

151 FERC ¶ 62,143
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

DES Wholesale, LLC

Docket No. EC15-80-000

ORDER AUTHORIZING ACQUISITION OF JURISDICTIONAL FACILITIES

(Issued June 1, 2015)

On February 26, 2015, as supplemented on March 18, 2015, DES Wholesale, LLC (DES or Applicant), filed an application requesting authorization for a transaction, under section 203(a)(1) of the Federal Power Act (FPA),¹ for the disposition of jurisdictional facilities that resulted from the transfer of all of the equity interests in DES from Mr. Fernando de Agüero (Mr. de Agüero) to Ms. Allison Sheffield de Agüero (Ms. Sheffield) (Completed Transaction). The jurisdictional facilities involved in the Completed Transaction are DES's market-based rate tariff and any related contracts, books, and records. Applicant states that the Completed Transaction will result in DES being wholly-owned and controlled by Ms. Sheffield.

Applicant states that at the time of the Completed Transaction, when Mr. de Agüero transferred full ownership and control of DES to MS. Sheffield, neither party was aware of the requirements under Section 203 of the FPA and the Commission's Part 33 regulations. Applicant requests that the Commission authorize the Transaction on a going-forward basis.

Applicant states that, at the time of the Completed Transaction, Mr. de Agüero was the sole officer of DES and wholly owned and controlled DES. Applicant states that Mr. De Agüero transferred his full ownership and control of DES to Ms. Sheffield on November 1, 2014 for \$13,000.00. Applicant asserts that Mr. de Agüero and Ms. Sheffield were the only parties to the Completed Transaction. Applicant states that Ms. Sheffield does not hold any other ownership or control interests, or hold any other officer or director position in any other entity. Applicant is a limited liability company organized under the state of Georgia, with its principal place of business in Milton, Georgia. Applicant received market-based rate authority on July 3, 2012, under Docket No. ER12-1770-001. Applicant states that DES wholly owns DES Retail, LLC, which is

¹ 16 U.S.C. § 824b (2012).

inactive and will be administratively dissolved by the state of Georgia. Applicant previously owned 51 percent of Diversified Fuel Supply, LLC, a petroleum products supplier that did not participate in the electric marketplace, which was merged into DES, effective October 21, 2014.

Applicant states that the Completed Transaction has not and will not have an adverse effect on competition. Applicant is a wholesale power marketer that does not own or operate any electric generation, transmission, or distribution facilities and does not control any generation capacity through tolling agreements or other contractual arrangements. Applicant states that the Commission granted DES market-based rate authority and determined that DES lacks market power. Applicant states that the Completed Transaction will not impact the wholesale energy market. Applicant asserts that the Completed Transaction raises no horizontal market power concerns.

Applicant states that the Completed Transaction raises no vertical market power concerns. Applicant does not own or control any electric transmission or distribution facilities or any inputs to electric power production in the United States. Applicant states that the Completed Transaction has not and will not create any new affiliation with entities that own or control transmission facilities or inputs to electric power production in the United States. Applicant asserts that the Completed Transaction has not and will not result in any adverse horizontal or vertical market power impacts.

Applicant states that the Completed Transaction has not and will not have an adverse effect on rates. Applicant states that DES makes wholesale sales of electric energy and ancillary services at market-based rates pursuant to the terms of its market-based rate tariff on file with the Commission. Applicant states that wholesale rates have not and will not be affected by the Completed Transaction. Applicant further states that DES does not have any transmission rates or transmission customers. Applicant concludes, therefore, the Completed Transaction has not and will not have an adverse effect on wholesale ratepayers' or transmission customers' rates.

Applicant states that the Completed Transaction has not and will not have any adverse effect on federal or state regulation. Applicant states that the Completed Transaction will not impair the ability of the Commission to regulate rates for wholesale sales or of State regulators to regulate retail sales. Applicant states that, upon completion of the Completed Transaction, DES will continue to be a public utility with market-based rates subject to the jurisdiction of the Commission.

Applicant states that the Completed Transaction has not and will not result in cross-subsidization or the pledge or encumbrance of utility assets as to any associate company. Applicant states that DES is not a public utility that has captive ratepayers or that owns or provides transmission service over jurisdictional transmission facilities. Applicant states that the Completed Transaction falls within the safe harbor for transaction

that do not involve a franchised public utility with captive customers.

Applicant states that, consistent with the requirements of the Commission, Applicant also provides the verifications required by the Commission under Exhibit M. Because the Completed Transaction does not involve a traditional public utility that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, there is no issue with respect to cross-subsidization. Pursuant to section 33.2(j)(1) of the Commission's regulations, Applicant provides assurance and verifies, based on facts and circumstances known to Applicant or that are reasonably foreseeable, that the Completed Transaction will not result in, at the time of the Transaction or in the future, cross-subsidization of a non-utility associate company or pledge or encumbrance of utility 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, including: (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 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) 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 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 206 of the FPA.² Therefore, Applicant states the Completed Transaction does not raise any issue with respect to cross-subsidization.

This filing was noticed on February 27, 2015, with comments, protests or interventions due on or before March 19, 2015. None were received.

When a controlling interest in a public utility is acquired by another company, whether a domestic company or a foreign company, the Commission's ability to adequately protect public utility customers against inappropriate cross-subsidization may be impaired absent access to the parent company's books and records. Section 301(c) of the FPA gives the Commission authority to examine the books and records of any person who controls, directly or indirectly, a jurisdictional public utility insofar as the books and records relate to transactions with or the business of such public utility. The approval of

² 16 U.S.C. § 824e (2012).

this Completed Transaction is based on such examination ability.

After consideration, it is concluded that the Completed Transaction is consistent with the public interest and is authorized, prospective from the date of this Order, subject to the following conditions:³

- (1) The Completed Transaction is authorized prospective from the date of this Order upon the terms and conditions and for the purposes set forth in the application;
- (2) 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;
- (3) 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;
- (4) The Commission retains authority under sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate;
- (5) If the Completed Transaction results in changes in the status or the upstream ownership of Applicant's affiliated qualifying facilities, if any, an appropriate filing for recertification pursuant to 18 C.F.R. § 292.207 (2014) shall be made;
- (6) Applicant shall make appropriate filings under section 205 of the FPA, as necessary, to implement the Completed Transaction;
- (7) Applicant must inform the Commission of any change in circumstances that would reflect a departure from the facts the Commission relied upon in authorizing the Completed Transaction; and

³ Contrary to the Commission's regulations, this application for authorization under section 203 of the FPA was filed after consummation of the Completed Transaction. Parties are reminded that they must submit required filings on a timely basis, or face possible sanctions by the Commission.

- (8) Applicant shall notify the Commission within 10 days of the date that the Completed Transaction has been consummated.

This action is taken pursuant to the authority delegated to the Director, Division of Electric Power Regulation -- West, under 18 C.F.R. § 375.307 (2014). This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. § 385.713 (2014).

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