

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suedeen G. Kelly.

Lake Road Holding Company, LLC  
Lake Road Generating Company, L.P.

Docket No. EC05-63-000

ORDER CONDITIONALLY AUTHORIZING DISPOSITION  
OF JURISDICTIONAL FACILITIES

(Issued July 8, 2005)

**I. Introduction**

1. On March 24, 2005, Lake Road Holding Company, LLC (HoldCo) and Lake Road Generating Company, L.P. (Lake Road Gen) (collectively, Applicants) filed a joint application under section 203 of the Federal Power Act (FPA)<sup>1</sup> requesting Commission authorization for an indirect disposition of jurisdictional facilities that would result from certain transfers of ownership or control of equity interests in HoldCo. The jurisdictional facilities involved with the proposed transaction include a market-based rate tariff, related books and records, and interconnection facilities associated with a generating facility owned and operated by Lake Road Gen.

2. As further described below, Applicants request section 203 authorization for three groups of transactions. One group of transactions would involve transfers of equity interests in HoldCo from current owners to buyers that are specifically identified in the application (Proposed Transaction). A second group of transactions would involve transfers of equity interests from current owners or future owners to other existing owners or new buyers that have not yet been determined and thus are not identified in the application (Future Transactions). The third group of transactions would involve transfers of interests from current or future holders to direct or indirect wholly-owned

---

<sup>1</sup> 16 U.S.C. § 824b (2000).

subsidiaries of the ultimate parent of such current or future holders (Future Subsidiary Transactions). The Commission has reviewed the three groups of transactions under the Merger Policy Statement<sup>2</sup> and will authorize them as consistent with the public interest, subject to certain conditions, as discussed below. This order benefits customers because it will promote new investment in generating facilities, enhancing competition in wholesale markets.

## II. Background

### A. Description of the Applicants

3. Lake Road Gen owns a 750 megawatt (MW) generator located near Killingly, Connecticut and certain associated interconnection facilities that connect the generator to the transmission system of Northeast Utilities. A third-party provides day-to-day administrative, support, and operation and maintenance services under an asset management agreement, but Lake Road Gen retains ultimate decision-making and control with respect to jurisdictional activities.

4. A group of 19 financial institutions and related entities (Creditors) own 100 percent of the equity interests in HoldCo, which, in turn, owns 100 percent of the equity interests in Lake Road Gen. Under a prior order issued under delegated authority, the Commission authorized the Creditors to assume an ownership interest in HoldCo pursuant to a bankruptcy reorganization.<sup>3</sup> The *Reorganization Order* limited the ownership by any individual Creditor to a maximum of 20 percent of the equity interests in HoldCo.

---

<sup>2</sup> See *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, 61 Fed. Reg. 68,595 (1996); FERC Stats. & Regs. ¶ 31,044 (1996), *reconsideration denied*, Order No. 592-A, 62 Fed. Reg. 33,341 (1997), 79 FERC ¶ 61,321 (1997) (*Merger Policy Statement*); see also *Revised Filing Requirements Under Part 33 of the Commission's Regulations*, Order No. 642, 65 Fed. Reg. 70,983 (2000), FERC Stats. & Regs., Regulations Preambles July 1996-Dec. 2000 ¶ 31,111 (2000), *order on reh'g*, Order No. 642-A, 66 Fed. Reg. 16,121 (2001), 94 FERC ¶ 61,289 (2001) (*Merger Filing Requirements*).

<sup>3</sup> *Lake Road Trust Ltd.*, 105 FERC ¶ 62,184 (*Reorganization Order*) (2003).

**B. Description of the Transactions**

5. Under the Proposed Transaction, certain existing owners (Sellers)<sup>4</sup> of equity interests in HoldCo seek to transfer their debt and associated equity interests to certain identified entities (Buyers)<sup>5</sup> that include banks, institutional investors, financial institutions, investment companies or related entities. Applicants state that the Buyers are entities not primarily engaged in energy-related business activities, although some of them or their affiliates may hold energy-related investments and engage in jurisdictional activities. Bear Stearns is affiliated with a power marketer and some affiliates have limited investments in the electricity sector. Applicants state that Bear Stearns and its affiliates do not own or control equity interests in electric facilities in the Independent System Operator New England (ISO-New England) region or in natural gas production, storage, transportation or distribution of natural gas. Cargill Financial is affiliated with a power marketer that does not own or control generating facilities. Applicants state that Cargill Financial owns less than a five percent, non-controlling interest in a number of generating facilities in New England. Applicants also state that although Cargill Financial is expected to soon acquire a 40 percent interest in a 720 MW generating facility in New Hampshire, its ownership interest will not give it sole control of the facility. Applicants further state that none of the other Buyers (and their affiliates) own or control five percent or more of the voting securities of any facilities used for generation, transmission or distribution of electricity and natural gas transmission and distribution.

6. Applicants also request authorization from the Commission for a two-year period without further section 203 filings for Future Transactions involving transfers of ownership or control of equity interests in HoldCo to existing owners or new buyers that are banks, institutional investors, financial institutions, investment or related entities not primarily engaged in energy-related business activities, which result in the acquiring

---

<sup>4</sup> Each Seller is one of the Creditors originally authorized to assume an ownership interest in HoldCo pursuant to the *Reorganization Order*.

<sup>5</sup> The Buyers are: Bear, Stearns & Co. Inc., Scottwood Partners, LP., Cargill Financial Services International, Inc. (Cargill Financial), TRS Callisto LLC, SPCP Group, L.L.C., Longacre Master Fund, Ltd., Longacre Capital Partners (QP), L.P., Banc of America Securities LLC, Bank of America, N.A., Fleet National Bank, Varde Investment Partners, L.P. and RDO II, Inc.

party owning or controlling an investment in HoldCo equal to an equity interest of 20 percent or less. Applicants state that they seek this additional authorization to facilitate the trading of debt in Lake Road Gen and equity interests in HoldCo consistent with the liquid market that is emerging for the transfer of such distressed assets.

7. In addition, Applicants seek authorization for Future Subsidiary Transactions, i.e., to allow any current or future holders of equity interests in HoldCo to transfer such interests to direct or indirect wholly-owned subsidiaries of the ultimate corporate parent of such current or future holder, as the case may be.

### **III. Notice, Interventions and Protests**

8. Notice of the filing was published in the *Federal Register*, 70 Fed. Reg. 17,440 (2005), with comments, protests or interventions due on or before April 14, 2005. None was filed.

### **IV. Discussion**

#### **A. Standard of Review**

9. Section 203(a) of the FPA provides that the Commission must approve a proposed disposition if it finds that the disposition “will be consistent with the public interest.”<sup>6</sup> The Commission generally takes account of three factors in analyzing proposed dispositions of facilities: (a) the effect on competition; (b) the effect on rates; and (c) the effect on regulation. As discussed below, we will approve the Proposed Transaction as consistent with the public interest. In addition, as discussed below, we will also grant authorization for Future Transactions and Future Subsidiary Transactions without further section 203 application, subject to certain conditions, because these transactions are also consistent with the public interest.

#### **B. Proposed Transaction**

##### **1. Effect on Competition**

10. Applicants state that the Proposed Transaction will have no adverse effect on competition. They contend that the Proposed Transaction raises no horizontal market power issues, as the amount of generation indirectly controlled by HoldCo is only 750 MW, while the total generation capacity within the ISO-New England market is

---

<sup>6</sup> 16 U.S.C. § 824b (a) (2000).

approximately 31,000 MW. Furthermore, while certain Buyers or their affiliates do own interests in electric generation facilities and related interconnection facilities, these interests represent a *de minimis* share of the generation capacity in ISO-New England. Applicants further contend that the Proposed Transaction does not raise any vertical market power issues because, to the extent that any Buyers or their affiliates own interests in fuel resources, fuel transportation systems, and other inputs to electricity products, such interests are *de minimis*, and Buyers do not have ownership or operational control of these facilities.

11. Based on the facts represented in the application and in the absence of any information to the contrary, the Commission finds that the Proposed Transaction does not adversely affect competition.

## **2. Effect on Rates**

12. Applicants contend that the Proposed Transaction will not have any adverse effects on rates. Applicants assert that all sales of electric energy will continue to be made at market-based rates previously authorized by the Commission. Furthermore, Applicants notes that the Proposed Transaction will have no effect on the rates, terms or conditions of wholesale power sales agreements and that they do not provide unbundled transmission service.

13. We note that nothing in the application indicates that rates to customers will increase as a result of the Proposed Transaction, and no customer argues otherwise. For these reasons, we are satisfied that the Proposed Transaction will not adversely affect rates.

## **3. Effect on Regulation**

14. Applicants assert that the Proposed Transaction will not have an adverse effect on regulation. They note that the Proposed Transaction will not diminish the Commission's regulatory authority because it will not result in the formation of a registered holding company under the Public Utility Holding Company Act of 1935. In addition, the Proposed Transaction will not have any adverse effects on state commission regulation because all sales from Lake Road Gen will continue to be at wholesale and thus are not subject to state regulation.

15. We note that no party has raised concerns about the Proposed Transaction's effect on state or federal regulation, and no state has indicated that it lacks jurisdiction to consider the transaction's effect on retail rates. Thus, we conclude that the Proposed Transaction will not adversely affect state or federal regulation.

### **C. Future Transactions**

16. As stated previously, Applicants seek authorization for a two-year period for transfers of equity interests to other existing owners or new buyers that are financial institutions that are not primarily engaged in energy-related activities, subject to a limitation of a 20 percent interest for any holder. In an order to be issued concurrently in Docket No. EC05-62-000, the Commission grants blanket authorization for similar transfers requested by the applicants in that docket, subject to certain conditions, as discussed in the body of the order. The Commission will grant the blanket authorizations requested by HoldCo and Lake Road Gen here, subject to the additional conditions applied to the blanket authorization granted in Docket No. EC05-62-000, because we believe that such action will serve the public interest by helping to permit these owners of financially distressed generation assets to keep them in operation. The Commission, however, also believes it is necessary to limit the potential for harm to the public interest, particularly competitive harm, resulting from this blanket authorization of Future Transactions. Accordingly, Future Transactions shall be permitted during this two-year period without further section 203 application only if the buyer and its affiliates do not collectively own or control five percent or more voting interest in any public utility that has interests in any generation facilities or engages in jurisdictional activities in ISO-New England, where the Lake Road plant is located.

17. Also, as a condition for blanket approval, Applicants must revise their proposed notification condition (that transferors of interests report the transfers within 10 days) to require that a statement of other generating or power marketing interests directly or indirectly owned by buyer or its affiliates be submitted within 10 days of the transaction, irrespective of the market or region of the country in which such interests are operated. In addition, Applicants must submit, both in a compliance filing within 30 days of the closing of the initial sale transaction, and in any subsequent notification of a holding company equity sales transaction, the following information:

- the identity of both pre- and post-transaction equity holders (and percentage ownership) of the holding company (the format used in Table I of the application is acceptable);
- any contracts for (or a summary thereof) power purchase agreements, energy management services, asset management services, and any fuel supply services provided to the facility, each of which should identify the contract counterparty, and any affiliation between that counterparty and post-transaction equity holders; and

- the identity of any parties acquiring equity interests that are subject to the Commission's Code of Conduct rules as a result of acquiring these equity interests.

These requirements do not relieve the buyer or its affiliates from complying with the Commission's other reporting requirements, in particular those associated with market-based rate authorizations, including the need to make applicable notifications of change in status filings or electronic quarterly reports.

18. As stated in our order being issued concurrently in Docket No. EC05-62-000, this order does not address the jurisdictional question of whether the transfer of a specific amount of ownership is a change of control and thus a disposition of jurisdictional facilities. The conditional blanket authorization for Future Transactions without further section 203 applications granted herein is limited to the specific facts and circumstances in this application. We find that the limited scope of the proposal together with the conditions imposed in this order should fully protect electric customers. However, if the Commission finds that the public interest requires that we impose additional or different conditions or that we should remove certain conditions on these types of transactions, we will do so.

#### **D. Future Subsidiary Transactions**

19. Applicants also seek authorization for Future Subsidiary Transactions, in which the holder of interests in HoldCo would transfer its interests to direct or indirect wholly-owned subsidiaries of the ultimate corporate parent of such current or future holder. Consistent with our order in Docket No. EC05-62-000, we grant blanket authorization for all current and future owners of equity interests to transfer their interests to wholly-owned direct or indirect subsidiaries of their ultimate parent company without making further section 203 applications. In addition, as we required in Docket No. EC05-62-000, Applicants are to identify the direct or indirect subsidiaries that will hold the equity interests.

The Commission orders:

(A) Applicants' proposed disposition of jurisdictional facilities is authorized, subject to certain conditions, as discussed in the body 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 cost, or any other matter whatsoever now pending or which may become 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 shall make any appropriate filings under section 205 of the FPA, as necessary, to implement the transactions;

(F) This order does not relieve acquirers of securities in this transaction from the necessity of making appropriate filings under section 203 of the FPA, as required;

(G) None of the buyers shall acquire HoldCo ownership interests in excess of 20 percent without prior Commission approval under section 203 of the FPA and;

(H) Applicants shall notify the Commission within 10 days of the date that the Proposed Transaction, Future Transactions, and Future Subsidiary Transactions have been consummated and shall identify the direct or indirect subsidiaries, if any, through which the buyers will hold their equity interests.

By the Commission. Commissioner Kelliher dissenting in part with a separate statement attached.

( S E A L )

Magalie R. Salas  
Secretary

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Lake Road Holding Company, LLC  
Lake Road Generating Company, LLC

Docket No. EC05-63-000

(Issued July 8, 2005)

Joseph T. KELLIHER, Commissioner *dissenting in part*:

This order conditionally authorizes indirect disposition of jurisdictional facilities under section 203 for three groups of transactions. First, transfers of equity interests in HoldCo from current owners to buyers that are specifically identified in the application. Second, transfers of equity interests from current owners or future owners to other existing owners or new buyers that have not yet been determined. Third, transfers of interests from current or future holders to direct or indirect wholly-owned subsidiaries of the ultimate parent of such current or future holders. I support the authorization under section 203 for transfers of equity interests in HoldCo from current owners to buyers who are specifically identified in the application. However, I do not believe that it is consistent with the public interest for the Commission to grant blanket approval to all Future Transactions and Future Subsidiary Transactions since these speculative transactions are void of specific details, including the identity of the buyers or sellers that would allow the Commission to examine any affiliate relationships. I find inadequate the condition the order imposes that the Applicants must simply inform the Commission of important transaction details after competitive harm may have already occurred.

The Applicants argue that a blanket authorization is necessary to facilitate the trading of debt and equity interests. However, it is important to note that in the past the Commission has acted expeditiously on section 203 approvals. I see no reason why the Commission will not continue this practice. Furthermore, in the absence of a blanket authorization, the conditions concerning the limitations on ownership that the Commission imposes in this order would have provided strong guidance to entities interested in expedited approval. Based on these facts, I believe that the potential for competitive harm outweighs any benefit an Applicant may receive through a blanket authorization. In my view, the granting of a blanket authorization is inconsistent with the Commission's

statutory responsibility to determine whether each proposed transaction is consistent with the public interest. Accordingly, I dissent on the blanket authorizations granted for the speculative Future Transactions and Future Subsidiary Transactions.

---

Joseph T. Kelliher