

150 FERC ¶ 61,017  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;  
Philip D. Moeller, Tony Clark,  
and Norman C. Bay.

Verso Bucksport LLC  
Verso Bucksport Power LLC

Docket No. EC15-46-000

ORDER AUTHORIZING DISPOSITION  
OF JURISDICTIONAL FACILITIES

(Issued January 15, 2015)

1. On December 8, 2014, Verso Bucksport LLC (Verso Bucksport) and Verso Bucksport Power LLC (Verso Bucksport Power) (together, Applicants), filed an application under section 203(a)(1)(A) of the Federal Power Act (FPA)<sup>1</sup> requesting Commission authorization for the sale of 100 percent of the equity interests in Applicants (Proposed Transaction) by Verso Paper LLC (Verso Paper) and Verso Maine Power Holdings LLC (Verso Maine) (together, Sellers) to AIM Development (USA) LLC (Buyer).<sup>2</sup> The Commission has reviewed the Proposed Transaction under the Commission's Merger Policy Statement.<sup>3</sup> As discussed below, we authorize the Proposed Transaction as consistent with the public interest.

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<sup>1</sup> 16 U.S.C. § 824b (2012).

<sup>2</sup> Application for Authorization Under Section 203 of the Federal Power Act for Disposition of Jurisdictional Facilities and Requests for Expedited Consideration and Confidential Treatment, Docket No. EC15-46-000 (Dec. 8, 2014) (Application).

<sup>3</sup> See *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*, 72 Fed. Reg. 42,277 (Aug. 2, 2007), FERC Stats. & Regs. ¶ 31,253 (2007) (Supplemental Policy Statement). 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*,

(continued ...)

**I. Background****A. Sellers**

2. Applicants state that Verso Bucksport is a Delaware limited liability company that owns and operates three generation units totaling 118.4 MW located in Maine, within the ISO New England Inc. (ISO-NE) Balancing Authority Area. In addition, Applicants state that Verso Bucksport owns, as a tenant-in-common with Verso Bucksport Power, an undivided 28 percent interest (51.8 MW) in a 185 MW cogeneration facility; Verso Bucksport Power owns the remaining 72 percent undivided interest (133.2 MW) in the facility. According to Applicants, all four of these generation units are located at the Bucksport Mill, a paper mill located in Bucksport, Maine, and are Qualifying Facilities.

3. Applicants state that the power produced by three of the four generation units at Bucksport Mill is either consumed at Bucksport Mill or sold, pursuant to the market-based rate authorizations of Verso Bucksport and Verso Bucksport Power, into the ISO-NE market. Applicants state that the power produced by the fourth generation unit is also sold in the ISO-NE market, pursuant to the market-based rate authorization of Verso Bucksport.<sup>4</sup>

4. Currently, Verso Paper owns 100 percent of the interests in Verso Bucksport, and Verso Maine owns 100 percent of the interests in Verso Bucksport Power.

**B. Buyer**

5. Applicants state that Buyer is a Delaware limited liability company and wholly-owned subsidiary of American Iron & Metal Company Inc., a privately-held Canadian metal recycling company. Applicants maintain that neither Buyer nor any of its affiliates currently owns or controls any generating capacity physically located in the ISO-NE market. Applicants explain that although Buyer has been the owner of the Sartell Project, a 9.5 MW hydroelectric dam located on the Upper Mississippi River near Sartell, Minnesota, the Commission recently issued an order approving the transfer of that project's license from Buyer to Eagle Creek Sartell Hydro, LLC. Applicants claim that the closing of the transaction that will result in the transfer of that license is imminent,

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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).

<sup>4</sup> Application at 4.

and that, apart from the Sartell Project, Buyer does not own any other jurisdictional generation assets.<sup>5</sup>

6. Applicants explain further that neither Buyer nor any of its affiliates currently owns or controls any electric transmission or distribution facilities in the United States, except for limited interconnection facilities required to connect individual generating facilities to the transmission grid. Applicants state that neither Buyer nor any of its affiliates owns or controls any inputs to electricity products or electric power production in the U.S. Lastly, Buyer is not affiliated with any franchised public utility.

### **C. The Proposed Transaction**

7. Pursuant to a purchase agreement, Buyer will purchase from Sellers 100 percent of the equity interests in Applicants. Upon consummation of the Proposed Transaction, Sellers will no longer own any equity interests in Applicants and Applicants will be wholly-owned subsidiaries of Buyer. The jurisdictional facilities involved in the Proposed Transaction include the market-based rate tariffs of Applicants, any agreements pursuant to these market-based rate tariffs, the interconnection facilities connecting Applicants' generation facilities to the transmission grid, and related books and records.

## **II. Notice of Filing and Responsive Pleadings**

8. Notice of the Application was published in the *Federal Register*, 79 Fed. Reg. 74,717 (2014), with interventions and protests due on or before December 29, 2014.

9. Paul R. LePage, Governor of Maine, and Kim Ervin Tucker, counsel for plaintiffs and other similarly situated former employees of the Bucksport Mill in a federal complaint related to the Bucksport Mill (Bucksport Mill Plaintiffs), filed comments on the Application. Applicants filed responses to Governor LePage's and the Bucksport Mill Plaintiffs' comments.

## **III. Discussion**

### **A. Procedural Matters**

10. Rule 213 (a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to a protest unless otherwise ordered decisional authority. We will accept Applicants' answer because it has provided information that assisted us in our decision-

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<sup>5</sup> *Id.* at 5.

making process. We also consider the comments submitted by Governor LePage and the Bucksport Mill Plaintiffs as part of the record.

**B. Substantive Matters**

**1. Standard of Review Under FPA Section 203**

11. 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. The Commission's analysis of whether a transaction is 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.<sup>6</sup> FPA 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."<sup>7</sup> The Commission's regulations establish verification and informational requirements for entities that seek a determination that a transaction will not result in inappropriate cross-subsidization or pledge or encumbrance of utility assets.<sup>8</sup>

**2. Analysis of the Proposed Transaction**

**a. Effect on Competition**

**i. Applicants' Analysis**

12. Applicants assert that the Proposed Transaction raises no horizontal market power concerns because Buyer neither owns nor controls any generation in the ISO-NE Balancing Authority Area, the relevant geographic market. Applicants conclude that, since Buyer and Applicants do not conduct business in the same geographic market, the Proposed Transaction does not raise horizontal market power concerns.<sup>9</sup>

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<sup>6</sup> Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,111.

<sup>7</sup> 16 U.S.C. § 824b(a)(4) (2012).

<sup>8</sup> 18 C.F.R. § 33.2(j) (2014).

<sup>9</sup> Application at 15-16.

13. Applicants also assert that the Proposed Transaction raises no vertical market power concerns. First, Applicants note that the Proposed Transaction does not involve any transmission facilities, other than discrete and limited transmission facilities necessary to interconnect generation facilities to the transmission grid. Second, Applicants state that neither Buyer nor any of its affiliates owns or controls transmission facilities, except for limited interconnection facilities associated with individual generating facilities. Third, Applicants state that neither Applicants, Buyer, nor any affiliates of Applicants or Buyer owns or controls any inputs to electricity products or electric power production in the United States that could allow them to erect barriers to entry. Applicants note that they are currently affiliated with sources of coal supplies, but that the Commission has adopted a rebuttable presumption that applicants cannot erect a barrier to market entry as a result of affiliation with sources of coal supplies.<sup>10</sup>

**ii. Commission Determination**

14. We find that the Proposed Transaction will not have an adverse effect on competition. As Applicants note, they do not conduct business in the same geographic market as Buyer, and the Proposed Transaction does not involve any transmission facilities other than those discrete and limited facilities necessary to interconnect the generation facilities to the transmission grid. In addition, neither Applicants, Buyer nor any of their affiliates own or control any inputs to electricity products of electric power production that would allow them to erect barriers to entry.

**b. Effect on Rates**

**i. Applicants' Analysis**

15. Applicants assert that the Proposed Transaction will have no adverse effect on rates because they do not have any cost-based wholesale power sales customers. Applicants explain that, except for the energy consumed at the Bucksport Mill, they sell the electric output of their generation facilities pursuant to their respective market-based rate tariffs, and that such sales will not be impacted by the Proposed Transaction. Applicants explain further that they do not have any transmission customers that are served by the discrete and limited facilities necessary to interconnect their facilities to the transmission grid.<sup>11</sup>

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<sup>10</sup> *Id.* at 16-17.

<sup>11</sup> *Id.* at 17-18.

**ii. Commission Determination**

16. We find that the Proposed Transaction will not have an adverse effect on rates. Applicants represent that they do not have any cost-based wholesale power sale customers, and that, other than the energy consumed at the Bucksport Mill, the electric output of the generation facilities is sold pursuant to market-based rate tariffs. In addition, Applicants do not have any transmission customers that are served on its limited and discrete interconnection facilities.

**c. Effect on Regulation**

**i. Applicants' Analysis**

17. Applicants assert that the Proposed Transaction will not have an adverse effect on regulation because the Proposed Transaction will not impair the ability of the Commission or any state regulatory authority to regulate Applicants or any of their affiliates. Applicants state that the Commission will continue to have the same jurisdiction over them and their Commission-jurisdictional facilities after the Proposed Transaction is consummated as before the transaction.<sup>12</sup>

**ii. Commission Determination**

18. We find no evidence that either state or federal regulation will be impaired by the Proposed Transaction. The Proposed Transaction will not create a regulatory gap at the federal level, and no state has alleged that it lacks the authority to review the Proposed Transaction or raised concerns about the effect of the transaction on state regulation.

**d. Cross-Subsidization**

**i. Applicants' Analysis**

19. Applicants assert that the Proposed Transaction falls within the “safe harbor” adopted by the Commission for certain classes of transactions that are unlikely to raise cross-subsidization concerns. Applicants state that the Proposed Transaction does not involve a franchised public utility with captive customers, and therefore falls within the Commission safe harbor established by the Commission.<sup>13</sup>

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<sup>12</sup> *Id.* at 18-19.

<sup>13</sup> *Id.* at 19.

20. Even though Applicants assert that the Proposed Transaction falls within the safe harbor, out of an abundance of caution, they also provide the verifications required by the Commission under Exhibit M. Specifically, Applicants verify that, based on facts and circumstances known to them or that are reasonably foreseeable, the Proposed Transaction will not result in, at the time of the Proposed Transaction or in the future: (1) any transfer of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company; (2) any new issuance of securities by a traditional public utility associate company that has captive customers or that owns, or provides transmission service over, jurisdictional transmission facilities, for the benefit of an associate company; (3) any new pledge or encumbrance of assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; or (4) any new affiliate contracts between a non-utility associate company and a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, other than non-power goods and service agreements subject to review under sections 205 and 206<sup>14</sup> of the FPA.

**ii. Commission Determination**

21. We find, based on Applicants' representations, that the Proposed Transaction will not result in the cross-subsidization of a non-utility associate company by a utility company, or in a pledge encumbrance of utility assets for the benefit of an associate company. As Applicants note, the Proposed Transaction does not involve a franchised public utility with captive customers, and therefore falls within the safe harbor established by the Commission.

**3. Other Issues**

**a. Issues Raised by Commentors**

22. Governor LePage states that the Proposed Transaction "raises questions regarding the operation of the power assets by a company that has very little experience with ISO-New England and power markets in general."<sup>15</sup> The Governor requests that the

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<sup>14</sup> 16 U.S.C. § 824e (2012).

<sup>15</sup> Letter from Paul R. LePage, Governor of Maine, to Kimberly D. Bose, Secretary of the Federal Energy Regulatory Commission at 1 (Dec. 23, 2014), Docket No. EC15-46-000 (Letter from Governor LePage at 1).

Commission carefully consider and assess whether the Proposed Transaction could introduce additional risk to the reliability of the electric system.

23. In their comments, the Bucksport Mill Plaintiffs call the Commission's attention to a complaint against Applicants that is pending in the United States District Court for the District of Maine. The Bucksport Mill Plaintiffs state that the complaint alleges violations of state and federal antitrust laws based on the anticompetitive effects of the proposed transfer of the Bucksport Mill to Buyer. According to the Bucksport Mill Plaintiffs, "Verso seeks destruction of the [Bucksport] Mill's paper producing capacity by transfer of the [Bucksport] Mill to [Buyer] – a scrapper that has indicated an intent to destroy the [Bucksport] Mill's ability to operate in the production of paper – in order [to] constrain supply and raise prices in a paper market where it will still have a market share of about [fifty percent]."<sup>16</sup>

**b. Applicants' Response**

24. Applicants respond to Governor LePage's comments by explaining that certain staff currently operating the generation facilities at the Bucksport Mill will continue working on the facilities' operations following the Proposed Transaction. In addition, Applicants note that Buyer will be retaining "a nationally recognized energy manager with experts in the ISO-NE market,"<sup>17</sup> Consolidated Asset Management Services, LLC, to manage energy sales from the facilities. Applicants also assert that Buyer has already demonstrated that it can ably operate a Commission-jurisdictional facility based on its ownership of the Sartell Project.<sup>18</sup>

25. In response to the Bucksport Mill Plaintiffs, Applicants argue that the Commission does not delay approving proposed transactions where other regulatory or court approvals may be required or other litigation may impact a proposed transaction.<sup>19</sup> Applicants also argue that the Bucksport Mill Plaintiffs' concerns are unrelated to competition in ISO-

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<sup>16</sup> Letter from Kim Ervin Tucker, Attorney, to Kimberly D. Bose, Secretary of the Federal Energy Regulatory Commission at 1, Docket No. EC15-46-000 (Jan. 6, 2015).

<sup>17</sup> Answer of Verso Bucksport LLC and Verso Bucksport Power LLC and Request for Confidential Treatment at 8, Docket No. EC15-46-000 (Jan. 5, 2015) (Applicants Jan. 5 Answer).

<sup>18</sup> *Id.*

<sup>19</sup> Answer of Verso Bucksport LLC and Verso Bucksport Power LLC at 7-8, Docket No. EC15-46-000 (Jan. 9, 2015).

NE's wholesale power markets. Applicants state that the antitrust laws addressed by the federal complaint cited by the Bucksport Mill Plaintiffs are not enforced by the Commission, and that the Bucksport Mill Plaintiffs have failed to show that the Proposed Transaction raises competitive issues in any relevant Commission-jurisdictional markets.<sup>20</sup>

**c. Commission Determination**

26. We find that the comments on the Proposed Transaction raise issues that are outside the scope of our analysis of the Proposed Transaction under FPA section 203. The matters referred to by the Bucksport Mill Plaintiffs relate to competition in the paper production markets, not to the effects of the Proposed Transaction on competition in energy markets. With respect to Governor LePage's concerns regarding "the operation of the power assets by a company that has very little experience with [ISO-NE] and power markets in general,"<sup>21</sup> we note that Applicant represents that Buyer has experience owning and operating a Commission-jurisdictional facility, the Sartell Project, and that Buyer will be retaining an energy manager with experience in the ISO-NE markets.<sup>22</sup> In addition, the Commission will retain the ability to address any reliability issues that may arise in the future as part of our authority to oversee reliability.<sup>23</sup>

**4. Other Considerations**

27. 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.<sup>24</sup> 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.

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<sup>20</sup> *Id.* at 9-10.

<sup>21</sup> Letter from Governor LePage at 1.

<sup>22</sup> Applicants Jan. 5 Answer at 8.

<sup>23</sup> *See, e.g., National Grid plc*, 117 FERC ¶ 61,080, at P 77 (2006); *BHE Holdings Inc.*, 133 FERC ¶ 61,231, at P 54 (2010).

<sup>24</sup> *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 70 Fed. Reg. 8,253 (Feb. 18, 2005), FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005). *See* 18 C.F.R. § 35.42 (2014).

28. Information and/or systems connected to the bulk power system involved in this transaction may be subject to reliability and cyber security standards approved by the Commission pursuant to FPA section 215.<sup>25</sup> Compliance with these standards is mandatory and enforceable regardless of the physical location of the affiliates or investors, information database, and operating systems. If affiliates, personnel or investors are not authorized for access to such information and/or systems connected to the bulk power system, a public utility is obligated to take the appropriate measures to deny access to this information and/or the equipment/software connected to the bulk power system. The mechanisms that deny access to information, procedures, software, equipment, etc., must comply with all applicable reliability and cyber security standards. The Commission, North American Electric Reliability Corporation or the relevant regional entity may audit compliance with reliability and cyber security standards.

The Commission orders:

(A) The Proposed Transaction is hereby authorized, as discussed in the body of this order.

(B) Applicants must inform the Commission within 30 days of any material change in circumstances that departs from the facts the Commission relied upon in authorizing the Proposed Transaction.

(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 cost or any valuation of property claimed or asserted.

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

(F) Applicants shall make any appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transaction.

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<sup>25</sup> 16 U.S.C. § 824o (2012).

(G) Applicants shall notify the Commission within 10 days of the date on which the Proposed Transaction is consummated.

By the Commission. Commissioner Honorable is not participating.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.