physical coal supplies or the transportation of coal supplies, such as barges and rail cars, in the United States. Applicants state that except for the sites timely reported in site acquisition reports, or sites not subject to the Commission jurisdiction, neither NatGas nor any of its affiliates currently owns or controls any sites for generation capacity in any market. Applicants state that the Proposed Transaction does not involve any transmission facilities, except for the limited and discrete facilities necessary to interconnect the Marcus Hook Project and MH50 Project to the PJM transmission system. Therefore, Applicants assert that the Proposed Transaction presents no vertical market power concerns.

With respect to rates, Applicants state that the Proposed Transaction will have no adverse effect on rates charged to wholesale ratepayers. Applicants state that NatGas does not have any captive wholesale requirement customers. The Proposed Transaction does not involve any transmission rates or transmission customers. Applicants state that wholesale sales from the Marcus Hook Project and MH50 Project will continue to be made at market-based rates. Accordingly, Applicants assert that the Proposed Transaction has no adverse effect on rates.

With respect to regulation, Applicants state that the Proposed Transaction will not affect the ability of the Commission to regulate them or related parties. Following consummation of the Proposed Transaction, the Commission will continue to have the same jurisdiction over Applicants and related parties that it has now. Applicants state no facilities will be removed from the Commission jurisdiction as a result of the Proposed Transaction. According to Applicants, the Proposed Transaction will also have no adverse effect on 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. Additionally, Applicants verify that based on the 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 nor 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 July 29, 2016 with comments, protests or interventions due on or before August 19, 2016. None was filed.

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.

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.

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 of 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

³ *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;

- (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 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 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 (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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