

147 FERC ¶ 61,261
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

NRG Energy, Inc.
NRG Yield, Inc.

Docket No. EC14-78-000

ORDER GRANTING BLANKET AUTHORIZATION

(Issued June 27, 2014)

1. On April 18, 2014, NRG Energy, Inc. (NRG Energy) and NRG Yield, Inc. (NRG Yield) (together, Applicants) filed an application pursuant to section 203 of the Federal Power Act (FPA)¹ and Part 33 of the Commission's regulations² requesting blanket authorization under FPA section 203(a)(1) for direct or indirect transfers from NRG Energy to NRG Yield of voting interests in public utilities under FPA section 201³ that are Exempt Wholesale Generators and/or Qualifying Facilities (Requested Blanket Authorization).⁴ We grant the Requested Blanket Authorization, subject to Applicants' proposed conditions and restrictions, as revised by the Commission, as discussed below.

¹ 16 U.S.C. § 824b (2012).

² 18 C.F.R. pt. 33 (2013).

³ 16 U.S.C. § 824 (2012).

⁴ Application for Blanket Approval under Section 203 of the Federal Power Act, Docket No. EC14-78-000 (Apr. 18, 2014) (Application).

I. Background

A. Description of Applicants

1. NRG Energy

2. Applicants state that NRG Energy is a Delaware corporation and an integrated wholesale power generation and retail electricity company that, through various subsidiaries, engages in (1) wholesale power generation and electricity and fuel trading; (2) retail electric supply and demand response; and (3) deployment and commercialization of alternative energy technologies.⁵ Applicants also state that NRG Energy, through various subsidiaries, owns or controls over 53,000 megawatts (MW) of electric generating capacity throughout the United States.⁶

3. Applicants note that NRG Energy's common stock is publicly-traded on the New York Stock Exchange (NYSE), and that they are aware of only two investor groups that own, control, or hold with the power to vote 10 percent or more of NRG Energy's outstanding common stock. Specifically, T. Rowe Price Group, Inc. (T. Rowe Price) and Capital Research and Management Company (Capital Research) have reported that they each, together with certain entities, own more than 10 percent of NRG Energy's outstanding common stock.⁷

2. NRG Yield

4. Applicants explain that certain of NRG Energy's generation-owning subsidiaries are owned through its controlling interest in NRG Yield, as described below. Applicants state that NRG Yield was formed "to own a diversified portfolio of contracted renewable and conventional generation and thermal infrastructure assets in the United States."⁸ Applicants state that by separating NRG Energy's contracted conventional and renewable

⁵ These technologies include vehicle charging infrastructure, distributed solar, and smart meter technology. *Id.* at 3.

⁶ *Id.* at 2-3.

⁷ Applicants note that the Commission has granted T. Rowe Price and its affiliates, and Capital Research and its affiliates blanket authorization to acquire up to 20 percent of the voting securities of public utilities, subject to certain conditions designed to prevent them from exercising control over such public utilities. *See id.* n.6.

⁸ *Id.* at 3.

generation and thermal infrastructure assets from its uncontracted, merchant assets and offering NRG Yield's Class A common stock to the public,⁹ they were attempting to create a "pure play" issuer that would be attractive to 'dividend growth-oriented investors.'"¹⁰ Applicants assert that this structure will provide them with access to a more competitive source of equity capital that supports their long-term growth strategy and allows them to optimize their capital structure. The existing NRG Yield portfolio consists of interests in entities that own and operate approximately 1,400 MW of fully-contracted natural gas-fired and renewable generation facilities, and approximately 1,300 MW of distributed energy facilities.¹¹

5. Applicants explain that NRG Yield has issued two outstanding classes of common stock, Class A and Class B common stock. NRG Energy owns 100 percent of the Class B common stock of NRG Yield, which, according to Applicants, represents approximately 65.5 percent of the voting interests, but no economic interest,¹² in NRG Yield. The Class

⁹ NRG Yield's Class A common stock was offered to the public through an initial public offering in July 2013 (July 2013 IPO). Applicants have filed as Attachment 1 to the Application a copy of the prospectus used in connection with the July 2013 IPO (Prospectus).

¹⁰ Application at 3-4. In the Prospectus, Applicants explain that, by creating NRG Yield, NRG Energy's objective was to create a public issuer with operating, financial and tax characteristics that will appeal to dividend growth-oriented investors seeking exposure to the contracted power sector. Application, Attachment 1, Prospectus at 2.

¹¹ Applicants list some of these entities and their facilities in the Application. *Id.* at 6-8. In the Prospectus, NRG Yield states that its contracted generation portfolio includes three natural gas or dual-fired facilities, eight utility-scale solar and wind generation facilities and two portfolios of distributed solar facilities, and that these facilities sell substantially all of their output pursuant to long-term, fixed price offtake agreements to credit-worthy counterparties. NRG Yield further states that the average remaining contract life, weighted by MWs, of these offtake agreements was approximately 16 years as of March 31, 2013. NRG Yield's assets also include thermal infrastructure assets that provide steam, hot water and/or chilled water, and in some instances electricity, to commercial businesses, universities, hospitals and governmental units in 10 locations, principally through long-term contracts or pursuant to rates regulated by state utility commissions. Application, Attachment 1, Prospectus at 2-3.

¹² As explained in the Prospectus, holders of Class B common stock do not have any right to receive dividends, other than dividends payable solely in shares of Class B

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A common stock of NRG Yield, which, in the aggregate, represents the remaining voting interest in NRG Yield, approximately 34.5 percent, is publicly-traded on the NYSE.¹³ Holders of Class A common stock and Class B common stock vote together as a single class on all matters presented to shareholders for their vote or approval.¹⁴

6. NRG Yield, in turn, owns 100 percent of the Class A membership units of NRG Yield LLC (Yield LLC), which represents approximately 34.5 percent of the economic interests in Yield LLC, and is the sole managing member of Yield LLC. NRG Energy owns 100 percent of the Class B membership units of Yield LLC, which represent approximately 65.5 percent of the economic interests in Yield LLC. Finally, Yield LLC owns all of the membership interests of NRG Yield Operating, LLC, which holds NRG Yield's direct and indirect interests in various project subsidiaries.

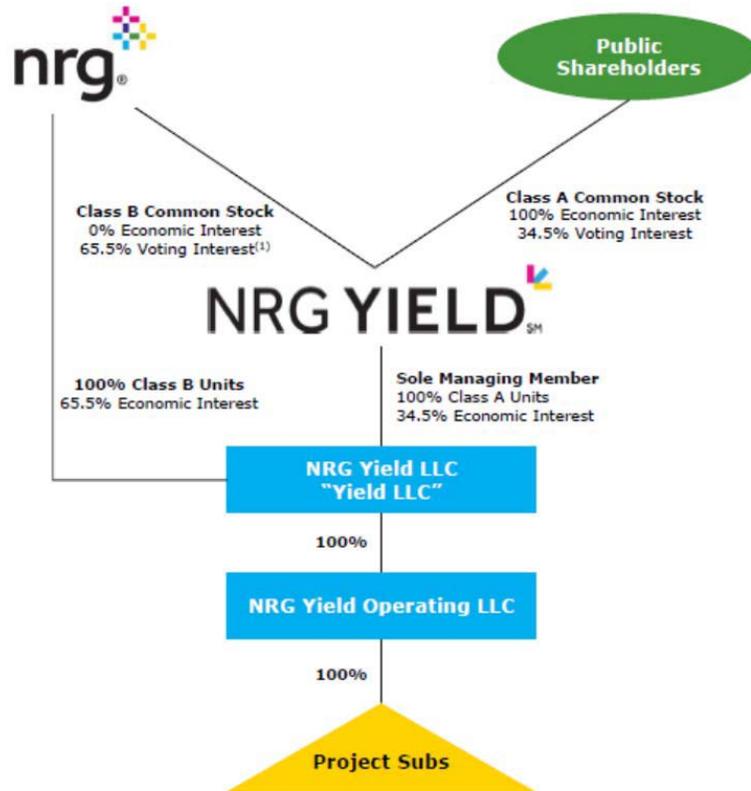
7. Applicants provide the following chart¹⁵ to illustrate the upstream ownership of NRG Yield:

common stock in the event of payment of a dividend in shares of common stock payable to holders of Class A common stock, or to receive any distribution upon the liquidation or winding up of NRG Yield, except for their right to receive payment for the par value of shares of Class B common stock (\$0.01 per share) in connection with the company's liquidation. Application, Attachment 1, Prospectus at 164-165.

¹³ Applicants state that they are not aware of any investor or investor group that currently owns, controls or holds with power to vote an amount of Class A NRG Yield shares that would equate to 10 percent or more of NRG Yield's voting securities. *Id.* at 5. In addition, Applicants note that NRG Yield has issued senior notes in an aggregate amount of \$345 million that are convertible, under certain circumstances, into shares of Class A common stock. *Id.* at 4.

¹⁴ Application, Attachment 1, Prospectus at 22.

¹⁵ As identified in the organizational chart, nrg® is NRG Energy.



8. Applicants state that NRG Yield’s Board of Directors consists of seven individuals, four of whom are officers of NRG Energy.¹⁶ Further, since NRG Yield does not have any employees, all of the officers of NRG Yield are also officers of NRG Energy. In addition, NRG Energy provides, or arranges for, operation, management and administrative services to NRG Yield and its subsidiaries pursuant to a management services agreement; NRG Energy personnel also operate certain of NRG Yield’s assets pursuant to project-level agreements.¹⁷

¹⁶ In the Prospectus, NRG Yield notes that, as a “controlled company” for purposes of NYSE listing requirements, it will be permitted to, and may, opt out of the NYSE listing requirement that a majority of the members of its board of directors be “independent.” Application, Attachment 1, Prospectus at 50.

¹⁷ Application at 5.

B. Request for Blanket Authorization

1. Proposed Transactions and Purpose of Blanket Authorization

9. Applicants state that a key part of NRG Yield's growth strategy involves acquiring additional contracted generation and thermal infrastructure assets from NRG Energy by purchasing voting interests in public utilities under FPA section 201 that are Exempt Wholesale Generators and/or Qualifying Facilities¹⁸ (Proposed Transactions). To that end, Applicants have entered into an agreement, the Right of First Offer Agreement, pursuant to which NRG Energy has granted NRG Yield a right of first offer for certain assets (ROFO Assets).¹⁹ In addition, Applicants observe that NRG Energy has stated its intention that NRG Yield "serve as its primary vehicle for owning, operating and acquiring contracted renewable and conventional generation and thermal infrastructure assets," and has publicly discussed the possibility of selling to NRG Yield certain contracted assets recently acquired from Edison Mission Energy, including a large number of wind-powered generation facilities.²⁰

10. According to Applicants, an upstream transfer of voting interests in a public utility requires prior Commission approval under FPA section 203(a)(1)(A) if it results in a change in control over the public utility and is deemed to be an indirect disposition of the public utility's Commission-jurisdictional facilities.²¹ Approval under FPA section 203(a)(2) may also be required if the acquirer is a holding company in a holding company system that includes an electric utility or a transmitting utility and is acquiring the securities of a transmitting utility, an electric utility company, or a holding company in a holding company system that includes a transmitting utility or an electric utility company.

11. Applicants conclude that any Commission authorization under FPA sections 203(a)(1) or 203(a)(2) that would have been necessary for the transfers of interests in public utilities consummated prior to the July 2013 IPO was provided for by the blanket

¹⁸ In the Application, Applicants refer to these public utilities as "the Project Companies." *Id.* at 1.

¹⁹ Applicants include a copy of the Right of First Offer Agreement in Exhibit I of the Application, and list the ROFO Assets in the Application. *See id.* at 8-10.

²⁰ Applicants state that they acquired these facilities from Edison Mission Energy in a recent, Commission-approved transaction. *Id.* at 11.

²¹ *Id.* (citing *Enova Corp.*, 79 FERC ¶ 61,107 (1997)).

authorization for “internal corporate reorganizations” set forth in the Commission’s regulations.²² Applicants assert that any authorization necessary under FPA section 203(a)(2) was also provided for by the blanket authorization for acquisitions of interests in Exempt Wholesale Generators, Qualifying Facilities, and foreign utilities by entities that are holding companies solely with respect to Exempt Wholesale Generators, Qualifying Facilities, and foreign utilities.²³

12. Applicants explain that, while the Holding Company Blanket Authorization would provide any necessary authorization under FPA section 203(a)(2) for post-July 2013 IPO transfers of interests in Exempt Wholesale Generators, Qualifying Facilities, and foreign utilities to NRG Yield, it is less clear whether the Internal Corporate Reorganization Blanket Authorization would provide any necessary FPA section 203(a)(1) authorization for the Proposed Transactions. According to Applicants, “there could be a question as to whether the transfer of voting interests in a public utility following the [July 2013 IPO] would be considered an ‘*internal*’ corporate reorganization[.]’ as such a transfer would result in some degree of ‘external’ (i.e., non-NRG Energy) ownership.”²⁴

13. Applicants request that the Commission assume jurisdiction without resolving any threshold jurisdictional issues regarding the applicability of the Internal Corporate Reorganization Blanket Authorization to the Proposed Transactions. Instead of addressing those issues, Applicants request that the Commission grant, subject to certain limitations and conditions discussed below, blanket authorization under FPA section 203(a)(1) for direct or indirect transfers from NRG Energy to NRG Yield of voting interests in public utilities that are Exempt Wholesale Generators and/or Qualifying Facilities (i.e., Project Companies). Applicants ask that the Requested Blanket Authorization remain effective for a three-year term commencing on the date of the Commission’s order. Reiterating that acquiring additional assets from NRG Energy, including but not limited to the ROFO Assets, is a core element of NRG Yield’s growth strategy, Applicants state that the Requested Blanket Authorization will “facilitate timely

²² *Id.* (citing 18 C.F.R. § 33.1(c)(6) (Internal Corporate Reorganization Blanket Authorization)).

²³ *Id.* at 11-12 (citing 18 C.F.R. § 33.1(c)(8) (Holding Company Blanket Authorization)).

²⁴ *Id.* at 12 (quoting 18 C.F.R. § 33.1(c)(6), the Internal Corporate Reorganization Blanket Authorization (Applicants’ emphasis retained)).

execution” of such acquisitions, and avoid burdening the Commission with FPA section 203 applications filed out of an abundance of caution.²⁵

2. Proposed Limitations and Restrictions on the Requested Blanket Authorization

14. Applicants propose specific limitations and restrictions on the Requested Blanket Authorization. First, Applicants propose that the Requested Blanket Authorization apply only to direct or indirect transfers of voting interests in one or more Project Companies, that is, public utilities that are Exempt Wholesale Generators and/or Qualifying Facilities. Thus, the Requested Blanket Authorization would not apply to direct or indirect transfers of voting interests in any traditional public utility that (1) has captive customers; (2) owns transmission facilities (other than limited transmission facilities used to interconnect generating facilities with the transmission grid); or (3) provides transmission service.²⁶

15. Second, Applicants state that the Requested Blanket Authorization would not apply to any transfer of voting interests in a Project Company that would result in a change in ultimate control over that Project Company, or in that Project Company becoming affiliated with entities with which it was not affiliated prior to the transfer. In order to ensure that no change in ultimate control or affiliation occurs, Applicants propose that the Requested Blanket Authorization only apply to transfers occurring when: (1) NRG Energy owns at least 55 percent of NRG Yield’s outstanding voting securities, and (2) neither NRG Energy nor NRG Yield have actual or constructive notice that any investor, individually or together with its affiliates, owns an amount of NRG Yield’s Class A shares that would equate to 10 percent or more of NRG Yield’s outstanding voting securities.²⁷

²⁵ *Id.*

²⁶ *Id.* at 13.

²⁷ Applicants state that, at this time, an investor would need to own approximately 28.2 percent of the Class A shares of NRG Yield in order to have a voting interest of 10 percent in NRG Yield. *Id.* at 14, n.49. As described in the Prospectus used in connection with the July 2013 IPO, NRG Yield imposed limitations, including through amendments to its amended and restated certificate of incorporation, to prevent any purchaser from acquiring through the offering or in subsequent purchases, other than secondary market purchases, an amount of Class A common stock sufficient to convey control over any public utility subsidiaries of NRG Yield, without the prior written consent of NRG Yield’s board of directors, where “control” was defined to mean any direct or indirect voting interest of 10 percent in any public utility subsidiaries of NRG

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16. With respect to the latter limitation, Applicants explain that they typically will not have advance notice that an investor in Class A shares of NRG Yield intends to acquire a controlling interest in NRG Yield and will instead have to rely on the after-the-fact notice provided by investors' Schedule 13D or 13G filings with the Securities and Exchange Commission.²⁸ Applicants assert that the Commission has recognized the difficulties faced by companies in Applicants' position,²⁹ and that the time lag is not a function of the Requested Blanket Authorization. According to Applicants, even after applying for and receiving Commission authorization for a transaction, NRG Energy and NRG Yield could still consummate a transaction without knowing that a third-party had acquired an amount of NRG Yield's Class A shares that would equate to 10 percent or more of NRG Yield's outstanding voting securities.³⁰

17. Finally, Applicants propose four additional reporting conditions to facilitate ongoing oversight of their compliance with the conditions of the Requested Blanket Authorization:

Yield. NRG Yield also alerted purchasers of Class A common stock that restrictions under the FPA may apply to them even in cases in which Class A common stock is acquired in secondary market transactions. Application, Attachment 1, Prospectus at i-ii, 127.

²⁸ Schedules 13D and 13G provide information concerning an acquirer's intent and purposes with respect to the issuer of a security. Schedule 13D requires an acquirer of a security to report investments undertaken with the intention of exerting control or with the effect of exerting control. Schedule 13G requires an acquirer to certify that the securities were not acquired for the purpose or with the effect of changing or influencing control over the issuer. *See The Goldman Sachs Group, Inc.*, 134 FERC ¶ 61,227, at n.8 (2011) (citing *Morgan Stanley*, 121 FERC ¶ 61,060, at n.15 (2007), *order granting clarification*, 122 FERC ¶ 61,094 (2008)).

²⁹ Application at 14 (citing *FPA Section 203 Supplemental Policy Statement*, FERC Stats. & Regs. ¶ 31,253, at P 36 (2007) (Supplemental Policy Statement) (clarifying that secondary market transactions involving public utilities do not require approval under FPA section 203(a)(1)(A) and acknowledging the virtual impossibility of public utilities or holding companies knowing in advance what trading will occur or whether direct or indirect control over them is being acquired), *order on clarification*, 122 FERC ¶ 61,157 (2008)).

³⁰ *Id.* at 14-15.

- (1) Applicants will notify the Commission within 10 days of the date upon which any Proposed Transactions are consummated;
- (2) Applicants will file with the Commission, on an informational basis and within 30 days of the Schedules or amendments being filed with the Securities and Exchange Commission, copies of any Schedule 13D or 13G filings, including amendments, relating to ownership of NRG Yield's Class A shares that are filed during the term that the Requested Blanket Authorization is in effect;
- (3) The Requested Blanket Authorization is for a three-year term, without prejudice to Applicants requesting extensions of the Requested Blanket Authorization; and
- (4) Applicants will inform the Commission within 30 days of any material change in circumstances that would reflect a departure from the facts upon which the Commission relies in granting the Requested Blanket Authorization.

II. Notice of Filings

18. Notice of the Application was published in the *Federal Register*, 79 Fed. Reg. 23,344 (2014), with interventions and protests due on or before May 9, 2014. None was filed.

III. Discussion

A. Standard of Review under Section 203

19. FPA section 203(a)(4) requires the Commission to approve a transaction if it determines that the transaction will be consistent with the public interest.³¹ 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.³² FPA section 203(a)(4) also requires the

³¹ 16 U.S.C. § 824b(a)(4) (2012).

³² See *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, FERC Stats. & Regs. ¶ 31,044, at 30,111 (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. See also *Revised Filing Requirements Under Part 33 of the*

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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.”³³ The Commission’s regulations establish verification and information requirements for applicants that seek a determination that a transaction will not result in inappropriate cross-subsidization or a pledge or encumbrance of utility assets.³⁴

20. Applicants assert that the Proposed Transactions, i.e. the transfers of voting interests in Project Companies by NRG Energy to NRG Yield pursuant to the Requested Blanket Authorization, subject to the limitations and conditions proposed above, satisfy the requirements of FPA section 203 because they will not have an adverse impact on competition, rates, or regulation, and will not result in cross-subsidization or the pledge or encumbrance of utility assets for the benefit of any associate company. Applicants contend that granting the Requested Blanket Authorization will benefit the public interest by reducing the burden, on both the Commission and Applicants, associated with filing individual FPA section 203 authorizations for transactions that do not present any competitive or other public interest issues.

B. Analysis

21. As discussed in further detail below, the Commission grants Applicants’ request for the Requested Blanket Authorization, subject to the conditions and restrictions proposed by Applicants, as revised by the Commission, and authorizes the Proposed Transactions.

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 No. 669), *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).

³³ 16 U.S.C. § 824b(a)(4) (2012).

³⁴ 18 C.F.R. § 33.2(j) (2013).

1. Effect on Competition

a. Applicants' Analysis

22. Applicants argue that the Proposed Transactions will have no effects on horizontal or vertical competition because the Project Companies that will be transferred to NRG Yield will be controlled by NRG Energy both before and after the Proposed Transactions are consummated. Applicants state that the Requested Blanket Authorization would “not apply at any time when the transfer of voting interests in a Project Company would result in a change in control over such Project Company and its Commission-jurisdictional facilities, either because NRG Energy no longer controlled NRG Yield or because another investor had acquired a controlling interest in NRG Yield.”³⁵ Specifically, the Requested Blanket Authorization “would *not* apply if NRG Energy owned, controlled or held with power to vote less than 55 percent of NRG Yield’s outstanding voting securities or if another investor had acquired 10 percent or more of NRG Yield’s outstanding voting securities.”³⁶ Applicants also claim that no Proposed Transaction would result in a Project Company becoming affiliated with any additional entities with which it was not already affiliated prior to the Proposed Transaction, including any additional entities that own or control generation facilities, transmission or inputs to electric power production.

23. Applicants conclude that no Proposed Transaction would involve any combination that would potentially present market power issues, and that the effect of the Proposed Transactions would be indistinguishable from that of internal corporate reorganizations, which, as the Commission has recognized in promulgating the Internal Corporate Reorganization Blanket Authorization, do not involve any change in ultimate control and are therefore unlikely to have anticompetitive effects.³⁷ Applicants state that the Commission has recognized the absence of competitive concerns not only in granting that blanket authorization but also in individual cases approving internal corporate reorganizations not covered by the Internal Corporate Reorganization Blanket Authorization.³⁸

³⁵ Application at 16-17.

³⁶ *Id.* at 17, n.58.

³⁷ *Id.* (citing Order No. 669, FERC Stats. & Regs. ¶ 31,200 at P 192).

³⁸ *Id.* (citing *Ameren Corp.*, 131 FERC ¶ 61,240, at P 18 (2010); *Cinergy Corp.*, 126 FERC ¶ 61,146, at P 32, *clarified*, 128 FERC ¶ 61,102 (2009); *Calpine Constr. Fin.*

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b. Commission Determination

24. Applicants have demonstrated that, under the Requested Blanket Authorization, the Proposed Transactions will not have an adverse effect on horizontal or vertical competition because the Project Companies transferred from NRG Energy to NRG Yield will be controlled by NRG Energy both before and after the Proposed Transactions take place.³⁹ Applicants' proposed conditions and restrictions limit the Requested Blanket Authorization so that it will not apply when a Proposed Transaction would result in a change in control over a Project Company and its Commission-jurisdictional facilities. Rather, the Requested Blanket Authorization would only apply to Proposed Transactions occurring when NRG Energy owns at least 55 percent of NRG Yield's outstanding voting securities, and neither NRG Energy nor NRG Yield have actual or constructive notice that any investor, individually or together with its affiliates, owns an amount of NRG Yield's Class A common stock that would equate to 10 percent or more of NRG Yield's outstanding voting securities. Similarly, none of the Proposed Transactions will result in a Project Company becoming affiliated with any additional entities with which it was not affiliated prior to a transaction. Thus, under the Requested Blanket Authorization, no change in market concentration would occur, and no new vertical combinations of assets would be created.

25. With respect to Applicants' commitment to file copies of any Schedule 13D or 13G filings, including any amendments, with the Commission, we will instead require Applicants to file a quarterly report that identifies each investor (or affiliated group of investors) that, as of the end of the quarter, owns five percent or more of the outstanding shares of Class A common stock, showing the percentages of Class A shares to (1) the total outstanding shares of Class A common stock and (2) the aggregate number of outstanding shares of Classes A and B common stock. Such a report, which must be filed within 30 days of the end of each of the first three calendar quarters and within 60 days of the end of the year, will enable the Commission to monitor Applicants' compliance with

Co., L.P., 143 FERC ¶ 62,205 (2013); *Metro Energy, L.L.C.*, 109 FERC ¶ 62,224 (2004)).

³⁹ In the Prospectus used in connection with the July 2013 IPO, NRG Yield discusses NRG Energy's role as its controlling stockholder. Among other things, NRG Yield notes that NRG Energy would possess approximately 70 or 65.5 percent of the combined voting power of NRG Yield's Class A and Class B common stock (depending on whether the underwriters exercised in full their option to purchase additional shares of Class A common stock), and that NRG Energy would have the right to appoint all of NRG Yield's directors. Application, Attachment 1, Prospectus at 43-44.

the conditions of the Requested Blanket Authorization in a more administratively efficient manner. These filings shall be made in this docket or in appropriate sub-dockets of this docket, and shall be prepared on the basis of the most current information filed with the Securities and Exchange Commission. We remind Applicants that if the circumstances the Commission is relying upon to grant the Application materially change, the Requested Blanket Authorization will not cover subsequent transactions until Applicants obtain approval based on the new circumstances.

26. Accordingly, we conclude that the Proposed Transactions under the Requested Blanket Authorization, subject to Applicants' proposed conditions and restrictions, as revised by the Commission, will not have an adverse effect on vertical or horizontal competition.

2. Effect on Rates

a. Applicants' Analysis

27. Applicants assert that the Proposed Transactions will not adversely affect rates because wholesale sales of electric energy, capacity, and ancillary services by the Project Companies will continue to be made at market-based rates or pursuant to the terms of other rate schedules on file with the Commission, and the transfer of voting interests in those companies from NRG Energy to NRG Yield will have no effect on the rates for such sales. Applicants explain that neither Applicants nor the Project Companies are traditional utilities with captive retail or wholesale customers, or that provide unbundled transmission service. According to Applicants, the only cost-based rate schedules potentially implicated by the Proposed Transactions would be cost-based compensation for reactive power, black start, reliability must-run services, or similar generator-based services. Applicants note, however, that these types of rate schedules do not allow for the automatic pass-through of transaction-related costs.

b. Commission Determination

28. We find that the Proposed Transactions under the Requested Blanket Authorization, subject to Applicants' proposed conditions and restrictions, as revised by the Commission, will not adversely affect rates, as sales of electric energy, capacity, and ancillary services will continue to be made at market-based rates, or pursuant to the terms of other rate schedules on file with the Commission.

3. Effect on Regulation

a. Applicants' Analysis

29. Applicants state that the Proposed Transactions will not have any adverse effect on federal or state regulation because the regulatory status of Applicants and the Project

Companies will remain unchanged, and no gaps in regulation will be created. Applicants also note that the Proposed Transactions will not affect the extent to which any state authority can regulate retail rates.

b. Commission Determination

30. We find that the Proposed Transactions under the Requested Blanket Authorization, subject to Applicants' proposed conditions and restrictions, as revised by the Commission, will not adversely affect regulation.

4. Cross-Subsidization

a. Applicants' Analysis

31. Applicants contend that the Proposed Transactions fall within the safe harbor established by the Commission for transactions that do not involve a franchised public utility with captive customers. Applicants state that the Commission has concluded that under such circumstances, there is no potential for harm to customers.⁴⁰ Accordingly, Applicants conclude that the Proposed Transactions will not result in cross-subsidization, or the pledge or encumbrance of utility assets for the benefit of any associate company.

32. Applicants verify that based on the facts and circumstances known to Applicants or that are reasonably foreseeable, the Proposed Transactions will not result in, at the time of any given Proposed Transaction or in the future: (1) transfers 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) new issuances of securities by traditional public utility associate companies that have captive customers or that own or provide transmission service or jurisdictional transmission facilities, for the benefit of an associate company; (3) new pledges or encumbrances 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) new affiliate contracts between non-utility associate companies and traditional public utility associate companies that have captive customers or that own or provide transmission service over jurisdictional transmission facilities, other than non-power goods and services agreements subject to review pursuant to FPA sections 205⁴¹ and 206.⁴²

⁴⁰ Application at 19 (citing Supplemental Policy Statement, FERC Stats. & Regs. ¶ 31,253 at P 17).

⁴¹ 16 U.S.C. § 824d (2012).

b. Commission Determination

33. We find that Applicants have provided adequate assurance that the Proposed Transactions under the Requested Blanket Authorization, subject to Applicants' proposed conditions and restrictions, as revised by the Commission, 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.

C. Conclusion

34. Based on our determination that the Proposed Transactions will not have an adverse effect on competition, rates or regulation, and will not result in cross-subsidization, the Commission authorizes the Proposed Transactions and grants Applicants' request for the Requested Blanket Authorization, subject to the conditions and restrictions proposed by Applicants, as revised by the Commission.

D. Other Considerations

35. 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.⁴³ To the extent that the foregoing authorization results in a change in status, Applicants are advised that they must comply with the requirements of Order No. 652. In addition, Applicants shall make any appropriate filings under section 205 of the FPA to implement the Proposed Transactions.

36. Information and/or systems connected to the bulk power system involved in the Proposed Transaction may be subject to reliability and cyber security standards approved by the Commission pursuant to FPA section 215.⁴⁴ 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

⁴² 16 U.S.C. § 824e (2012).

⁴³ *Reporting Requirements 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). *See* 18 C.F.R. § 35.42 (2013).

⁴⁴ 16 U.S.C. § 824o (2012).

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 cyber security standards. The Commission, the North American Electric Reliability Corporation or the relevant Regional Entity may audit compliance with reliability and cyber security standards.

37. The blanket authorization granted by this order, by its terms, only affects public utilities that have market based rate authority. Because such entities also have standard waivers from other FERC requirements, including the requirement to maintain books in accordance with the Uniform System of Accounts, Applicants did not need to provide any information in the Application on the accounting treatment for the Proposed Transactions and do not need to submit final accounting entries.

The Commission orders:

(A) The Proposed Transactions under the Requested Blanket Authorization are authorized, as discussed in the body of this order, effective for a three-year term from the issuance date of this order.

(B) Applicants will file, on an informational basis and within 30 days of the end of each of the first three calendar quarters and within 60 days of the end of the year, a quarterly report that identifies each investor (or affiliated group of investors) that, as of the end of the quarter, owns five percent or more of the outstanding shares of Class A common stock, showing the percentages of Class A shares to (1) the total outstanding shares of Class A common stock and (2) the aggregate number of outstanding shares of Classes A and B common stock, as discussed in the body of this order.

(C) 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.

(D) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of costs or any valuation of property claimed or asserted.

(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.

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

(G) Applicants must inform the Commission within 30 days of any material change in circumstances that departs from the facts the Commission relied upon in granting the Application.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.