



Control Number: 46214



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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  
PUBLIC UTILITY COMMISSION  
FILING CLERK

**JOINT PROPOSED ORDER OF APPROVAL AND REQUEST TO ADMIT EVIDENCE**

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

Western Generation Partners, LLC ("Western Generation"), on behalf of itself and Staff of the Public Utility Commission of Texas ("Commission"), submits this Joint Proposed Order of Approval and Request to Admit Evidence, including findings of facts, conclusions of law, and ordering paragraphs. This Joint Proposed Order is timely filed on or before September 30, 2016, consistent with Order No. 2.

**I. Request to Admit Evidence**

The parties jointly request to admit the following evidence into the record of this proceeding: (a) Application of Western Generation Partners, LLC for Approval Pursuant to Section 39.158 of the Public Utility Regulatory Act and all attachments thereto, filed July 26, 2016, (b) Notice of the Application published in the *Texas Register* on August 12, 2016; and (c) Commission Staff's Final Recommendation and all attachments thereto, filed September 14, 2016.

**II. Joint Proposed Order of Approval**

The Joint Proposed Order of Approval would grant approval of Western Generation's proposed acquisition 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. Western Generation is a joint venture among Harbert Power Fund V, LLC, UBS Asset Management Funds Ltd, and The Northwestern Mutual Life Insurance Company.

**III. Conclusion**

Staff has reviewed the Application and recommends its approval. The Docket was processed in accordance with applicable statutes and Commission rules. Proper notice of the Application was provided to interested parties, and no protests, motions to intervene, or requests for hearing were filed. The parties therefore respectfully request that the Commission adopt the attached Joint Proposed Order of Approval and admit certain evidence in the record.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I, Kevin Lipson, hereby certify that a true and correct copy of this Application of Western Generation Partners, LLC, pursuant to § 39.158 of The Public Utility Regulatory Act was served on all parties of interest on this 10<sup>th</sup> day of September, 2016, by hand-delivery, facsimile, electronic mail and/or First Class, U.S. Mail.



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Kevin Lipson

**Attachment 1**

**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**

**JOINT PROPOSED ORDER OF APPROVAL**

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 hereby 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"),<sup>1</sup> 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").

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

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 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 the state 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.<sup>2</sup>
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

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<sup>2</sup> 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>.

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 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 \_\_, 2016, the ALJ issued Order No. \_\_, admitting the following evidence into the record of this proceeding: (a) Application of Western Generation Partners, LLC for Approval Pursuant to Section 39.158 of the Public Utility Regulatory Act and all attachments thereto, filed July 26, 2016, (b) Notice of the Application published in the *Texas Register* on August 12, 2016, and (c) Commission Staff's Final Recommendation and all attachments thereto, filed September 14, 2016.

**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 July 28, 2016, the Commission provided notice of the Application in the *Texas Register*.
18. On August 12, 2016, notice of the Application was published in the *Texas Register*.
19. No protests, motions to intervene or requests for hearing were filed in this docket; therefore, no hearing was necessary.

## **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 the findings of fact and conclusions of law, the Commission issues the following Order:

1. The Application for approval of the proposed Transaction is granted.
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**

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**DONNA L. NELSON, CHAIRMAN**

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**KENNETH W. ANDERSON, JR., COMMISSIONER**

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**BRANDY MARTY MARQUEZ, COMMISSIONER**