

136 FERC ¶ 61,091
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Entegra Power Group LLC
Gila River Power, L.P.
Union Power Partners, L.P.
Entegra Power Services LLC
EPG LLC
Entegra TC LLC
Gila River Supply LLC

Docket No. EC11-44-000

ORDER EXTENDING BLANKET AUTHORIZATIONS AND GRANTING AND
DENYING, IN PART, PROPOSED MODIFICATIONS

(Issued August 5, 2011)

1. On February 15, 2011, as supplemented on April 22, 2011, Entegra Power Group LLC (Entegra), Gila River Power, L.P. (Gila River), Union Power Partners, L.P. (Union Power), Entegra Power Services LLC (Power Services), EPG LLC (EPG), Entegra TC LLC (Entegra TC), and Gila River Supply LLC (GR Supply) (collectively, Applicants) filed an application pursuant to sections 203(a)(1) and 203(a)(2) of the Federal Power Act (FPA)¹ requesting that the Commission reauthorize and extend, for an additional three-year period, the blanket authorizations for future transfers and acquisitions of voting equity interests previously granted by the Commission in Docket Nos. EC06-78-000 and EC07-37-000.² As part of their request for reauthorization, Applicants also propose modifications to the Existing Blanket Authorizations.³

¹ 16 U.S.C. § 824b (2006).

² *Entegra Power Group LLC*, 115 FERC ¶ 62,038 (2006) (April 10, 2006 Order), as amended by, *Entegra Power Group LLC*, 118 FERC ¶ 61,181 (2007) (March 5, 2007

(continued...)

2. The Commission has reviewed the Application under the Commission's Merger Policy Statement.⁴ As discussed below, we reauthorize the Existing Blanket Authorizations for another three-year period, and grant and deny certain of the requested modifications.

I. Background

A. Applicants

3. Entegra is a Delaware limited liability company that holds indirectly all of the equity interests in Gila River and Union Power (the Project Companies) and Power Services. The Project Companies and Power Services are wholly owned by EPG, a Delaware limited liability company. EPG, in turn, is wholly owned by Entegra TC, a Delaware limited liability company, and certain intermediate entities that are wholly owned by Entegra TC. Entegra TC, in turn, is wholly owned by Entegra. Each current owner of the equity interests in Entegra (Entegra Units) is either a bank, institutional investor, financial institution, investment company or related entity that is not primarily engaged in energy-related business activities.

Order), *Entegra Power Group LLC*, 119 FERC ¶ 62,218 (2007) (June 13, 2007 Order) and *Entegra Power Group LLC*, 123 FERC ¶ 61,006 (2008) (April 3, 2008 Order) (collectively, Existing Blanket Authorization Orders). The currently authorized blanket authorizations, as granted and modified by the Existing Blanket Authorization Orders, are referred to as the Existing Blanket Authorizations.

³ *Request for Order Reauthorizing and Extending Existing Blanket Authorizations and Amending Conditions for Certain Future Transfers and Acquisitions of Equity Interests Under Section 203 of the Federal Power Act, and Request for Waivers*, Docket No. EC11-44-000 (Feb. 15, 2011) (Application).

⁴ *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, FERC Stats. & Regs. ¶ 31,044 (1996), *reconsideration denied*, Order No. 592-A, 79 FERC ¶ 61,321 (1997) (Merger Policy Statement). *See also FPA Section 203 Supplemental Policy Statement*, FERC Stats. & Regs. ¶ 31,253 (2007). *See also Revised Filing Requirements Under Part 33 of the Commission's Regulations*, Order No. 642, FERC Stats. & Regs. ¶ 31,111 (2000), *order on reh'g*, Order No. 642-A, 94 FERC ¶ 61,289 (2001). *See also Transactions Subject to FPA Section 203*, Order No. 669, FERC Stats. & Regs. ¶ 31,200 (2005), *order on reh'g*, Order No. 669-A, FERC Stats. & Regs. ¶ 31,214, *order on reh'g*, Order No. 669-B, FERC Stats. & Regs. ¶ 31,225 (2006).

4. Gila River owns and operates three of the four power blocks (each referred to as a Power Block) that comprise a natural gas-fired, combined-cycle generating facility in Arizona (the Gila River Facility). Each of the four Power Blocks has an approximate installed capacity of 550 megawatts (MW). Power Blocks 1⁵, 3, and 4 are owned by Gila River, and Power Block 2 is owned by Sundevil Power Holdings, LLC. The Gila River Facility is located in its own generator-only balancing authority area, which has no load other than station power loads when the Gila River Facility is operating, and is interconnected to the transmission system of Arizona Public Service Company (APS). Gila River is an exempt wholesale generator (EWG) and sells wholesale power at market-based rates primarily into the APS and Salt River Project (SRP) balancing authority areas, within the Western Electricity Coordinating Council region.

5. Union Power owns and operates a natural gas-fired, combined-cycle generating facility with an approximate installed capacity of 2,200 MW in Arkansas that is interconnected with the transmission system of Entergy Arkansas, Inc., an operating company of Entergy Corporation (Entergy). Union Power is an EWG and sells wholesale power within the Entergy balancing authority area at market-based rates.

6. Power Services provides certain non-power related services to Entegra, Gila River and Union Power. Power Services does not own any electric generation or transmission assets or interstate natural gas transportation or storage assets. Power Services is authorized to sell wholesale energy, capacity and ancillary services at market-based rates.

B. Request for Extension and Modifications of Existing Blanket Authorizations

7. In the April 10, 2006 Order, Applicants were granted, for a two-year period, authority under section 203(a)(1) of the FPA for future transfers of Entegra Units in the secondary market, provided that the acquiring party:

- (a) is a financial institution or related entity that is not primarily engaged in energy-related activities and is not affiliated with a traditional utility with captive customers;

⁵ The Commission authorized Entegra to dispose of Power Block 1 in *Entegra Power Group LLC*, 135 FERC ¶ 62,110 (2011). Entegra notified the Commission that it completed the transaction in *Notice of Consummation*, Docket No. EC11-54-000 (July 15, 2011).

(b) does not individually or collectively with affiliates own five percent or more of the voting interests in any public utility that has interests in any generating facilities or that engages in jurisdictional activities within the Entergy and APS/SRP control areas; and

(c) will hold less than 20 percent of the Entegra Units.⁶

8. The April 10, 2006 Order also granted blanket authorization under section 203(a)(2) of the FPA for future acquisitions of Entegra Units in the secondary market to any holding company in a holding company system that includes a transmitting utility or an electric utility under the same conditions applicable to future section 203(a)(1) transactions.⁷

9. The Commission subsequently amended the blanket authorizations to clarify that an acquiring entity under a future section 203(a)(1) transfer or a future section 203(a)(2) acquisition, or its affiliates, may own five percent or more of the voting interests in a power marketer that engages in jurisdictional activities within the Entergy or APS/SRP balancing authority areas so long as such affiliated power marketer does not own or control generation or transmission in the subject balancing authority areas.⁸ In the June 13, 2007 Order, the blanket authorizations were further amended to reflect restructuring of the upstream ownership of the Project Companies effective on April 19, 2007.⁹ In the April 3, 2008 Order, the Commission extended the blanket authorization, as amended, for an additional three-year period, until April 10, 2011.¹⁰ On April 8, 2011, the Commission granted an interim extension pending Commission review of and further order on Applicants' request to modify the Existing Blanket Authorizations.¹¹

⁶ See April 10, 2006 Order, 115 FERC ¶ 62,038.

⁷ *Id.*

⁸ See March 5, 2007 Order, 118 FERC ¶ 61,181.

⁹ See June 13, 2007 Order, 119 FERC ¶ 62,218.

¹⁰ In the April 3, 2008 Order, the Commission also amended the reporting requirement established in the April 10, 2006 Order to require the filing of reports within 45 days of the close of each calendar quarter.

¹¹ See *Entegra Power Group LLC*, 135 FERC ¶ 61,015 (2011).

10. Applicants request that the Commission extend the effectiveness of the Existing Blanket Authorizations, with the modifications proposed by Applicants, for an additional three-year period.¹² Applicants state that secondary market trading of Entegra Units is important to allow current and future investors in Entegra to maintain the liquidity of their investments.¹³ Applicants conclude that authorizing continued secondary market trading of Entegra Units subject to the limitations of the Existing Blanket Authorizations facilitates such liquidity and is in the public interest. Applicants state that, for the reasons previously cited in the Existing Blanket Authorization Orders, transactions made under the blanket authorizations, as modified, will not raise horizontal or vertical competitive issues.¹⁴

11. Applicants propose two modifications to the Existing Blanket Authorizations. First, Applicants request that the Commission increase from five to ten percent the limitation on the amount of voting interests that a transferee of Entegra Units may, individually or collectively with its affiliates, own in any public utility that has interests in any generating facilities or that engages in jurisdictional activities within the relevant market of the Project Companies. Second, Applicants propose to revise the identification of the relevant market area to separate the APS and SRP balancing authority areas, rather than combine those areas as one market.

12. Applicants explain that, as a result of granting the two requested modifications, the following conditions would apply (marked to show the changes to the two conditions as set forth in the April 3, 2008 Order):

For future transfers under section 203(a)(1):

to an acquiring party that: (a) is a financial institution or related entity that is not primarily engaged in energy-related activities and is not affiliated with a traditional utility with captive customers; (b) does not individually or collectively with affiliates own ten ~~five~~ percent or more of the voting interest in any public utility that has interest in any generating facilities or that engages in jurisdictional activities within the Entergy, APS or SRP balancing authority ~~and APS/SRP control~~ areas; and (c) will hold individually or collectively with its affiliates not more than 20 percent of the voting interests in Entegra Units.

¹² Application at 1-2.

¹³ *Id.* at 7.

¹⁴ *Id.* at 10.

For future transfers under section 203(a)(2):

the acquiring entity under Section 203(a)(2) would be a Section 203(a)(2) that: (a) is a financial institution or related entity that is not primarily engaged in energy-related activities and is not affiliated with a traditional utility with captive customers; (b) does not individually or collectively with affiliates own ~~ten~~ five percent or more of the voting interest in any public utility that has interest in any generating facilities or that engages in jurisdictional activities within the Entergy, APS or SRP balancing authority and APD/SRP control areas; and (c) will hold individually or collectively with its affiliates not more than 20 percent of the voting interests in Entegra.

C. Supplemental Filing

13. On April 22, 2011, Applicants submitted supplemental information to address four developments regarding Entegra that occurred following the filing of the Application and that may be relevant to the Commission's consideration of the Application.¹⁵

14. First, Applicants state that, on April 5, 2011, the updated market power analysis filed by Gila River and Power Services, in compliance with Order No. 697¹⁶ and the Commission's orders granting Gila River and Power Services authority to sell electric energy and capacity at market-based rates, was accepted for filing.¹⁷ Applicants note that, for the purposes of market-based rate authority, the APS balancing authority area was considered to be the relevant geographic market for Gila River and Power Services.

¹⁵ *Supplement to Request for Order Reauthorizing and Extending Existing Blanket Authorizations*, Docket No. EC11-44-000 (April 21, 2011) (Supplemental Filing).

¹⁶ *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, at P 848-50, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010).

¹⁷ Supplemental Filing at 2 (citing Gila River Power, L.P., Unpublished Letter Order, Docket Nos. ER05-1178-015 and ER09-838-001).

15. Second, Applicants explain that, on March 22, 2011, Entegra and Gila River submitted a joint application under section 203 of the FPA for Commission approval of the sale of Power Block 1 at the Gila River Generating Station to Wildcat Power Holdings, LLC.¹⁸

16. Third, Applicants state that, on April 11, 2011, Entegra, Gila River, and a newly formed entity, GR Supply, filed an application seeking Commission approval under section 203 of the FPA to transfer Gila River's ownership in the remaining Power Blocks at the Gila River Facility to GR Supply.¹⁹ GR Supply also submitted an application to the Commission for authority to make sales of wholesale electric energy, capacity, and ancillary services at market-based rates.²⁰ Applicants request that the Commission include GR Supply as an additional applicant in the present docket.

17. Fourth, Applicants explain that Entegra, Gila River, GR Supply, Union Power, EPS, and Merrill Lynch GENCO II, LLC (ML GENCO) filed an application under section 203(a)(2) of the FPA seeking specific authorization for proposed transfers of interests in Entegra to ML GENCO, or a wholly owned subsidiary of ML GENCO's ultimate parent, resulting in ML GENCO owning either individually, or in the aggregate with subsidiaries of ML GENCO's ultimate parent, up to 20 percent of the ultimate interests in Entegra.²¹

II. Discussion

A. Notice of Filing, Interventions, and Protests

18. Notice of the Application was published in the *Federal Register*, 76 Fed. Reg. 10,345 (2011), with interventions and protests due on or before March 8, 2011. None was filed.

¹⁸ *Id.* This transaction was approved on May 5, 2011. See *Entegra Power Group LLC*, 135 FERC ¶ 62,110.

¹⁹ *Id.* at 2-3. This transaction was approved on May 11, 2011. See *Entegra Power Group LLC*, 135 FERC ¶ 62,134 (2011) (GR Supply Order).

²⁰ *Id.* The filing was made in Docket No. ER11-3329-000.

²¹ *Id.* at 3. This application was approved on July 21, 2011. See *Entegra Power Group LLC*, 136 FERC ¶ 61,049 (2011).

B. Standard of Review Under Section 203

19. Section 203(a)(4) requires the Commission to approve a transaction if it determines that the transaction will be consistent with the public interest. The Commission's analysis of whether a transaction will be consistent with the public interest generally involves consideration of three factors: (1) the effect on competition; (2) the effect on rates; and (3) the effect on regulation.²² Section 203(a)(4) also requires the Commission to find that the transaction "will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company, unless the Commission determines that the cross-subsidization, pledge, or encumbrance will be consistent with the public interest."²³ The Commission's regulations establish verification and informational requirements for applicants that seek a determination that a transaction will not result in inappropriate cross-subsidization or pledge or encumbrance of utility assets.²⁴

C. Analysis Under Section 203**1. Effect on Competition****a. Applicants' Analysis**

20. Applicants state that, without an extension of the Existing Blanket Authorizations, secondary market trades of Entegra Units, to the extent that Commission authorization is required for such trades and is not provided by any other applicable blanket authorizations, would no longer be authorized.²⁵ Applicants explain that secondary market trading of Entegra Units is important to allow current and future investors in Entegra to maintain the liquidity of their investments.²⁶ Applicants state that for the reasons previously cited in the Existing Blanket Authorization Orders, transactions made under the blanket authorizations, as modified, will not raise horizontal or vertical competitive issues.²⁷ Accordingly, Applicants request that the Commission extend the

²² See Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,111.

²³ 16 U.S.C. § 824b(a)(4) (2006).

²⁴ 18 C.F.R. § 33.2(j) (2011).

²⁵ Application at 7.

²⁶ *Id.*

²⁷ *Id.* at 10.

Existing Blanket Authorizations, with the modifications described below, for an additional three-year period.

21. With respect to the first proposed modification, Applicants explain that raising the limit, from five to ten percent, on the amount of voting securities that any transferee of Entegra Units may, collectively or with its affiliates, own in any public utility that has interests in any generating facilities or that engages in jurisdictional activities within the relevant geographic market of the Project Companies, is consistent with the Commission's definition of affiliate, as set forth in the Commission's regulations at section 35.36(a)(9).²⁸ Applicants explain that the Commission has stated that: "[f]or purposes of paragraph (a)(9), owning controlling or holding with power to vote less than 10 percent of the outstanding voting securities of a specified company creates a rebuttable presumption of lack of control."²⁹ Applicants also state that the Commission's blanket authorizations under section 203, as set forth in sections 33.1(c)(2)(ii) and 33.1(c)(12), use a 10 percent investment limitation.³⁰ Applicants further note that when they originally proposed and the Commission approved the Existing Blanket Authorizations, the affiliate test for EWGs under section 205 of the FPA³¹ used a five percent standard. Since the original application, however, the Commission has approved a ten percent standard in the definition of affiliate for EWGs and for purposes of blanket authorization in the section 203 context.³² Therefore, Applicants request that the Commission revise the condition in the Existing Blanket Authorizations to include a ten percent standard with respect to investors' ownership of other public utilities that have interests in any generating facilities or that engage in jurisdictional activities within the same market area as either of the Project Companies.

22. With respect to the second proposed modification, Applicants state that revising the Existing Blanket Authorizations to separately identify the APS and SRP market areas as the market areas that the Gila River Facility can sell into is appropriate and consistent with the market power update for Gila River and Power Services that was recently

²⁸ 18 C.F.R. § 35.36(a)(9) (2011).

²⁹ Application at 7 (*quoting* Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 at P 48).

³⁰ *Id.* at 8 (citing 18 C.F.R. §§ 33.1(c)(2)(ii) and (12) (2011)).

³¹ 16 U.S.C. § 824d (2006).

³² Application at 8.

accepted for filing.³³ Applicants point out that the APS balancing authority area was considered to be the appropriate geographic market for market-based rate purposes.³⁴

23. Finally, Applicants request that GR Supply, a newly-created, wholly owned subsidiary of Entegra be included in this docket as an Applicant.³⁵

b. Commission Determination

24. We deny Entegra's request to modify the Existing Blanket Authorizations to increase to ten percent the amount of voting securities that any transferee of Entegra Units may, collectively or with its affiliates, own in any public utility that has interests in any generating facilities or that engages in jurisdictional activities within the relevant geographic market. In *Entegra Power Group LLC*,³⁶ the Commission rejected Applicants' previous request to increase the five percent investment limitation to ten percent.³⁷ In that decision, the Commission explained that, when it granted one of the first blanket authorizations, it imposed the five percent investment limitation to ensure that the transaction at issue would not "consolidate unknown amounts of generating and transmission assets owned by acquiring entities with their partial ownership interest" in other facilities.³⁸ As part of its original application for blanket authorization, Entegra requested the same five percent investment limitation that was applied in *La Paloma* and committed to comply with the conditions and requirements the Commission had previously established when granting blanket authorizations pursuant to section 203.³⁹

³³ Supplemental Filing at 2.

³⁴ *Id.*

³⁵ On May 11, 2011, the Commission approved the sale of Power Blocks 3 and 4, and certain other assets to GR Supply. In that order, the Commission stated that Applicants' request that GR Supply be included as an Applicant in this docket would be addressed in this proceeding. See GR Supply Order, 135 FERC ¶ 62,134 at P 1.

³⁶ 119 FERC ¶ 61,022 (2007) (*Entegra Power Group*).

³⁷ See also *Boston Generating, LLC*, 119 FERC ¶ 61,147 (2007) (*Boston Generating*) rejecting request to raise investment limitation from five to ten percent and reaching same result as *Entegra Power Group*.

³⁸ *Entegra Power Group*, 119 FERC ¶ 61,022 at P 11 (quoting *La Paloma Holding Co., LLC*, 112 FERC ¶ 61,052 (2005) (*La Paloma*)).

³⁹ *Id.* P 12.

25. As before, we reject Applicants' request to modify the Existing Blanket Authorizations to increase the investment limitation from five to ten percent. Applicants have not presented sufficient justification here to dilute the measure of protection provided by the five percent investment limitation, which helps to ensure that entities transacting pursuant to blanket authorizations do not acquire significant assets in a market area or adversely impact competition in the market area. In addition, Applicants have not shown that the circumstances under which their original blanket authorizations were granted have changed in such a way as to require reexamination of the reasons for the five percent investment limitation. In fact, Applicants state: "there have been no changes in material facts and circumstances that would alter or affect the Commission's analysis under Section 203."⁴⁰ While the Commission recognizes that it has modified its regulations to adopt a ten percent standard in various contexts,⁴¹ the circumstances where the Existing Blanket Authorizations apply are different: here, Applicants request that the Commission allow a transferee of Entegra Units to own up to ten percent of the voting interest in a public utility *and* allow that same transferee of Entegra Units to own up to twenty percent of the Entegra Units. The Commission concludes that increasing the investment limitation on ownership of a public utility in the same control area could increase the incentive and ability of an entity to operate jurisdictional facilities in a manner that could adversely affect or undermine competition in that market area.⁴² Accordingly, the Commission rejects the request to modify the Existing Blanket Authorizations to increase the five percent investment limitation to ten percent.⁴³

⁴⁰ Application at 10.

⁴¹ Applicants cite, for example, the Commission's blanket section 203 authorizations and the definition of "affiliate" as set forth in section 35.369(a)(9) of the Commission's regulations, both of which use a ten percent standard. Application at 7-8.

⁴² The Commission recognizes that it is possible that a ten percent investment limitation on public utility ownership would not necessarily result in competitive harm. Accordingly, we note that Applicants and other entities may seek approval pursuant to section 203 for specific transactions. *See Entegra Power Group*, 119 FERC ¶ 61,022 at P 12 ("...Applicants are free to pursue a request to raise the five percent investment limitation in an individual identified holding."). *See also Boston Generating*, 119 FERC ¶ 61,147 at P 27.

⁴³ Based on our finding that increasing the five percent investment limitation to ten percent does not satisfy our effect on competition analysis, we do not address Applicants' claims that a ten percent investment limitation will not have an adverse effect on rates, regulation, or will not result in cross-subsidization. *Entegra Power Group*, 119 FERC ¶ 61,022 at P 14. *See also Boston Generating*, 119 FERC ¶ 61,147 at P 28.

26. The Commission will, however, accept the proposed modification to separately identify the APS and SRP balancing authority areas as the relevant market areas for the restrictions on ownership of voting interests. Accordingly, as revised, the Existing Blanket Authorizations will accurately reflect Commission recognized market areas.

27. The Commission agrees with Applicants that, for the reasons stated in the Existing Blanket Authorization Orders, the Existing Blanket Authorizations, as modified to include the separate references to the APS and SRP balancing authority area, do not raise horizontal and competitive issues. As explained above, however, the Commission rejects the request to increase the five percent investment limitation to ten percent. Thus, the amount of voting securities that any transferee of Entegra Units may, collectively or with its affiliates, own in any public utility that has interests in any generating facilities or that engages in jurisdictional activities within the relevant geographic market remains limited to five percent. We find that the extension for a three-year period of the Existing Blanket Authorizations at the current ownership levels will not raise horizontal or vertical market power concerns.

28. With respect to whether GR Supply should be included as an Applicant to the Existing Blanket Authorization, we find it appropriate because any acquisition of Entegra securities will necessarily include an acquisition of GR Supply as the affiliate.⁴⁴ As a result, we accept Entegra's requests to include GR Supply as an applicant subject to the Existing Blanket Authorizations.

2. Effect on Rates

a. Applicants' Analysis

29. Applicants argue that transactions covered by the modified Existing Blanket Authorizations will not have an adverse effect on rates. They state that all sales of power by the Project Companies will continue to be made at market-based rates as previously authorized by the Commission. In addition, Applicants state that the Project Companies do not provide any transmission service for others, so no jurisdictional transmission rates are affected.⁴⁵

b. Commission Determination

⁴⁴ See GR Supply Order, 135 FERC ¶ 62,134.

⁴⁵ Application at 11.

30. We find that transactions under the Existing Blanket Authorizations, as modified and discussed in this order, will not adversely affect rates, as sales of power will continue to be made at market-based rates.⁴⁶

3. Effect on Regulation

a. Applicants' Analysis

31. Applicants contend that the modified Existing Blanket Authorizations will not diminish the Commission's regulatory authority. In addition, Applicants argue that because the modified Existing Blanket Authorizations will not result in a merger of public utilities, and because all sales from the Project Companies will continue to be at wholesale, the modified Existing Blanket Authorizations will not have an adverse effect on state commission regulation.⁴⁷

b. Commission Determination

32. We find that transactions under the Existing Blanket Authorizations, as modified and discussed in this order, will not adversely affect regulation.

4. Cross-subsidization

a. Applicants' Analysis

33. Applicants argue that dispositions or acquisitions of Entegra Units under the modified Existing Blanket Authorizations cannot result in cross-subsidization now or in the future because the acquiring party will not be a traditional public utility with captive customers, and will not be affiliated with a traditional public utility with captive customers.

34. Applicants state that because they are not traditional public utilities and because they do not have captive customers, they do not provide information on existing pledges and/or encumbrances of utility assets. In addition, Applicants state that the modified Existing Blanket Authorizations do not result in: (A) 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; (B) any new issuance of securities by a traditional public utility associate company that has captive customers or that owns or provides transmission service over

⁴⁶ See *Union Electric Co. d/b/a AmerenUE*, 114 FERC ¶ 61,255, at P 45 (2006).

⁴⁷ Application at 11.

jurisdictional transmission facilities, for the benefit of an associate company; (C) 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 (D) 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 services agreements subject to review under sections 205 and 206⁴⁸ of the FPA.⁴⁹

b. Commission Determination

35. We find that Applicants have provided adequate assurance that transactions under the Existing Blanket Authorizations, as modified and discussed in this order, will not result in cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company.

D. Other Issues

36. Information and/or systems connected to the bulk power system involved in this transaction may be subject to reliability and cybersecurity standards approved by the Commission pursuant to FPA section 215.⁵⁰ Compliance with these standards is mandatory and enforceable regardless of the physical location of the affiliates or investors, information databases, 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.

37. 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

⁴⁸ 16 U.S.C. § 824e (2006).

⁴⁹ Application at Exhibit M.

⁵⁰ 16 U.S.C. § 824o (2006).

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 reauthorization of the Existing Blanket Authorizations, as modified and discussed in this order, is based on such examination ability.

38. 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.⁵¹ The foregoing authorization may result in a change in status. Accordingly, the Applicants are advised that they must comply with the requirements of Order No. 652. In addition, Applicants shall make any necessary filings under section 205 of the FPA to implement the transaction.

The Commission orders:

(A) Applicants' proposed transactions under the Existing Blanket Authorizations, as modified and discussed in the body of this order, are authorized, effective for a three-year period from the issuance date of this order.

(B) 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.

(C) 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.

(D) The Commission retains authority under sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate.

(E) Applicants are subject to audit to determine whether they are in compliance with the representations, conditions and requirements upon which the authorizations are herein granted and with applicable Commission rules, regulations and policies. In the event of a violation, the Commission may take action within the scope of its oversight and enforcement authority.

⁵¹ *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 70 Fed. Reg. 8253 (Feb. 18, 2005), FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005).

(F) Applicants shall notify the Commission of transactions consummated under the Existing Blanket Authorizations, as extended under this order, in accordance with the notification requirements set forth in the April 3, 2008 Order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.