

DOCKET NO. _____

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

§
§
§
§

PUBLIC UTILITY COMMISSION
OF TEXAS

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

TO THE HONORABLE CHAIRMAN AND COMMISSIONERS OF THE PUBLIC UTILITY
COMMISSION OF TEXAS:

Pursuant to Sections 39.158 and 39.154 of the Public Utility Regulatory Act ("PURA"),¹ Western Generation Partners, LLC ("Applicant"), a newly formed joint venture among Harbert Power Fund V, LLC ("HPF V"), UBS Asset Management Funds Ltd ("UBSI"), and The Northwestern Mutual Life Insurance Company ("NML"), submits this application for approval of the proposed transaction pursuant to which Applicant will acquire 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") (hereafter, the "Transaction").

I. Introduction

The Borger Facility, a 230 MW gas-fired plant located near Borger, Texas and providing power to Southwestern Public Service Company under a long term power purchase agreement, is wholly owned by Borger Energy Associates, L.P., a registered power generation company ("PGC") with the Commission.² Borger Energy Associates, L.P. is a wholly owned subsidiary of First Reserve Energy Infrastructure Fund ("Seller"). HPF V, UBSI and NML (the "JV Members") have formed Western Generation Partners, LLC, 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 Purchase and Sale Agreement, which will govern the terms and conditions of the Transaction.

¹ Public Utility Regulatory Act, Tex. Util. Code Ann. §§ 11.001-66.016 ("PURA").

² See Docket No. 40131, Notice of Approval (Feb. 3, 2012) (assigning Borger Energy Associates, L.P. registration number 20282).

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, Applicant will also acquire a 604 MW gas-fired generation facility located outside of the state but within SPP. Because the combined capacity owned by the Applicant and its affiliates after the Transaction will exceed one percent of the electricity offered for sale in SPP, the Applicant must obtain the Commission's prior approval before entering into the Transaction.

The Transaction will not result in a violation of the installed capacity share limitations of PURA Section 39.154, which under PURA Section 39.158(a) is the only issue relevant to the Commission's approval of this application. As shown in Applicant's Attachment A, following the consummation of the Transaction, Applicant will own approximately 1.15 percent of the total generating capacity within SPP – significantly below the twenty percent threshold that could trigger additional review by the Commission pursuant to PURA Section 39.154.³ Accordingly, Applicant respectfully requests that the Commission waive the PURA Section 39.158(a) requirement that an application must be filed 120 days before the proposed closing date and grant its approval of the Transaction on an expedited basis, in accordance with the schedule provided below.⁴

II. Jurisdiction and Applicable Legal Standards

Section 39.158 of PURA provides in part that an "owner of electric generation facilities that offers electricity for sale in the state and proposes to merge, consolidate, or otherwise become affiliated with another owner of electric generation facilities that offers electricity for sale in this state shall obtain the approval of the commission before closing if the electricity offered for sale in the power region by the merged, consolidated, or affiliated entity will exceed one percent of the total

³ As also shown in Attachment A, post-Transaction the Applicant will have a direct or indirect ownership interest in approximately 0.95 percent of the total generating capacity within the Electric Reliability Council of Texas power region ("ERCOT") and therefore Applicant is not required to provide a Section 39.154 analysis for that region.

⁴ The Commission has previously approved on an expedited basis applications for similar transactions *See e.g., NRG Texas Gregory LLC*, Docket No. 41363 (2013) (transaction resulting in applicant's ownership of 13.7% of total generating capacity in ERCOT approved in 72 days).

electricity for sale in the power region."⁵ In the event that the one percent threshold is exceeded, the Commission upon review "shall approve the transaction unless the commission finds that the transaction results in a violation of Section 39.154."⁶ Section 39.154, in turn, forbids a PGC and any entity that is affiliated with the PGC to "own and control more than 20 percent of the installed generation capacity located in, or capable of delivering electricity to, a power region."⁷

As noted above, the Applicant has concluded that, after closing the Transaction, the combined ownership interests of it and its affiliates will exceed the one percent threshold found in Section 39.158, as applied to SPP. The Transaction satisfies the requirements of Section 39.154 as the 20 percent threshold has not been met.

III. Facts

Pursuant to the terms of the Transaction, Seller will convey 100 percent indirect ownership interests in the Borger Facility to the Applicant. As a result of the Transaction, Applicant will indirectly own 100 percent of the Borger Facility. In addition, the Applicant, through its members and their respective affiliates and subsidiaries, either directly or indirectly owns interest in electricity generation assets in SPP. Post-Transaction, the Applicant will directly or indirectly own interest in approximately 865 MW of capacity located in or capable of delivering electricity to SPP.

Attachment A lists the relevant post-Transaction generation capacity ownership interests that will be held by the Applicant and its affiliates by generation facility. Capacity calculations for Applicant and its affiliates are from the SPP Market Monitoring Unit's Annual State of the Market dated August 24, 2015 ("State of the Market Report"), and the Commission's Staff Estimate of Installed Generation Capacity in ERCOT filed in Project No. 39870 dated February 17, 2016 and reflect changes adopted by ERCOT in NPRR 611. As noted in the Staff's spreadsheet, wind

⁵ PURA § 39.158.

⁶ *Id.*

⁷ PURA § 39.154. Subsection (d) of PURA §39.154 also provides that "installed generation capacity" refers to "potentially marketable capacity," and specifies that this includes generation connected to a transmission or distribution system, generation used for the person owning or controlling the generation facility, and generation facilities that will be connected to a transmission or distribution system within 12 months.

generation capacity is calculated by applying a 12% capacity factor to the nameplate capacity of non-coastal wind generation and a 56% capacity factor to coastal wind generation. The listed capacity numbers attributed to the Applicant and its affiliates are conservative in that they include passive interests in the listed projects.

According to the SPP State of the Market Report, the total installed generation capacity in SPP is 75,458 MW. After taking into account the percentage equity ownership interests and capacity factors for the different types of installed generation capacity owned, the current aggregate installed generation capacity that will be owned and controlled in, or capable of delivering electricity to SPP attributable to Applicant and its affiliates is 865 MW. This represents approximately 1.15% of the total generation capacity in SPP, which is well below the twenty percent threshold in PURA Section 39.154.

IV. Parties

The authorized representative of Western Generation Partners, LLC for filing and service of all pleadings and other documents in this docket is:

Kevin Lipson
State Bar No. 24099421
John Bridge
Hogan Lovells US LLP
700 Louisiana Street, Suite 4300
Houston, TX 77002
Tel: 713/632-1400
Fax: 713/632 1401
kevin.lipson@hoganlovells.com
john.bridge@hoganlovells.com

V. Relief Requested

Based on the foregoing, Applicant respectfully requests the Commission approve this application pursuant to Section 39.158 and 39.154 of PURA. The Applicant proposes to close the Transaction on or around September 30, 2016, or as soon as possible following the acquisition of all necessary regulatory approvals, including Commission approval.

Section 39.158 requires that the Commission "shall approve the transaction unless the Commission finds that the transaction results in a violation of Section 39.154." The Applicant respectfully requests that the Commission approve the Transaction as expeditiously as possible to enable the Applicant to timely meet the Transaction's accelerated closing requirements. To that end, Applicant includes in Attachment A detailed information, supported by affidavit, regarding the amount of installed capacity that will be owned and controlled by the Applicant and its affiliates in the relevant power regions. The information provided in this application clearly demonstrates that the Applicant's combined capacity share after the closing will not exceed the twenty percent limitation in Section 39.154 in any affected power region following the closing of the Transaction. Because the relevant inquiry under PURA is limited to that issue and the relevant facts and law are clear, expedited consideration of this application is warranted.

VI. Procedures

a. Notice

Consistent with prior applications of this nature, notice should be published in the *Texas Register* to provide public notice regarding this application. A proposed public notice is attached hereto as Attachment B. Moreover, since the only other party affected by this application is Seller, the Applicant is providing a copy of this application to Seller contemporaneously with its filing.

b. Procedural Schedule

Because the factual inquiry related to this application is limited, and the Applicant and the other Transaction parties desire to close the Transaction as soon as possible, the Applicant respectfully requests that this application be processed pursuant to the following schedule:

Item	Date
Staff comments on sufficiency of notice	August 3, 2016
Deadlines for motions to intervene, intervenor comments, and intervenor requests for a hearing	August 17, 2016
Deadline for Staff recommendation and any Staff request for a hearing	August 24, 2016

Deadline for Applicant Response to intervenor requests and/or Staff recommendations or requests	August 31, 2016
Deadline for proposed order draft, including findings of fact, conclusions of law, and ordering paragraphs	September 12, 2016

The proposed schedule allows sufficient time for notice, intervention (if any), Staff review of the calculations submitted herein, filing a proposed order, and allows for further procedures in the unlikely event that the Application is contested.

The Applicant respectfully requests that the Commission issue the proposed notice and adopt the proposed schedule set forth in this Application, accept this Application for approval of the Transaction pursuant to Section 39.158 of PURA, enter a finding that the Transaction will not result in a violation of Section 39.154 of PURA, and expeditiously approve the proposed Transaction, and award all other relief to which the Applicant may be entitled.

Respectfully submitted,



Kevin Lipson
State Bar No. 24099421
Hogan Lovells US LLP
700 Louisiana Street, Suite 4300
Houston, TX 77002
Tel: 713/632-1400
Fax: 713/632 1401
kevin.lipson@hoganlovells.com

CERTIFICATE OF SERVICE

I, Kevin Lipson, hereby certify that a true and correct copy of this Application of Western Generation Partners, LLC, Pursuant to Section 39.158 of The Public Utility Regulatory Act was served on all parties of interest on this 25th day of July, 2016, by hand-delivery, facsimile, electronic mail and/or First Class, U.S. Mail.



Kevin Lipson

ATTACHMENT A

INSTALLED CAPACITY OF APPLICANT AND IT AFFILIATES

I. Total installed capacity located in, or capable of delivering electricity to, SPP of Applicant and its affiliates following the Transaction:

Facility	Power Region⁸	Ownership %	Generation Type	Nameplate Capacity	Capacity
Borger	SPP	100%	Natural Gas	230 MW	230 MW
Hobbs	SPP	100%	Natural Gas	604 MW	604 MW
Spinning Spur II	SPP	50%	Wind	161 MW	10 MW
Caprock Wind	SPP	23.3%	Wind	80 MW	2.3 MW
Sweetwater Wind 2	ERCOT	20.8%	Wind	91.5 MW	2.3 MW
Sweetwater Wind 3	ERCOT	19%	Wind	135 MW	3.1 MW
Buffalo Gap Holdings	ERCOT	11.2%	Wind	120.6 MW	2 MW
Buffalo Gap Holdings 2	ERCOT	8%	Wind	232.5 MW	2.2 MW
Barney Davis	ERCOT	0.5%	Natural Gas	964 MW	5 MW
Laredo	ERCOT	0.5%	Natural Gas	181 MW	1 MW
Nueces Bay 7	ERCOT	0.5%	Natural Gas	648 MW	3.2 MW

Total Installed Generation Capacity Located in, or Capable of Delivering Electricity to, SPP: 75,458 MW

Post-Transaction Total Installed Generation Capacity Owned by Applicant and its affiliates Located in or Capable of Delivering Electricity to SPP: 865 MW

Post-Transaction Percentage Share of Installed Generation. Capacity in, or Capable of Delivering Electricity to, SPP Owned by Applicant and its affiliates: 1.15 %

⁸ Consistent with Commission precedent, we assume that generation in ERCOT is theoretically capable of being delivered into SPP through the direct current ("DC") interconnections between ERCOT and SPP, capped at the maximum capacity of the 2015 ERCOT Capacity, Demand, and Reserves Report value for the DC ties (820 MW).

II. Total installed capacity located in, or capable of delivering electricity to, ERCOT of Applicant and its affiliates following the Transaction:

Facility	Power Region ⁹	Ownership %	Generation Type	Nameplate Capacity	Capacity
Borger	SPP	100%	Natural Gas	230 MW	230 MW
Hobbs	SPP	100%	Natural Gas	604 MW	604 MW
Spinning Spur II	SPP	50%	Wind	161 MW	10 MW
Caprock Wind	SPP	23.3%	Wind	80 MW	2.3 MW
Sweetwater Wind 2	ERCOT	20.8%	Wind	91.5 MW	2.3 MW
Sweetwater Wind 3	ERCOT	19%	Wind	135 MW	3.1 MW
Buffalo Gap Holdings	ERCOT	11.2%	Wind	120.6 MW	2 MW
Buffalo Gap Holdings 2	ERCOT	8%	Wind	232.5 MW	2.2 MW
Barney Davis	ERCOT	0.5%	Natural Gas	964 MW	5 MW
Laredo	ERCOT	0.5%	Natural Gas	181 MW	1 MW
Nueces Bay 7	ERCOT	0.5%	Natural Gas	648 MW	3.2 MW

Total Installed Generation Capacity Located in, or Capable of Delivering Electricity to, ERCOT: 90,765 MW

Post-Transaction Total Installed Generation Capacity Owned by Applicant and its affiliates Located in or Capable of Delivering Electricity to ERCOT: 862.3 MW

Post-Transaction Percentage Share of Installed Generation. Capacity in, or Capable of Delivering Electricity to, ERCOT Owned by Applicant and its affiliates: .95 %

⁹ Consistent with Commission precedent, we assume that generation in SPP is theoretically capable of being delivered into ERCOT through the direct current ("DC") interconnections between ERCOT and SPP, capped at the maximum capacity of the 2015 ERCOT Capacity, Demand, and Reserves Report value for the DC ties (820 MW). In light of this cap, the post-Transaction total installed generation capacity owned by Applicant and its affiliates located in or capable of delivering electricity to ERCOT is 2.7 MW less than the total installed generation capacity owned by Applicant and its affiliates located in or capable of delivering electricity to SPP.

Alabama
Jefferson County

AFFIDAVIT OF Douglas McCrary

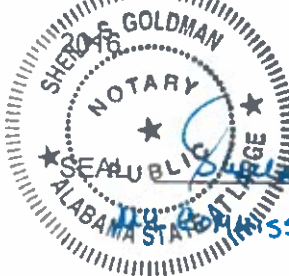
BEFORE ME, the undersigned authority, on this day personally appeared the undersigned, who, after being duly sworn, stated on his oath that he is entitled to make his affidavit, and that the statements contained below are true and correct.


"My name is Douglas McCrary. I am the Director of Investments. My business address is 2100 Third Avenue North, Birmingham, AL 35203. All statements made herein are based upon personal knowledge gained in the course of my employment.

I am familiar with the factual statements contained in the foregoing Application of Western Generation Partners, LLC pursuant to Sections 39.158 and 39.154 of the Public Utility Regulatory Act. To the best of my information, knowledge and belief, the factual statements contained therein concerning the capacity owned by Harbert Power Fund V, LLC and its affiliates are true and correct. The opinions expressed therein, based upon my professional knowledge and judgment, also are true and correct."


Douglas McCrary

Subscribed and sworn before me, a notary of the State of Alabama, this 25 th day of July.




Sherman S. Goldman
COMMISSION EXPIRES 6/14/18

New York
299 Park Avenue
New York, NY 10171

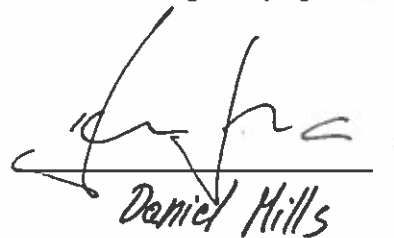
AFFIDAVIT OF DANIEL MILLS

BEFORE ME, the undersigned authority, on this day personally appeared the undersigned, who, after being duly sworn, stated on his oath that he is entitled to make his affidavit, and that the statements contained below are true and correct.

"My name is Daniel Mills. I am an Authorized Representative. My business address is 299 Park Avenue, New York NY 10171. All statements made herein are based upon personal knowledge gained in the course of my employment.

I am familiar with the factual statements contained in the foregoing Application of Western Generation Partners, LLC pursuant to Sections 39.158 and 39.154 of the Public Utility Regulatory Act. To the best of my information, knowledge and belief, the factual statements contained therein concerning the capacity owned by UBS Asset Management Funds Ltd and its affiliates are true and correct. The opinions expressed therein, based upon my professional knowledge and judgment, also are true and correct."

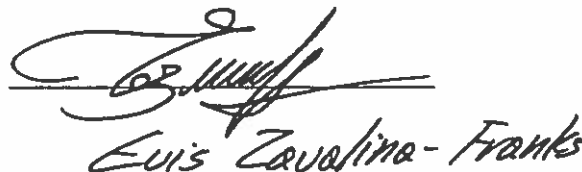
EVIS ZAVALINA-FRANKS
Notary Public - State of New York
No. 01ZA6278651
Qualified in New York County
My Commission Expires Mar. 25, 2017



Daniel Mills

Subscribed and sworn before me, a notary of the State of New York, this 25th day of July, 2016.

SEAL



Evis Zavolina-Franks

New York
299 Park Avenue
New York, NY 10171

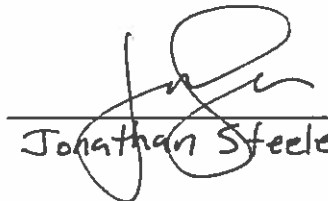
AFFIDAVIT OF JONATHAN STEELE

BEFORE ME, the undersigned authority, on this day personally appeared the undersigned, who, after being duly sworn, stated on his oath that he is entitled to make his affidavit, and that the statements contained below are true and correct.

"My name is Jonathan Steele. I am an Authorized Representative. My business address is 299 Park Avenue, New York NY 10171. All statements made herein are based upon personal knowledge gained in the course of my employment.

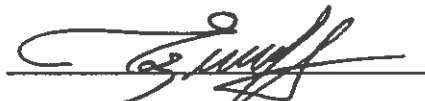
I am familiar with the factual statements contained in the foregoing Application of Western Generation Partners, LLC pursuant to Sections 39.158 and 39.154 of the Public Utility Regulatory Act. To the best of my information, knowledge and belief, the factual statements contained therein concerning the capacity owned by UBS Asset Management Funds Ltd and its affiliates are true and correct. The opinions expressed therein, based upon my professional knowledge and judgment, also are true and correct."

EVIS ZAVALINA-FRANKS
Notary Public - State of New York
No. 01ZA6278651
Qualified in New York County
My Commission Expires Mar. 25, 2017


Jonathan Steele

Subscribed and sworn before me, a notary of the State of New York, this 25th day of July, 2016.

SEAL


Evis Zavallina-Franks

Wisconsin
Milwaukee County

AFFIDAVIT OF Howard Stern

BEFORE ME, the undersigned authority, on this day personally appeared the undersigned, who, after being duly sworn, stated on his oath that he is entitled to make his affidavit, and that the statements contained below are true and correct.

"My name is Howard Stern. I am a Managing Director of Northwestern Mutual Investment Management Company, LLC, investment adviser to (and subsidiary of) The Northwestern Mutual Life Insurance Company. My business address is 720 East Wisconsin Avenue, Milwaukee, Wisconsin 53202. All statements made herein are based upon personal knowledge gained in the course of my employment.

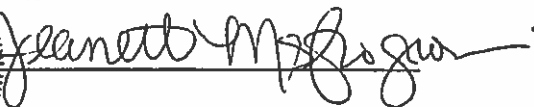
I am familiar with the factual statements contained in the foregoing Application of Western Generation Partners, LLC pursuant to Sections 39.158 and 39.154 of the Public Utility Regulatory Act. To the best of my information, knowledge and belief, the factual statements contained therein concerning the capacity owned by The Northwestern Mutual Life Insurance Company and its affiliates are true and correct. The opinions expressed therein, based upon my professional knowledge and judgment, also are true and correct."



Howard Stern



Subscribed and sworn before me, a notary of the State of Wisconsin, this 25th day of July, 2016.



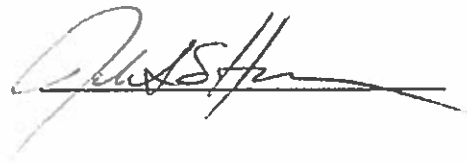
First Reserve Energy Infrastructure Fund, L.P.
c/o First Reserve Energy Infrastructure GP Limited
600 Travis Street
Suite 6000
Houston, TX 77002

AFFIDAVIT OF ROBERT S. HANNA

BEFORE ME, the undersigned authority, on this day personally appeared the undersigned, who, after being duly sworn, stated on his oath that he is entitled to make his affidavit, and that the statements contained below are true and correct.

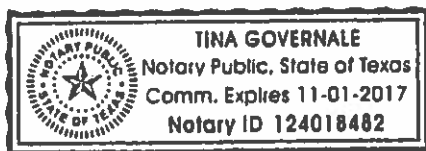
"My name is Robert S. Hanna. I am the Asset Manager of First Reserve Energy Infrastructure GP Limited, the general partner of First Reserve Energy Infrastructure Group, L.P., which is the general partner of First Reserve Energy Infrastructure Fund, L.P. My business address is 600 Travis Street, Suite 6000, Houston, TX 77002. All statements made herein are based upon personal knowledge gained in the course of my employment.

I am familiar with the factual statements contained in the foregoing Application of Western Generation Partners, LLC pursuant to Sections 39.158 and 39.154 of the Public Utility Regulatory Act. To the best of my information, knowledge and belief, the factual statements contained therein concerning the capacity owned by First Reserve Energy Infrastructure Fund and its affiliates are true and correct. The opinions expressed therein, based upon my professional knowledge and judgment, also are true and correct."



Subscribed and sworn before me, a notary of the State of Texas, this 25th day of July, 2016.

SEAL



ATTACHMENT B

PUBLIC UTILITY COMMISSION OF TEXAS NOTICE OF APPLICATION FOR SALE, TRANSFER OR MERGER PURSUANT TO SECTION 39.158 OF THE PUBLIC UTILITY REGULATORY ACT

Notice is hereby given to the public of an application for sale, transfer, or merger filed with the Public Utility Commission of Texas (the "Commission") on July XX, 2016 pursuant to the Section 39.158 of the Public Utility Regulatory Act, Tex. Util. Code Ann. §§ 39.158 (PURA).

Docket Style and Number: Application of Western Generation Partners, LLC for Approval Pursuant to Section 39.158 of the Public Utility Regulatory Act, Docket No. _____.

The Application: Western Generation Partners, LLC ("Applicant") seeks approval of the proposed purchase by Applicant, of a one hundred percent (100%) undivided ownership interest in the Borger Facility, a 230 MW gas-fired plant located near Borger, Texas in the Southwest Power Pool power region (the "Facility") (the proposed purchase is hereinafter referred to as the "Transaction"). Currently, one hundred percent (100%) of the Facility is owned by First Reserve Energy Infrastructure Fund. After closing, Applicant will indirectly own 100 percent of the Borger Facility. After the Transaction, the combined direct and indirect generation ownership of Applicant and its affiliates will equal 865 MW, which exceeds one percent of the generation ownership in the Southwest Power Pool power region ("SPP").

Applicant is required to obtain Commission approval before closing the Transaction if the electricity to be offered for sale in SPP will exceed one percent of the total electricity for sale in SPP. The Commission shall approve the Transaction unless the Commission finds that the Transaction results in violation of Section 39.154 of PURA. Under Section 39.154, 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 SPP. Applicant asserts following the consummation of the Transaction, the aggregate direct and indirect generation interests in or capable of delivery into SPP directly or indirectly owned by the Applicant and its affiliates, subject to assumptions with regard to delivery capacity and generation calculations consistent with Commission policy, will not be more than 865 MW, which does not exceed the 20% threshold in § 39.154 of PURA.

Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the Commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the Commission at (512) 9367136 or use Relay Texas (toll free) 1-800-735-2989. All correspondence should refer to Docket No. _____.

