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Donna L. Nelson
Chairman

Kenneth W. Anderson, Jr.
Commissioner

Brian H. Lloyd
Executive Director



Rick Perry
Governor


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PUBLIC UTILITY COMMISSION
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Public Utility Commission of Texas

TO: Donna L. Nelson, Chairman
Kenneth W. Anderson, Jr., Commissioner

All Parties of Record

FROM: Irene Montelongo 
Director, Docket Management

RE: **Open Meeting of June 20, 2013**
Docket No. 41363 – *Application of NRG Texas Gregory LLC Pursuant to Section 39.158 of the Public Utility Regulatory Act*

DATE: May 30, 2013

Enclosed is a copy of the Proposed Order in the above-referenced docket. The Commission will consider this docket at an open meeting presently scheduled to begin at 9:30 a.m. on Thursday, June 20, 2013, at the Commission's offices, 1701 North Congress Avenue, Austin, Texas. The parties shall file corrections or exceptions to the Proposed Order on or before Wednesday, June 12, 2013.

If there are no corrections or exceptions, no response is necessary.

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DOCKET NO. 41363

APPLICATION OF NRG TEXAS § PUBLIC UTILITY COMMISSION
GREGORY LLC PURSUANT TO §
SECTION 39.158 OF THE PUBLIC § OF TEXAS
UTILITY REGULATORY ACT §

PROPOSED ORDER

This Order addresses the application of NRG Texas Gregory LLC (NRG Gregory) for approval of the proposed purchase by NRG Energy, Inc. (NRG), acting by and through its subsidiary NRG Gregory, to acquire all of the general and limited partnership interests of Gregory Power Partners, L.P. (GPP) from Javelin Gregory General Corporation, Gregory Holding #1, LLC, KY Energy Power Gregory #1, Inc., and KY Energy, LLC (collectively, Sellers) (Proposed Purchase). Public Utility Commission of Texas (Commission) Staff recommended approval of the application. The application is approved.

The Commission adopts the following findings of fact and conclusions of law:

I. Findings of Fact

1. On April 9, 2013, NRG Gregory filed an application for approval of the proposed purchase by NRG to acquire all of the general and limited partnership interests of GPP from Sellers.
2. On April 9, 2013, contemporaneously with the application, NRG provided notice of the application to Sellers.
3. On May 3, 2013, the Commission provided notice of the application in the *Texas Register*.
4. NRG, through its registered power generation company affiliates, currently owns multiple power generation facilities in the Electric Reliability Council of Texas (ERCOT) region. They are:

Parish Peaking Unit
Cedar Bayou Units 1 and 2
Cedar Bayou Unit 4 (50% ownership interest)
Elbow Creek Wind
Greens Bayou

Langford Wind
Limestone
San Jacinto
S. R. Bertron
Sherbino Wind (50% ownership interest)
South Texas Project (44% ownership interest)
South Trent Wind
T II Wharton
W.A. Parish

5. GPP owns an approximately 387 MW summer net dependable capability rated natural gas cogeneration facility located in Gregory, Texas, in the ERCOT power region.
6. As a result of the Proposed Purchase, NRG will own all of the general and limited partnership interests of GPP, including the Gregory Power Station.
7. NRG proposed to close the transaction on August 8, 2013, or as soon as possible upon Commission approval of the Proposed Purchase.
8. Following the close of the Proposed Purchase, NRG states that the combined direct and indirectly owned generation of NRG within ERCOT will be 11,473 MW, based on the summer net dependable capability rating of all generation capacity owned and controlled by NRG and its affiliates that is currently connected, or is scheduled to be connected within the next 12 months, with a transmission or distribution system within ERCOT, except for wind resource which are discounted to 8.7% of installed nameplate capacity as per the methodology currently utilized in ERCOT's Capacity, Demand and Reserves Report.
9. Following the close of the Proposed Purchase, NRG states that the combined, direct and indirectly owned generation of NRG within ERCOT will exceed one percent of the total electricity offered for sale in ERCOT, but that NRG will only own approximately 13.7% of the total generating capacity within the ERCOT region, sufficiently below the 20% threshold that could trigger additional review of the Proposed Purchase under § 39.154 of the Public Utility Regulatory Act, TEX. UTIL. CODE. ANN. §§ 11.001-66.016 (Vernon 2007 & Supp. 2012).
10. On May 29, 2013, Commission Staff filed a recommendation that the application be approved. Commission Staff determined that the combined percentage of installed

generation capacity for ERCOT, as shown in Attachment 1 of the application, appears to be calculated according to PURA § 39.154, with input numbers that are compliant with the Commission's substantive rules. Commission Staff determined that the combined percentage share of installed generation capacity of NRG in ERCOT after close of the Proposed Purchase does not exceed the 20% threshold set by PURA § 39.154.

11. Evaluation of the installed generation capacity located in or capable of delivering electricity to ERCOT shows that the electricity directly or indirectly owned and offered for sale in ERCOT by NRG following the close of the Proposed Purchase is below the 20% limitation in PURA § 39.154 pursuant to the calculations under P.U.C. SUBST. R. 25.91 and 25.401.

II. Conclusions of Law

1. The Commission has jurisdiction over the Proposed Purchase pursuant to PURA § 39.158, which requires an owner of electric generation facilities proposing to merge, consolidate, or affiliate with another owner of electric generation facilities to obtain Commission approval before closing if the electricity offered for sale by the merged, consolidated, or affiliated entity will exceed one percent of the total electricity for sale in the power region.
2. Notice of the application was provided in compliance with P.U.C. PROC. R. 22.54(a) and 22.55.
3. PURA § 39.158 provides that the Commission shall approve the Proposed Purchase unless it finds that the transaction results in a violation of PURA § 39.154.
4. PURA § 39.154 provides that a power generation company may not own and control more than 20% of the installed generation capacity located in or capable of delivering electricity to a power region. The relevant power region, for purposes of this analysis is ERCOT.
5. NRG has met the requirements for approval of the Proposed Purchase, having demonstrated that the proposed acquisition of 100% of the general and limited liability partnership interests of GPP will not result in NRG's ownership and control of more than

20% of the installed generation capacity located in or capable of delivering electricity to ERCOT pursuant to PURA § 39.154.

6. The application does not constitute a major rate proceeding as defined in P.U.C. PROC. R. 22.2(27).
7. The requirements for informal disposition pursuant to P.U.C. PROC. R. 22.35 have been met in this proceeding.

III. Ordering Paragraphs

In accordance with the findings of fact and conclusions of law, the Commission issues the following Order

1. The application of NRG Texas Gregory LLC for NRG Energy, Inc.'s purchase of the general and limited partnership interests of Gregory Power Partners, L.P. is approved.
2. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other requests for general or specific relief, if not expressly granted herein, are denied.

SIGNED AT AUSTIN, TEXAS the _____ day of June 2013.

PUBLIC UTILITY COMMISSION OF TEXAS

DONNA L. NELSON, CHAIRMAN

KENNETH W. ANDERSON, JR., COMMISSIONER