

151 FERC ¶ 62,145
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Cross-Sound Cable Company, LLC
AIA Energy North America, LLC

Docket No. EC15-122-000

ORDER AUTHORIZING ACQUISITION AND
DISPOSITION OF JURISDICTIONAL FACILITIES

(Issued June 1, 2015)

On April 15, 2015, Cross-Sound Cable Company, LLC (Cross-Sound Company) and AIA Energy North America, LLC (AIA Energy) (collectively, Applicants), filed an application under section 203(a)(1) of the Federal Power Act (FPA)¹ requesting Commission authorization for the disposition of jurisdictional facilities resulting from the indirect acquisition by AIA Energy of all the membership interests in Cross-Sound Company (Proposed Transaction). The jurisdictional facilities associated with the Proposed Transaction include the Cross-Sound Cable (described below), Cross-Sound Company's filed rate schedules, and associated books, records, and accounts.

Applicants state that Cross-Sound Company, a Connecticut limited liability company, owns and provides electric transmission service over the Cross Sound Cable Project (Cross-Sound Cable), a 24-mile, high voltage, direct current transmission line having bi-directional transfer capacity of approximately 330 megawatts (MW). The Cross-Sound Cable runs beneath Long Island Sound from the Halvarsson Converter Station in New Haven, Connecticut, to the Tomson Converter Station in Shoreham, New York. The Cross-Sound Cable connects the transmission systems of UIL Holdings Corporation and the Long Island Power Authority (LIPA). Applicants state that it is one of several interconnections between the balancing authority areas of ISO New England, Inc. (ISO-NE) and the New York Independent System Operator, Inc. (NYISO). Cross-Sound Company has one wholly-owned subsidiary, Cross-Sound Cable Company (New York) LLC, a New York limited liability company that is party to contracts, leases, and easements related to the Cross-Sound Cable, but is not a public utility under the FPA.

Applicants state that the Cross-Sound Cable is under the operational control of ISO-NE, and Cross-Sound Company provides service over the Cross-Sound Cable under the ISO-NE Open Access Transmission Tariff (OATT).

¹ 16 U.S.C. § 824b (2012).

According to Applicants, Cross-Sound Company has no market power and no captive customers and is authorized to sell transmission capacity on the Cross-Sound Cable at negotiated rates as a merchant transmission provider.² Applicants state that, in accordance with Commission precedent, the capacity of the Cross-Sound Cable was originally allocated pursuant to an open season process which resulted in the execution of a long-term service agreement with LIPA under the ISO-NE OATT for the entire firm capacity of the Cross Sound Cable. The LIPA service agreement will expire no earlier than 2032. In the event that LIPA does not renew or extend its rights to the firm capacity of the Cross-Sound Cable, the capacity will be offered to the market in another open season process.

Applicants state that Cross-Sound Company is a direct, wholly-owned subsidiary of CSCC LLC, a Delaware limited liability company (CSCC). CSCC also owns CSC Operations LLC, a Delaware limited liability company, which is engaged in providing operations and maintenance services to Cross-Sound Company but is not a jurisdictional entity. CSCC is an indirect, wholly-owned subsidiary of BAIF CSC Finance (Delaware) LLC, a Delaware limited liability company (BAIF Finance). BAIF Finance is a direct, wholly-owned subsidiary of the seller in the Proposed Transaction, BAIF CSC Holdings L.P. (BAIF Holdings).

According to Applicants, BAIF Holdings, a limited partnership formed under the laws of Delaware, is controlled through affiliates by Brookfield Asset Management Inc. (Brookfield), an Ontario corporation. Brookfield is a global alternative asset manager focused on property, renewable power, infrastructure assets, and private equity. Brookfield is a publicly traded company.

Applicants state that AIA Energy, a Delaware limited liability company, is an investment fund formed for the purpose of investing in energy infrastructure projects. AIA Energy is owned 0.3984 percent by arGo Energy North America MM LLC (arGo Energy MM), 49.8008 percent by the California State Teachers' Retirement System (CalSTRS), and 49.8008 percent by Sogra, LLC (Sogra), a special purpose vehicle controlled by APG Asset Management US Inc., a Delaware corporation (APG US).

According to Applicants, arGo Energy MM is the managing member of AIA Energy and controls all of its day-to-day management and operations. arGo Energy MM is controlled by its management committee, composed of three individuals. Applicants state that arGo Infrastructure Partners LLC (arGo Infrastructure Partners), a Delaware limited liability company, is the investment manager of AIA Energy. arGo Infrastructure Partners is controlled by its management committee, composed of three individuals. arGo Energy MM and arGo Infrastructure Partners are under the common ownership of

² *TransEnergie U.S., Ltd.*, 91 FERC ¶ 61,230 at 61,838 (2000).

arGo LP, a Cayman Islands limited partnership. arGo LP is controlled by its general partner, arGo Partners GP LLC (arGo GP), a Delaware limited liability company which is 100 percent owned by an individual. Applicants state that neither AIA Energy, arGo Energy MM, arGo Infrastructure Partners, arGo LP, arGo GP, the members of any management committee, nor the individual who owns arGo GP owns a 10 percent or greater voting interest in or otherwise controls, directly or indirectly, in the U.S. any: (i) electric generation, transmission or distribution facilities; (ii) intrastate natural gas transportation or storage facilities or natural gas distribution facilities; (iii) sites for generation capacity development that could constitute a barrier to entry to electric generation; (iv) physical coal supply sources; or (v) coal transportation.

Applicants state that CalSTRS is a California state agency and retirement fund formed for the purpose of funding retirement, disability and survivor benefits for California pre-kindergarten through community college educators and their families. According to Applicants, CalSTRS' ownership interests in AIA Energy are passive and do not constitute voting securities under Commission precedent.

According to Applicants, Sogra is a single-member, Delaware limited liability company, formed for the purposes of investment in AIA Energy. Sogra is a direct, wholly-owned subsidiary of APG Infrastructure Pool 2014 (APG Pool), an investment fund vehicle formed under the laws of the Netherlands. APG Pool is owned by two pension plans formed under the laws of the Netherlands: Stichting Pensioenfond ABP (Stichting ABP), which owns 99.8 percent, and Stichting Personeelspensioenfond APG which owns the remaining 0.2 percent. Stichting ABP, which is the pension fund for the Dutch government civil servants and education workers, indirectly controls and has majority ownership of APG US, and APG US manages the investments of Sogra. Applicants maintain that Sogra's ownership interests in AIA Energy are passive and do not constitute voting securities under Commission precedent.

Applicants state that under the Membership Interest Purchase Agreement (Purchase Agreement), dated March 13, 2015, BAIF Holdings will sell all of the membership interests in BAIF Finance to a wholly-owned, single purpose company formed by AIA Energy. In connection with the closing of the Proposed Transaction, CSCC will enter into certain financing arrangements (Financing Arrangements) to replace its existing debt. Upon closing of the Proposed Transaction, Cross-Sound Company will become an indirect, wholly-owned subsidiary of AIA Energy.

Applicants state that the Proposed Transaction is consistent with the public interest and will have no adverse effect on competition, rates, or regulation. Applicants maintain that the Proposed Transaction has no adverse impact on horizontal market power in the any market, because Applicants do not have ownership interests in any electric generation assets and the Proposed Transaction will not result in any new combination of electric generating assets that could have an impact on the competitive situation in any

market. Thus, Applicants maintain that the Proposed Transaction does not raise any horizontal market power concerns.

Applicants state that the Proposed Transaction raises no concerns with respect to vertical market power because Cross-Sound Company is subject to open access requirements through the open season process, and the firm capacity of the Cross-Sound Cable is already subject to a long-term contract with LIPA. Future commitments of the firm capacity, if not renewed by LIPA, will be offered to the market in an open season process. Applicants add that all non-firm, point-to-point transmission service must be offered by Cross-Sound Company pursuant to the ISO-NE OATT. Thus, Applicants submit that no acquiring party would be able to exercise vertical market power through an acquisition of Cross-Sound Company. Furthermore, neither AIA Energy nor any person or entity controlling AIA Energy, directly or indirectly, owns or controls in the United States any: (i) electric generation, transmission or distribution facilities; (ii) intrastate natural gas transportation or storage facilities or natural gas distribution facilities; (iii) sites for generation capacity development that could constitute a barrier to entry to electric generation; (iv) physical coal supply sources; or (v) coal transportation. Accordingly, Applicants maintain that the Proposed Transaction does not raise vertical market power concerns.

Applicants state that the Proposed Transaction will not have an adverse effect with respect to the rates charged to either wholesale sales or transmission service customers. Following the Proposed Transaction, Cross-Sound Company will continue to operate and provide service over the Cross-Sound Cable at negotiated rates pursuant to the ISO-NE OATT and in coordination with ISO-NE and the NYISO. Accordingly, Applicants maintain that the Proposed Transaction will not have an adverse effect on rates.

Applicants state that the Proposed Transaction will not have an adverse impact on regulation, at either the federal or state level. Applicants maintain that the Proposed Transaction will have no effect on the Commission's jurisdiction over the jurisdictional activities of the Applicants. Cross-Sound Company is currently regulated by the Commission and the New York Public Service Commission (New York Commission) and will continue to be subject to such regulation after closing of the Proposed Transaction. Therefore, Applicants maintain that the Proposed Transaction will have no effect on regulation for purposes of the public interest determination by the Commission under FPA section 203.

Applicants state 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 closing or in the future, cross-subsidization of a non-utility associate company or the pledge or encumbrance of assets of a traditional public utility that has captive customers or that owns or provides transmission service over jurisdictional facilities for the benefit of an associate company. Specifically, Applicants state that the Proposed Transaction

will not result in 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. According to Applicants, the Proposed Transaction will take place at the holding-company level only and does not involve any transfer of physical facilities. Applicants state that in conjunction with the Proposed Transaction, Cross-Sound Company will guarantee the borrowings of one of its intermediate parent companies pursuant to the Financing Arrangements. However, such guarantee will only occur pursuant to approval by the Commission under FPA section 204 and approval by the New York Commission under section 69 of the New York Public Service Law. Applicants state that subject to authorization under FPA section 204 and section 69 of the New York Public Service Law, Cross-Sound Company will pledge certain of its assets to secure new borrowings in connection with the Financing Arrangements. Finally, Applicants state that the Proposed Transaction does not involve any new affiliate contracts between Cross-Sound Company and a nonutility associate company.

The filing was noticed on April 16, 2015, with comments, protests, or interventions due on or before May 6, 2015. None were received. Notices of intervention and unopposed timely filed motions to intervene are granted pursuant to the operation of Rule 214 of the Commission's Rules of Practice and Procedure.³ Any opposed or untimely filed motion to intervene is governed by the provisions of Rule 214.

Information and/or systems connected to the bulk system involved in this transaction may be subject to reliability and cybersecurity standards approved by the Commission pursuant to FPA section 215. 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 cybersecurity standards. The Commission, North America Electric Reliability Corporation or the relevant regional entity may audit compliance with reliability and cybersecurity standards.

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.⁴ The

³ 18 C.F.R. § 385.214 (2014).

⁴ *Reporting Requirement for Changes in Status for Public Utilities with Market-*

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

After consideration, it is concluded that the Proposed Transaction is consistent with the public interest and is authorized, subject to the following conditions:

- (1) The Proposed Transaction is authorized 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 costs, or any other matter whatsoever now pending or which may come 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 Proposed Transaction results in changes in the status or upstream ownership of the Applicants' affiliated qualifying facilities, an appropriate filing for recertification pursuant to 18 C.F.R. § 292.207 (2014) shall be made;
- (6) Applicants must inform the Commission of any change in circumstances that would reflect a departure from the facts the Commission relied upon in authorizing the Proposed Transaction;
- (7) Applicants shall make appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transaction; and
- (8) Applicants shall notify the Commission within 10 days of the date that the disposition of jurisdictional facilities 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