

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Aequitas Energy, Inc.  
Agera Energy LLC  
Lumens Energy Supply LLC

Docket No. EC15-90-000

ORDER ON PROSPECTIVE AUTHORIZATION FOR THE DISPOSITION  
OF JURISDICTIONAL FACILITIES

(Issued July 23, 2015)

On March 9, 2015, as amended on July 2, 2015, Aequitas Energy, Inc. (Aequitas), Agera Energy LLC (Agera), and Lumens Energy Supply LLC (Lumens Supply) (collectively, Applicants) filed an application under section 203(a)(1)(B) of the Federal Power Act (FPA)<sup>1</sup> requesting prospective authorization to transfer indirect ownership and control of Aequitas and Lumens Supply to Agera (Proposed Transaction) pursuant to a Stock Purchase Agreement.<sup>2</sup> The affected jurisdictional facilities consist of a market-based rate tariff and associated books and records.

Aequitas is a Connecticut corporation that is authorized by the Commission to sell energy and capacity at market-based rates.<sup>3</sup> All of Aequitas' outstanding voting securities are wholly owned by Lumens Energy Supply CT LLC (Lumens CT). Aequitas does not, directly or indirectly, own, operate or control electric generation facilities,

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<sup>1</sup> 16 U.S.C. § 824b (2012).

<sup>2</sup> According to Applicants, the Stock Purchase Agreement provided for an Economic Closing of the Proposed Transaction, which occurred in 2014. Applicants state that the Economic Closing did not require prior Commission authorization under Section 203 of the FPA because it did not involve the transfer or disposition of jurisdictional assets. Applicants state that the Economic Closing involved the transfer of certain economic benefits associated with Lumens Energy Holdings LLC (Lumens Holdings) and its subsidiaries, but did not involve a transfer of ownership interests in, or control over, either Aequitas or Lumens Supply. Applicants state that the actual transfer of the jurisdictional assets described in this Application will be made at the closing date, which will not occur unless the Commission grants the requested authorization.

<sup>3</sup> See *Aequitas Energy, Inc.*, Docket No. ER12-2065-001 (August 7, 2012) (delegated letter order).

transmission facilities, natural gas storage or distribution facilities or any other inputs to electric power production. Aequitas purchases electricity in the day-ahead wholesale market administered by ISO New England Inc. (ISO-NE). Aequitas uses electricity purchased in the day-ahead market solely to meet its retail obligations, and enters into balancing transactions in ISO-NE's real-time market to make up for insufficient or excess electricity purchased in the day-ahead market.

Lumens Supply is a Delaware limited liability company with its principal place of business in New York, New York. Lumens Supply provides energy services and is authorized to engage in retail sales of electricity and natural gas in New York. Lumens Supply has received market-based rate authorization from the Commission.<sup>4</sup>

According to Applicants, one hundred percent of Lumens Supply's outstanding membership interests are owned by Lumens Energy Group LLC (Lumens Group), a Delaware limited liability company. Lumens Group's sole business is to act as a holding company and control the business of its wholly owned subsidiaries, Lumens Supply and Lumens CT, and its indirect subsidiary Aequitas. Lumens Group does not own any interest in any entity other than its direct interest in Lumens Supply and Lumens CT, and its indirect interest in Aequitas. Lumens CT's sole business is to act as the holding company of Aequitas.

Applicants state that one hundred percent of the membership interests in Lumens Group are owned by Lumens Holdings, its sole member. According to Applicants, Lumens Holdings controls the business of Lumens Group. Lumens Holdings is a Delaware limited liability company that was formed in August 2013, as a special purpose entity. Its sole business is to act as a holding company of its direct ownership interest in Lumens Group and its indirect ownership interest in Lumens Supply, Lumens CT, and Aequitas. Lumens Holdings does not own any interests in any other entity.

None of Lumens Holdings, Lumens Group, Lumens Supply or Lumens CT, Aequitas or any of their affiliates, directly or indirectly, own, operate or control electric generation facilities, transmission facilities, natural gas storage or distribution facilities or any other inputs to electric power production.

Agera is a Delaware limited liability company licensed to sell electricity and/or gas at retail in Connecticut, Ohio, Maine, New Hampshire, New York, Pennsylvania, Rhode Island, Virginia and the District of Columbia. Agera has received market-based

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<sup>4</sup> See *Lumens Energy Supply LLC*, Docket No. ER14-1040-000 (March 21, 2014) (delegated letter order).

rate authorization from the Commission<sup>5</sup> and commenced wholesale sales in January 2015. On May 15, 2015, Agera submitted an application for its indirect acquisition of energy.me midwest llc (EMMW) in Docket No. EC15-142-000.

According to Applicants, on April 10, 2014, Glacial Energy Holdings and its affiliates (Glacial) filed for bankruptcy protection in the U.S. Bankruptcy Court for the District of Delaware (Bankruptcy Court). Applicants state that, pursuant to a sale order signed by the Bankruptcy Court on June 17, 2014, the Bankruptcy Court approved a sale of substantially all of Glacial's non-jurisdictional assets to Platinum Partners Value Arbitrage Fund (Platinum) or its designee. Pursuant to an Asset Purchase Agreement (Agreement) Platinum designated Agera as the sole designated buyer of the Glacial Assets, effective as of June 19, 2014. Applicants state that the Glacial assets to be transferred to Agera under the Agreement do not include Commission jurisdictional assets such as the Glacial market-based rate tariffs, but Applicants are describing them out of an abundance of caution.

Applicants state that Agera Holdings, LLC (Agera Holdings) is a Delaware limited liability company that owns 100 percent of the membership interests in Agera and is Agera's sole member. According to Applicants, Agera Holdings sole business is to act as a holding company and control the business of its wholly owned subsidiaries, Agera, Utility Recovery LLC (Utility Recovery) and Agera Solutions LLC (Agera Solutions). Agera Holdings is 95.01 percent owned by an individual and 4.99 percent owned by MF Energy Holdings, LLC (MF Holdings).

Applicants state that Agera Holdings has issued a convertible promissory note to a lender (Note). Under the Note, the lender does not have the right to manage or control Agera Holdings, but has the rights and remedies that are customarily conferred on a lender to protect its economic interest. According to Applicants, the Note permits the lender, subject to certain conditions, to convert the principal balance of this debt instrument to a number of units of limited liability company interests in Agera Holdings. The Note provides that the exercise of this conversion right is subject to procurement of all required regulatory approvals, including the Commission.

Applicants' state that the individual that owns 95.01 percent of Agera Holdings serves as the General Counsel of Agera, and does not otherwise currently hold the position of officer or director of any public utility, or any entity authorized to underwrite or participate in the marketing of public utility securities. According to Applicants, this individual is the sole member of Carnegie Direct LLC (Carnegie Direct) a Delaware limited liability company that was established as the marketing affiliate of Agera and has

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<sup>5</sup> See *Agera Energy LLC*, Docket No. ER14-2472-000 (September 30, 2014) (delegated letter order).

no operations and owns no assets. Except for his ownership position in Agera Holdings and Agera Management Corp. (Agera MC) and his membership in Carnegie Direct, the individual is not involved in the energy industry.

Applicants state that MF Holdings LLC (MF Holdings) is a Delaware limited liability company that holds a 4.99 percent interest in Agera Holdings. According to Applicants, MF Holdings may from time to time hold equity in other companies, but currently does not. Applicants state that 100 percent of the membership interests in MF Holdings are owned by an individual. Except for his ownership position in MF Holdings, the individual is not involved in the energy industry.

Applicants state that Agera MC is a Delaware corporation whose outstanding shares are owned by the individual that owns 95.01 percent of Agera Holdings. According to Applicants, Agera MC provides general supervision, direction and day-to-day control of the business and operations of Agera, Utility Recovery and Agera Solutions. Applicants state that Agera MC does not supervise, direct or have day-to-day control over the business and operations of any other entity. Through its supervision, direction and control of Agera, Agera MC will also provide those services to EMMW.

Under the Proposed Transaction, pursuant to the terms of the Stock Purchase Agreement, Agera will purchase all of the issued and outstanding membership interests in Lumens Holdings. As a result of the Proposed Transaction, Lumens Supply and Aequitas will become indirect, wholly owned subsidiaries of Agera.

Applicants state that the Proposed Transaction is consistent with the public interest and will not have an adverse effect on competition, rates, or regulation. With respect to competition, the application states that no Applicant owns or controls any generation capacity in any market, including through power purchase agreements or otherwise, and thus there is no overlap of generation facilities owned or controlled by the Applicants. Applicants further state that the Proposed Transaction will not result in any indirect combination of jurisdictional facilities, other than rate schedules, and related books, records and accounts. Therefore Applicants conclude that the Proposed Transaction will have no adverse effect on competition.

With regard to vertical market power, Applicants state that the Proposed Transaction will not have an adverse effect. Applicants state that neither they nor any of their affiliates own or control, directly or indirectly, any transmission facilities, inputs to generation, intrastate natural gas transportation, intrastate natural gas storage or distribution facilities, physical coal supply sources or coal transportation, or sites for development of electric generating facilities. Thus, Applicants assert that the Transaction raises no vertical market power concerns.

With regard to rates, Applicants state that the Proposed Transaction will not have

an adverse effect. Applicants state that the any wholesale sales of energy, capacity and/or ancillary services are limited to energy-only balancing sales in various real-time markets at market-based rates. Applicants also state that because the Proposed Transaction does not involve any transmission facilities, it will have no effect on transmission rates. Therefore, Applicants conclude that the Proposed Transaction will have no adverse effect of rates.

With regard to regulation, Applicants state that the Proposed Transaction will not have an adverse effect because it will not affect the manner or extent to which the Commission, any state, or any other Federal agency may regulate them.

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 does not involve a franchised public utility with captive customers and will not result in: (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 contract 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 of the FPA.

The filings were noticed on March 10, 2015 and July 6, 2015, with comments, protests, or interventions due on or before March 30, 2015 and July 13, 2015, respectively. None were received.

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 relied upon in granting market-based rate authority.<sup>6</sup> The foregoing authorization may result in a change in status. Accordingly, Applicants that have market-based rates are advised that they must comply with the requirements of Order No. 652. In addition, Applicants shall make appropriate 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 hereby authorized on a prospective basis, effective from the date of the issuance of this order, subject to the following conditions:<sup>7</sup>

- (1) The Proposed Transaction is authorized prospectively 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

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<sup>6</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).

<sup>7</sup> Contrary to the Commission's regulations, this application for authorization under section 203 of the FPA was filed after consummation of the Closed Transaction. Parties are reminded that they must submit required filings on a timely basis, or face possible sanctions by the Commission.

FPA to issue supplemental orders as appropriate;

- (5) If the Proposed Transaction results in changes in the status or upstream ownership of 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 material change in circumstances that departs from the facts or representations that the Commission relied upon in authorizing the Proposed Transaction within 30 days from the date of the material change in circumstances;
- (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 of the actual transfer of the jurisdictional assets described in the Application.

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