

**160 FERC ¶ 62,186**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSIONPublic Service Company of New Hampshire
FPL Energy Wyman IV LLC

Docket No. EC17-132-000

ORDER AUTHORIZING CONSOLIDATION OF
JURISDICTIONAL FACILITIES

(Issued August 28, 2017)

On June 21, 2017, Public Service Company of New Hampshire (PSC New Hampshire) and FPL Energy Wyman IV LLC (FPL Wyman IV) (together, Applicants) filed an application pursuant to section 203(a)(1)(B) of the Federal Power Act (FPA)¹ requesting authorization for a transaction whereby PSC New Hampshire will sell its 3.1433 percent undivided ownership interest as a tenant in common in W.F. Wyman Station – Unit 4 (Wyman 4 Station) and associated jurisdictional facilities to FPL Wyman IV (Proposed Transaction). The jurisdictional facilities involved in the Proposed Transaction consist of interconnection facilities and various books and records.

Applicants state that Wyman 4 Station is an approximately 620 megawatt (MW) oil-burning generation plant located in Yarmouth, Maine and interconnected to ISO New England Inc. (ISO-NE) through Central Maine Power Company's system. FPL Wyman IV controls the output of Wyman 4 Station, which is operated by a subsidiary of NextEra Energy Resources, LLC. Besides Applicants, various other entities hold ownership interests in Wyman 4 Station.

According to Applicants, PSC New Hampshire is an electric utility regulated by the New Hampshire Public Utilities Commission (New Hampshire Commission) that serves residential, commercial, and industrial customers in parts of New Hampshire. PSC New Hampshire currently owns approximately 1,200 MW of generation facilities in the ISO-NE market. Applicants note that New Hampshire Commission has directed PSC New Hampshire to divest its remaining generation in order to comply with the state law restructuring requirements. PSC New Hampshire's transmission facilities are operated by ISO-NE pursuant to the ISO-NE Transmission, Markets and Services Tariff (ISO-NE Tariff). Applicants state that PSC New Hampshire has market-based rate authority but does not have any captive wholesale power customers. PSC New Hampshire is a direct, wholly owned subsidiary of Eversource Energy, a publicly traded public utility holding

¹ 16 U.S.C. § 824b (2012).

company.

Applicants state that FPL Wyman IV holds an 84.3461 percent undivided ownership interest as a tenant in common in the Wyman 4 Station and owns a 16.2 MW battery storage unit that is co-located at the Wyman 4 Station. FPL Wyman IV is a wholly owned subsidiary of NextEra Energy Resources, LLC (NextEra Resources), which in turn is a wholly owned subsidiary of NextEra Energy, Inc. (NextEra), a publicly traded corporation.

Applicants represent that NextEra Resources is the competitive power subsidiary of NextEra. NextEra Resources owns or operates merchant generating facilities in the United States and Canada with a combined gross generating capacity of approximately 20,000 MW, with approximately 2,127 MW located within the ISO-NE market. Subsidiaries of NextEra Resources own limited interconnection facilities necessary to connect to the transmission grid.

Applicants state that NextEra owns Florida Power & Light Company (FPL), a franchised public utility that provides wholesale and retail electric service to customers in the Florida. NextEra also owns NextEra Energy Transmission, LLC, which in turn owns New Hampshire Transmission, LLC (New Hampshire Transmission), an electric utility that owns a single transmission asset, the Seabrook Substation, located in Seabrook, New Hampshire. New Hampshire Transmission provides wholesale transmission service to its affiliate, NextEra Energy Seabrook, LLC, through a Local Network Service Tariff on file with the Commission.

Applicants state that NextEra, through its subsidiaries, indirectly owns interstate natural gas pipelines in the southeast United States, including 42.5 percent of Sabal Trail Transmission, LLC and 100 percent of Florida Southeast Connection, LLC. In addition, FPL Wyman IV is also affiliated with a number of Hinshaw Pipelines.

Applicants explain that, pursuant to a purchase and sale agreement, PSC New Hampshire will sell its 3.1433 percent undivided ownership interest in Wyman 4 Station and associated jurisdictional facilities to FPL Wyman IV. After consummation of the Proposed Transaction, FPL Wyman IV's ownership interest in Wyman 4 Station will increase to 87.4894 percent.

Applicants state that the Proposed Transaction will not have an adverse effect on competition in the ISO-NE market, the relevant geographic market for the Proposed Transaction. Applicants note that FPL Wyman IV already controls the output of the Wyman 4 Station. Therefore, Applicants represent that the Proposed Transaction will not result in a change in control over the Wyman 4 Station.

With regard to vertical competition, Applicants state that the Proposed Transaction

does not involve the combination of control over generation with control over transmission or other vertical inputs to generation. Applicants assert that, after consummation of the Proposed Transaction, Wyman 4 Station's affiliation with FPL, New Hampshire Transmission, and Sky River, each of which owns or controls electric transmission facilities, will remain unchanged. Applicants represent that such affiliations do not raise any competitive concerns because service on the transmission facilities owned or controlled by FPL and Sky River is provided pursuant to Commission-accepted open access transmission tariffs; service over the transmission facilities owned by New Hampshire Transmission is provided pursuant to a Commission-accepted Local Network Service Tariff, and ISO New England, Inc. has operational control of the regional transmission facilities associated with the Seabrook Substation. Applicants note that, although FPL Wyman IV is affiliated with two interstate natural gas pipelines, those pipelines are not located in the same geographic market as FPL Wyman IV.

Applicants state that the Proposed Transaction will not have an adverse effect on the rates charged to either wholesale or transmission service customers affiliated with FPL Wyman IV or PSC New Hampshire. Applicants state that, following the Proposed Transaction, all of the sales of electric energy owned by FPL Wyman IV will be made at market-based rates. Furthermore, while certain affiliates of FPL Wyman IV currently provide unbundled transmission services, Applicants assert that such affiliates are not involved in the Proposed Transaction, and therefore their rates will not be affected by the Proposed Transaction. Likewise, Applicants state that PSC New Hampshire has no captive wholesale power customers and its transmission rates and services, administered through the ISO-NE Tariff, will not be affected by the Proposed Transaction.

Applicants state that the Proposed Transaction will not have an adverse effect on federal or state regulation. According to Applicants, the Commission will continue to have the same jurisdiction over wholesale sales of electric energy by FPL Wyman IV as it had before consummation of the Proposed Transaction, and approval from the New Hampshire Commission is required to close the Proposed Transaction.

Applicants verify that, based on 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 or in the future, any cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company, including: (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 service agreements subject to review under sections 205 and 206 of the FPA.

The filing was noticed on June 21, 2017, with comments, protests, or interventions due on or July 12, 2017. None were filed.

Information and/or systems connected to the bulk system involved in these transactions 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 database, 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, North American Electric Reliability Corporation 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 Proposed 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.² 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.

² *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005).

After consideration, it is concluded that the Proposed Transaction is consistent with the public interest and is 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 from 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 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 upstream ownership of Applicants' affiliated qualifying facilities, an appropriate filing for recertification pursuant to 18 C.F.R. § 292.207 (2017) 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;
- (8) Applicants shall notify the Commission within 10 days of the date that the disposition of jurisdictional facilities has been consummated; and
- (9) PSC New Hampshire shall account for the Proposed Transaction in accordance with Electric Plant Instruction No. 5, and Account 102, Electric Plant Purchased or Sold, of the Uniform System of Accounts. PSC New Hampshire shall submit proposed accounting entries within six months of the date that the Proposed Transaction is approved, and the accounting submission shall provide all the accounting entries and amounts related to the transfer along with narrative explanations describing the basis for the entries.

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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 (2017). 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 (2017).

Steve P. Rodgers, Director
Division of Electric Power
Regulation - West

Document Content(s)

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