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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

BluCo Energy, LLC

Docket Nos. EC15-75-000
EC15-88-000

ORDER DENYING APPLICATIONS FOR DISPOSITION
OF JURISDICTIONAL FACILITIES

(Issued August 10, 2015)

1. On February 12, 2015, in Docket No. EC15-75-000, pursuant to section 203(a)(1) of the Federal Power Act (FPA)¹ and Part 33 of the Commission's regulations,² BluCo Energy, LLC (BluCo) submitted an application for prospective authorization for the disposition of 100 percent of BluCo's membership interests (the BluCo LLC Interests) to GoCOM Corporation (GoCOM).³ Additionally, on March 6, 2015, in Docket No. EC15-88-000, pursuant to FPA section 203(a)(1) and Part 33 of the Commission's regulations, BluCo filed an application requesting prospective authorization for a transaction pursuant to which Vantage Commodities Financial

¹ 16 U.S.C. § 824b(a)(1) (2012).

² 18 C.F.R. pt. 33 (2014).

³ This order refers to this transaction as the GoCOM Transaction. BluCo February 12, 2015 Application (GoCOM Application). According to the GoCOM Application, BluCo and GoCOM consummated the GoCOM Transaction on November 12, 2014, and BluCo self-reported the consummation to the Commission's Office of Enforcement. *Id.* at 1 n.3.

Services II, LLC (Vantage) acquired the BluCo LLC Interests (Vantage Transaction).⁴ As discussed below, we deny both applications without prejudice.

I. Background

A. GoCOM Transaction Parties

1. BluCo

2. According to the GoCOM Application, BluCo, a New York limited liability company, is an energy services company authorized to engage in electricity and natural gas retail sales in New York. The GoCOM Application states that BluCo's managing directors are Mr. Isaac H. Sutton and Mr. Michael Proscia and that BluCo does not own or control any electric generation resources, transmission or distribution facilities, natural gas storage, transportation, or distribution facilities, or any other inputs to electric power production. The GoCOM Application further states that BluCo has authorization to make sales of energy, capacity, and ancillary services at market-based rates and has one agreement under its market-based rate tariff, its membership agreement with the New York Independent System Operator, Inc. (NYISO).⁵ The GoCOM Application further asserts that BluCo's only market-based rate transactions have been incidental electricity sales to NYISO that occurred when BluCo's delivery of electricity to the market exceeded its retail customers' needs.

3. The GoCOM Application further states that, as of November 12, 2014, over 90 percent of BluCo's voting securities are owned and controlled by Mr. Michael Proscia and the balance are owned by individuals, none of whom has more than a 7.5 percent interest. In addition to serving as an officer and managing member of BluCo, Mr. Proscia serves as an officer, and has an equity interest in, BluCo Mechanical, Inc., a corporation engaged in the retail sale and installation of heating and air conditioning equipment; BluCo Securities, Inc., a corporation engaged in the retail sale and installation of alarm and security devices; Energy Management Partners, LLC, a company that provides energy efficiency advice and consultation to retail businesses; and Pristine Energy, LLC, a currently inactive company. The GoCOM Application further states that, except for his interests in BluCo, Mr. Proscia does not serve as an officer or director, or have any direct

⁴ BluCo March 6, 2015 Application (Vantage Application). The Vantage Application contends that because of the "the unique circumstances" of this case, "prior authorization was not possible." *Id.* at 1-2.

⁵ BluCo Energy, LLC, Docket No. ER12-1279-000 (Apr. 16, 2012) (delegated letter order).

or indirect interest, in any entity that owns or controls any electric generation, transmission, or distribution facilities, or interstate or intrastate natural gas storage, transportation, or distribution facilities.⁶

2. GoCOM and its Affiliates

4. According to the GoCOM Application, GoCOM, a Nevada corporation, is controlled by its four-member board. Mr. Isaac H. Sutton is its chief executive officer and Sutton Global Associates, Inc. is its largest shareholder. The GoCOM Application also states that Sutton Global Associates, Inc. is the only shareholder with a greater than 10 percent equity interest and that two individual shareholders own 7.69 percent and 5.67 percent equity interests; all other equity interests are held at a level below 5 percent. Further, GoCOM is a Development Stage —Financial Services Company. GoCOM's affiliates through common upstream ownership via Sutton Global Associates, Inc. are GoIP Global, Inc., a dormant corporation, and SavWatt USA, Inc., a supplier of energy efficient LED lighting products, neither of which engages in Commission-jurisdictional activities nor owns or controls, directly or indirectly, any inputs to electric power production.⁷

B. GoCOM Transaction

5. The GoCOM Application states that, in accordance with a share exchange agreement between BluCo and GoCOM, GoCOM acquired all of BluCo's ownership interests on November 12, 2014, and, as of consummation, GoCOM became the owner of the BluCo LLC Interests. Additionally, the GoCOM Application states that Mr. Proscia now owns only a non-controlling share of GoCOM's equity but remains a managing director of BluCo.

C. Vantage Transaction Parties

6. The Vantage Application states that, at the time of the Vantage Transaction, Mr. Michael Proscia, Ms. Diane Proscia, and Mr. Sal Rusi, Jr. "were the sole owners of BluCo, and wholly owned and controlled BluCo."⁸ The Vantage Application states that Vantage is a credit support and finance provider that does not own or control any facilities for electric generation, transmission, or distribution facilities or any natural gas

⁶ GoCOM Application at 4.

⁷ *Id.* at 4-5.

⁸ Vantage Application at 3.

transportation, storage, or distribution facilities. The Vantage Application also states that Vantage does not have a franchised service area for the sale of electricity to captive customers.⁹

D. Vantage Transaction

7. According to the Vantage Application, BluCo and Vantage are parties to certain credit agreements pursuant to which Vantage extends financing and credit support to BluCo. It further asserts that, following the occurrence of numerous events of default under these credit agreements, on February 6, 2015, pursuant to Article 9 of the Uniform Commercial Code, Vantage served notice of a foreclosure sale of the BluCo LLC Interests on the BluCo shareholders and other parties that may have an interest in the BluCo LLC Interests. The Vantage Application also states that, on February 13, 2015, the New York Times and the Wall Street Journal published notices of the auction, which took place on February 26, 2015. Finally, the Vantage Application contends that, as evidenced by a bill of sale and transfer statement, the BluCo LLC Interests were assigned to Vantage as a result of the auction.¹⁰

II. Notice of Filing and Responsive Pleadings

8. Notice of the GoCOM Application was published in the *Federal Register*, 80 Fed. Reg. 10,081-82 (2015), with interventions and protests due on or before March 5, 2015. On March 3, 2015, counsel on the GoCOM Application filed a request for the Commission to defer action on the GoCOM Application. On March 6, 2015, Vantage filed an out-of-time motion to intervene and protest. On April 10, 2015, GoCOM filed a protest and request for the Commission to defer action with respect to Vantage's protest.

9. Notice of the Vantage Application was published in the *Federal Register*, 80 Fed. Reg. 14,127-28 (2015), with interventions and protests due on or before March 27, 2015. On April 10, 2015, GoCOM filed an out-of-time motion to intervene, a protest, and a request for the Commission to defer action.

⁹ *Id.* at 2.

¹⁰ *Id.* at 4. It appears that, contrary to the requirements of FPA section 203, the applicants to both the GoCOM Application and the Vantage Application failed to file timely requests for disposition of jurisdictional facilities. The applicants are reminded that they must submit required filings on a timely basis or face possible sanctions by the Commission.

10. On June 8, 2015, Commission staff issued a letter in both dockets requesting a status update on the two proceedings. On June 17, 2015, Vantage filed a response to the letter.

III. Discussion

A. Procedural Matters

11. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2014), we grant Vantage's and GoCOM's late-filed motions to intervene given their interest in the proceedings, the early stage of the proceedings, and the absence of undue prejudice or delay.

B. Substantive Matters

1. Pleadings

12. On March 3, 2015, in Docket No. EC15-75-000, BluCo's counsel on the GoCOM Application filed a letter stating that he "no longer is able to certify and represent that the upstream ownership set forth" in the GoCOM Application is "true, correct and complete to the best of his knowledge, information and belief" and asked the Commission to defer action on the GoCOM Application until such time "as greater clarity is available to either confirm the accuracy and completeness of the representations set forth in the [GoCOM Application], the filing is withdrawn, or the filing is amended to reflect updated and correct descriptions of the post-transaction ownership of BluCo."¹¹

13. In its March 6, 2015 protest in Docket No. EC15-75-000, Vantage explains its claim to, and the actions it has taken to acquire, the BluCo LLC Interests. It also argues that Vantage's credit agreements with BluCo prohibit the terms of the GoCOM Transaction and that Vantage possesses the only true certificates representing the BluCo LLC Interests. Furthermore, Vantage states that the GoCOM Application's failure to disclose Vantage's interest in the BluCo LLC Interests is a violation of the regulations setting forth the requirements for FPA section 203 applications.¹² For these reasons, Vantage asks the Commission to reject the GoCOM Application as deficient.

14. On April 10, 2015, GoCOM filed protests in both proceedings. It asserts that GoCOM and Vantage are parties to a dispute over the ownership of BluCo before the

¹¹ BluCo May 3, 2015 Letter (Docket No. EC15-75-000) at 1.

¹² Vantage March 6, 2015 Protest (Docket No. EC15-75-000) at 3.

New York Supreme Court of New York County (Ownership Dispute Litigation).¹³ In both protests, GoCOM states that “[a]t this time, no party can contend that it is the undisputed owner of Bluco” and asks the Commission to defer action on the Vantage Application until the resolution of the Ownership Dispute Litigation.¹⁴ Additionally, in Docket No. EC15-75-000, GoCOM asks the Commission to not grant the relief requested in Vantage’s protest.

15. On June 8, 2015, Commission staff issued a letter in both dockets asking the recipients to update the Commission on the status and schedule of the Ownership Dispute Litigation and reminding the applicants that, pursuant to FPA section 203(a)(5), the Commission must “grant or deny any . . . application for approval of a transaction not later than 180 days after the application is filed.”¹⁵ Staff also informed the applicants that for the proceedings in Docket Nos. EC15-75-000 and EC15-88-000, the deadlines fall on August 11, 2015 and September 2, 2015, respectively. Finally, the letter asked the applicants to update the Commission on whether they plan to supplement or withdraw the GoCOM Application, the Vantage Application, or both, as a result of the Ownership Dispute Litigation.

16. On June 17, 2015, Vantage submitted a letter in both dockets stating that the parties to the Ownership Dispute Litigation had reached a “settlement in principle.”¹⁶ It further stated that Vantage has no current plans to supplement or withdraw the Vantage Application and requested that the Commission defer consideration of both applications while the parties negotiate. Vantage stated that it would provide an update to the Commission “no later than July 1, 2015 on the status of the Ownership Dispute Litigation, with the intention of providing the Commission with sufficient time to rule” on both pending applications.¹⁷ No party has made a subsequent filing.

¹³ GoCOM April 10, 2015 Protest (Docket No. EC15-75-000) at 1 (citing *Bluco Energy, LLC and GoCOM Corp. v. Vantage Commodities Fin. Servs. LLC, Vantage Commodities Fin. Servs I, LLC, and Vantage Commodities Fin. Servs. II, LLC*, Docket No. 650095/2015, (Civil Branch of the Supreme Court of the State of New York, New York County Mar. 30, 2015)).

¹⁴ *Id.* at 7-8. GoCOM April 10, 2015 Protest (Docket No. EC15-88-000) at 6.

¹⁵ 16 U.S.C. § 824b(a)(5) (2012).

¹⁶ Vantage June 17, 2015 Letter (Docket Nos. EC15-75-000 and EC15-88-000) at 1.

¹⁷ *Id.*

2. Commission Determination

17. Section 33.2(e)(1) of the Commission’s regulations requires that FPA section 203 applications include a “narrative description of the proposed transaction for which Commission authorization is requested, including: ... [t]he identity of all parties involved in the transaction.”¹⁸ We currently have two competing FPA section 203 applications before us, and each requests Commission authorization for the transfer of the same assets to two different parties. Based on the record of these proceedings, we are unable to rely on the accuracy of the description of the involved parties provided in each application, and we therefore deny both applications without prejudice.

The Commission orders:

The GoCOM Application and the Vantage Application are hereby denied, without prejudice, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁸ 18 C.F.R. § 33.2(e)(1) (2014).