

DOCKET NO. 46214

APPLICATION OF WESTERN
GENERATION PARTNERS, LLC,
PURSUANT TO SECTION 39.158
OF THE PUBLIC UTILITY
REGULATORY ACT

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PUBLIC UTILITY COMMISSION
OF TEXAS

PROPOSED ORDER

This Order addresses Western Generation Partners, LLC's (Western Generation) application for approval of the purchase of 100 percent of the ownership interests in the Borger Facility, a 230 MW gas-fired plant located near Borger, Texas in the Southwest Power Pool power region (SPP). Western Generation is a joint venture among Harbert Power Fund V, LLC (HPF V), UBS Asset Management Funds Ltd (UBSI), and The Northwestern Mutual Life Insurance Company (NML). 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

Procedural History, Description, and Background

1. On July 26, 2016, pursuant to §§ 39.154 and 39.158 of the Public Utility Regulatory Act (PURA),¹ Western Generation filed an application for approval of the purchase of 100 percent of the ownership interests in the Borger Facility, a 230 MW gas-fired plant located near Borger, Texas in SPP (hereafter, the transaction).
2. The Borger Facility is wholly owned by Borger Energy Associates, L.P., a registered power generation company (PGC) with the Commission. Borger Energy Associates, L.P. is a wholly owned subsidiary of First Reserve Energy Infrastructure Fund (seller).
3. HPF V, UBSI and NML have formed Western Generation, a joint venture holding company that will own, indirectly, 100 percent of the membership interests in a Delaware limited liability company to be formed that will act as the buyer under a

¹ Public Utility Regulatory Act, Tex. Util. Code Ann. §§ 11.001-58.303 (West 2016), §§ 59.001-66.017 (West 2007 & Supp. 2015) (PURA).

- Purchase and Sale Agreement, which will govern the terms and conditions of the transaction.
4. Pursuant to the terms of the transaction, seller will convey 100 percent indirect ownership interest in the Borger Facility to Western Generation.
 5. UBSI and NML, through subsidiaries, own electric generation facilities in Texas that offer electricity for sale in the state. As a result of the transaction, Western Generation will also acquire a 604 MW gas-fired generation facility located outside of Texas but within SPP.
 6. As provided by Western Generation, following the close of the transaction and after taking into account the percentage equity ownership interests and capacity factors for the different types of installed generation capacity, the current aggregate installed generation capacity that will be owned, controlled, or capable of delivering electricity to the SPP region attributable to Western Generation totals approximately 865 MW, or approximately 1.15 percent of the total generation capacity in SPP.
 7. The total installed capacity in SPP is 75,458 MW.²
 8. Western Generation states that its percentage share of installed generation capacity in the SPP power region following the close of the transaction will be below the 20 percent threshold set by PURA § 39.154.
 9. On September 14, 2016, Commission Staff filed its recommendation that Western Generation's application be approved.
 10. Commission Staff determined that the combined percentage of installed generation capacity of Western Generation, including its affiliates, is in accordance with PURA § 39.154, with input numbers that are compliant with the Commission's substantive rules. Commission Staff determined that the calculated combined percentage share of the installed capacity of Western Generation after the close of the transaction will not exceed the 20 percent threshold set by PURA § 39.154.
 11. Reasonable evaluations of the installed generation capacity located in or capable of delivering electricity to SPP show that the total electricity directly or indirectly owned and offered for sale in SPP by Western Generation following the close of

² See *State of the Market*, SPP Market Monitoring Unit 22 (Aug. 24, 2015), <https://www.spp.org/documents/29399/2014%20state%20of%20the%20market%20report.pdf>.

- the transaction is below the 20 percent threshold set by PURA § 39.154, pursuant to the calculations under 16 Tex. Admin. Code §§ 25.91 and 25.401 (TAC).
12. Western Generation proposes to close the transaction upon receipt of all required approvals.
 13. No parties intervened in this case.
 14. On September 21, 2016, Western Generation filed a Joint Proposed Order of Approval and Request to Admit Evidence.
 15. On October 3, 2016, Order No. 3 was issued, admitting evidence into the record of this proceeding.

Notice

16. On July 26, 2016, contemporaneously with the filing of the application, Western Generation provided notice of the application to the seller.
17. On August 12, 2016, notice of the application was published in the *Texas Register*.

Informal Disposition

18. More than 15 days have passed since completion of notice provided in this docket.
19. No protests, motions to intervene, or requests for hearing were filed in this docket.

II. Conclusions of Law

1. The Commission has jurisdiction over the proposed transaction pursuant to PURA §§ 39.154 and 39.158.
2. Notice of application was provided in compliance with 16 TAC §§ 22.54(a) and 22.55.
3. PURA § 39.158 provides that the Commission shall approve the transaction unless it finds that the proposed 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 percent 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 SPP.
5. Western Generation has met the requirements for approval of the transaction, having demonstrated that the proposed transaction will not result in the combined ownership and control of more than 20 percent of the installed capacity located in or capable of delivering to SPP, pursuant to PURA § 39.154.

6. This application does not constitute a major rate proceeding as defined in 16 TAC § 22.2(27).
7. The requirements for informal disposition pursuant to 16 TAC § 22.35 have been met in this proceeding.

III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders:

1. The application is approved.
2. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other request for general or specific relief, if not expressly granted herein, are denied.

Signed at Austin, Texas the _____ day of October 2016.

PUBLIC UTILITY COMMISSION OF TEXAS

DONNA L. NELSON, CHAIRMAN

KENNETH W. ANDERSON, JR., COMMISSIONER

BRANDY MARTY MARQUEZ, COMMISSIONER