

153 FERC ¶ 61,332
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Starwood Energy Group Global, L.L.C.
Beaver Falls, L.L.C.
Syracuse, L.L.C.
Hazleton Generation LLC
Startrans IO, LLC
Gainesville Renewable Energy Center, LLC

Docket No. EL15-87-000

ORDER GRANTING PETITION FOR DECLARATORY ORDER

(Issued December 22, 2015)

1. On July 29, 2015, Starwood Energy Group Global, L.L.C. (Starwood Energy Group) and the Project Companies¹ (together Petitioners), pursuant to Rules 207 and 212 of the Commission's Rules of Practice and Procedure,² submitted a petition for declaratory order³ related to current and future investments in public utilities made through various limited liability private equity investment funds that Starwood Energy Group manages or controls (collectively, Starwood Funds).⁴ Specifically, Petitioners

¹ For purposes of this Petition, the Project Companies are Beaver Falls, L.L.C. (Beaver Falls), Syracuse, L.L.C. (Syracuse), Hazleton Generation LLC (Hazleton), Startrans IO, LLC (Startrans), and Gainesville Renewable Energy Center, LLC (Gainesville Renewable), each of which is a public utility subject to the Commission's jurisdiction.

² 18 C.F.R. §§ 385.207 and 385.212 (2015).

³ Petition for Declaratory Order and Request for Expedited Action and Confidential Treatment, Docket No. EL15-87-000 (filed July 29, 2015) (Petition).

⁴ As of the date of filing the Petition, the Starwood Funds are: Starwood Energy Infrastructure Fund LP (Delaware), Starwood Energy Infrastructure Co-Invest Fund LP (Delaware), Co-SEIF Canada Investors LP (Ontario), Co-SEIF Canada Investors II LP

(continued ...)

request that the Commission issue a declaratory order determining that (i) current and future LP Interests in the Starwood Funds⁵ are passive investments that do not allow the LP Investors⁶ to manage, direct, or control the activities of the Starwood Funds, the Project Companies or future Commission jurisdictional public utilities; (ii) transactions resulting in the purchase and sale of LP Interests do not require case specific approval pursuant to section 203 of the Federal Power Act⁷ and, to the extent relevant, qualify for the benefit of the blanket authorization in section 33.1(c)(2)(i) of the Commission's regulations regarding non-voting securities;⁸ (iii) the Starwood Funds or their affiliates do not need to identify the LP Investors in any future section 203 application, market-based rate application under section 205 of the FPA,⁹ notice of change in status, or updated market power analysis; and (iv) the Commission does not have jurisdiction under section 201 of the FPA¹⁰ over the Starwood Funds and the LP Investors, as public

(Ontario), Starwood Energy Infrastructure Fund II US LP (Delaware), Starwood Energy Infrastructure Fund II Global LP (Delaware), Starwood Energy Infrastructure Fund II US Alternative LP (Delaware), Starwood Energy Infrastructure Fund II TE LP (Delaware), Starwood Energy Infrastructure Fund II Canada LP (Delaware), Starwood Energy Infrastructure Fund II International LP (Ontario), Starwood Energy Infrastructure Fund II Investor LLC (Delaware), NatGas Co-Invest Holdings 1, LP (Delaware), NatGas Co-Invest Holdings 2, LP (Delaware), Co-Investor 1, LLC (Delaware), Co-SEIF Investment Inc. (Delaware), SEI Co-Investment II, L.P. (Alberta), and SEIF II Co-Invest FF, LLC (Delaware).

⁵ As described by the Petitioners, LP Interests are “purely passive in nature and in no case involve an exercise of control, including voting or equivalent rights, in connection with any of the Project Companies or any other FPA jurisdictional facility through their investment in the Starwood Funds.” Petition at 12.

⁶ As defined by the Petitioners, LP Investors “consist of a mix of sovereign wealth funds, insurance companies, pension funds, superannuation funds, fund[s] of funds, charitable endowments, family offices, high net worth individuals and banking institutions.” *Id.* at 6-7. By this definition, none of the LP Investors has a principal business of producing, selling, or transmitting electric power.

⁷ 16 U.S.C. § 824b (2012).

⁸ 18 C.F.R. § 33.1(c)(2)(i) (2015).

⁹ 16 U.S.C. § 824d (2012).

¹⁰ 16 U.S.C. § 824 (2012).

utilities, and the LP Investors are not holding companies under the Public Utility Holding Company Act of 2005 (PUHCA).¹¹ We grant the Petition, as discussed below.

I. Background

A. Overview of Starwood Energy Group

2. Petitioners state that Starwood Energy Group is a private equity fund, focusing on energy infrastructure investments, including acquiring and holding interests in power generation and transmission projects, some of which are public utilities subject to the Commission's jurisdiction. According to Petitioners, Starwood Energy Group's investments in energy projects are made through various Starwood Funds, which are limited partnerships (or limited liability companies) that LP Investors invest in and receive limited partnership and/or membership interests, collectively referred to as LP Interests. The relationship between the LP Investors and the various general partners for each of the Starwood Funds is governed by the rights and restrictions established in the limited partnership and limited liability company agreements (LP/LLC Agreements) that govern the current Starwood Funds.¹²

B. Description of Petitioners

1. Starwood Energy Group

3. Petitioners state that Starwood Energy Group is the ultimate general partner or sole manager of each of the Starwood Funds and that, through the Starwood Funds, Starwood Energy Group invests in energy infrastructure projects in the United States.¹³ Petitioners state that neither Starwood Energy Group nor any of the Starwood Funds is a public utility, as defined in section 201 of the FPA, but that the Starwood Funds invest in various energy-related business entities, a number of which are public utilities under the FPA.¹⁴ Petitioners state that Starwood Energy Group is privately owned and controlled by a group of individuals (or trusts or similar vehicles for the benefit of one or more individuals), none of whom directly or indirectly controls or is affiliated with any public

¹¹ 42 U.S.C. § 16451 *et seq.* (2006). *See* Petition at 2-3.

¹² Petitioners represent that the LP/LLC Agreements are “materially similar in terms of consent/veto rights granted to the passive LP Investors.” Petition at 12, n.22. As such, Petitioners address the rights of the Starwood Funds collectively.

¹³ *Id.* at 5.

¹⁴ *Id.* at 6.

utility other than through the Starwood Funds. Petitioners explain that except for Starwood Energy Group and certain entities controlled by Starwood Energy Group that hold general partnership interests, investors in the Starwood Funds hold LP Interests, either directly or through limited liability company holding company structures.

4. Petitioners state that Starwood Energy Group is a holding company under PUHCA, and as such, a holding company for purposes of section 203(a)(2) of the FPA. Petitioners further state that Starwood Energy Group currently benefits from a waiver of certain accounting, record retention, and reporting requirements under PUHCA as a single-state holding company pursuant to sections 366.3(c)(1) and 366.3(c)(3) of the Commission's regulations.¹⁵

2. Project Companies

5. Petitioners state that each of the five Project Companies described below is an indirect subsidiary of one or more of the Starwood Funds and is a public utility subject to the Commission's jurisdiction.

6. Beaver Falls is a Delaware limited liability company that owns and operates an approximately 108 megawatt (MW) combined-cycle generating facility located in Beaver Falls, New York, within the New York Independent System Operator, Inc. (NYISO) market. Beaver Falls is an exempt wholesale generator (EWG) under PUHCA and is authorized to sell electric energy, capacity and ancillary services at market-based rates.

7. Syracuse is a Delaware limited liability company that owns and operates an approximately 103 MW combined-cycle facility located in Solvay, New York, within the NYISO market. Syracuse is an EWG and is authorized to sell electric energy, capacity, and ancillary services at market-based rates.

8. Hazleton is a Delaware limited liability company that owns and operates an approximately 158 MW natural gas and oil-fired electric generating facility located in Hazle Township, Luzerne County, Pennsylvania, within the PJM Interconnection, L.L.C. (PJM) market. Hazleton is an EWG and is authorized to sell electric energy and capacity at market-based rates.

9. Gainesville Renewable owns and operates an approximately 100 MW biomass-fired power production facility located in Gainesville, Florida, within the City of Gainesville, Florida balancing authority area. The Gainesville Renewable facility is directly interconnected to the City of Gainesville's distribution system through an

¹⁵ *Id.* at 7, n.13.

approximately 4,500 foot, 138 kilovolt (kV) single-circuit transmission line. It sells 100 percent of its output to the City of Gainesville pursuant to a 30-year power purchase agreement. Gainesville Renewable is an EWG and is authorized to sell electric energy, capacity and ancillary services at market-based rates.

10. Startrans owns a minority interest in the Mead-Phoenix project (M-P Project), a 1,300 MW, 500-kV alternating current (AC) transmission line extending from Arizona to southern Nevada, and in the Mead-Adelanto project (M-A Project), a 1,296 MW, 500-kV AC transmission line extending from southern Nevada into southern California. Startrans owns a 6.25 percent interest in M-A Project. M-P Project consists of three primary components, in which Startrans holds interests of 2.15 percent, 3.79 percent, and 4.05 percent, respectively. However, Startrans does not operate either project. M-P Project is operated by the Los Angeles Department of Water and Power and M-A Project is operated by Salt River Project and the Western Area Power Administration. Moreover, Startrans is a Participating Transmission Owner in the California Independent System Operator Corporation (CAISO) and its transmission entitlements on M-P Project and M-A Project are under the functional control of CAISO.

II. Notice of Filing

11. Notice of the Petition was published in the *Federal Register*, 80 Fed. Reg. 46,571 (2015), with interventions and protests due on or before August 28, 2015. None was filed.

III. Discussion

A. Current and Future LP Interests

1. Petitioners' Request

12. Petitioners request that the Commission determine that current and future LP Interests “are passive investments that do not allow the LP Investors to manage, direct, or control the activities of the Starwood Funds, the Project Companies or future Commission jurisdictional public utilities.”¹⁶ Specifically, Petitioners request that the Commission disclaim jurisdiction over transactions that involve (1) the ability of LP Investors to co-invest in jurisdictional facilities, with the understanding that the agreement governing the co-investment will contain the same rights and restrictions as set

¹⁶ *Id.* at 2, 18.

forth above in the LP/LLC Agreements, and (2) the sale by Starwood Energy Group from time to time in the future of additional passive LP Interests in the Starwood Funds.¹⁷

13. In support of this request, Petitioners describe LP Interests as being “purely passive in nature and in no case involve an exercise of control, including voting or equivalent rights, in connection with any of the Project Companies or any other FPA jurisdictional facility through their investment in the Starwood Funds.”¹⁸ Petitioners note that LP Investors have no ability to manage, direct, or control the jurisdictional activities of any of the Project Companies or any other jurisdictional asset.¹⁹ Petitioners state that under the provisions of the LP/LLC Agreements for each of the Starwood Funds that govern the relationship between the applicable general partner and such applicable passive LP Investors, the management, control, operation, and policy of the Starwood Funds is vested exclusively with the general partners of the Starwood Funds.²⁰

14. Additionally, Petitioners state that the rights of the LP Investors under each LP/LLC Agreement are limited to the veto and consent rights necessary to protect their economic investment.²¹ In addition, Petitioners have supported their Petition by committing that “there will be no material changes in the rights and obligations of the LP Investors or the Starwood Funds from what is set forth herein....”²² Petitioners list the following as the specific rights and obligations provided for by the LP/LLC Agreements in effect for the Starwood Funds:

- Investment restrictions that function to limit ability to dispose of assets or redeem interests without consent of a majority of LP Investors;

¹⁷ *Id.* at 15.

¹⁸ *Id.* at 12. Further, Petitioners explain that with respect to each Starwood Fund in which an LP Investor holds its LP Interest, the LP Investor may receive annual and quarterly reports, access to books and records, periodically appraise the assets owned by the relevant fund, and amend the valuation plan presented by the general partner. *Id.*

¹⁹ In addition, as defined by Petitioners, none of the LP Investors has a principal business of producing, selling, or transmitting electric power. *Id.* at 6-7.

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 4.

- Limitations on the general partner's powers to subject, without consent, the LP Investors to an act that would have them function as a general partner, such as incurring liabilities, making loans, or forming additional partnerships on behalf of the LP Investors, among other things;
- Prohibition on in-kind distributions so that the general partner cannot distribute assets of the Starwood Fund comprising marketable securities unless such distribution has been approved either by the advisory committee or non-defaulting LP Investors;
- Providing LP Investors with certain consent rights that would limit investment opportunities for the general partner's investment in any new pooled investment vehicles;
- Requiring approval of two-thirds of the LP Investors to remove the general partner upon receiving a "for cause" notice with respect to the actions of the general partner;
- Providing for amendments to the LC/LLP Agreement with the consent of a majority of the LP Investors;
- Requiring a majority of LP Investors to approve the appointment of the general partner's candidate to fill a vacancy on the advisory committee;
- Requiring a majority of LP Investors to appoint a liquidation trustee to wind up the affairs of the Starwood Fund and to liquidate its assets, when there is no general partner;
- Requiring a two-thirds vote of the LP Investors to dissolve the Starwood Fund; and
- Requiring the establishment of an advisory committee comprised of a certain number of LP Investors or their representatives who will be vested with power sufficient to protect their economic investment in the Starwood Funds, but prohibited from taking part in the control or management of the Starwood Funds.²³

Petitioners argue that the rights provided to LP Investors do not provide them with the ability to "manage, direct, or control the jurisdictional activities of any of the Project Companies or any other jurisdictional asset."²⁴ Petitioners state that the Commission has

²³ *See id.* at 12-14.

²⁴ *Id.* at 12.

found that the rights enumerated in the Petition are consistent with passive investments and do not involve an exercise of control.²⁵

15. Petitioners request that the Commission determine that current and future LP Interests are passive investments that do not allow the LP Investors to manage, direct, or control the activities of the Starwood Funds, the Project Companies or future Commission jurisdictional public utilities. Further, Petitioners argue that should the Commission agree that LP Interests are passive, and as such not subject to section 203, the Commission should disclaim jurisdiction over certain transactions involving LP Interests. Finally, Petitioners also request a finding that, to the extent relevant, transactions involving the purchase and sale of LP Interests qualify for the blanket authorization with respect to any acquisition of non-voting securities set forth in section 18 C.F.R. § 33.1(c)(2)(i) of the Commission's regulations.²⁶

2. Commission Determination

16. Section 203 requires prior Commission approval if “a public utility seeks to sell, lease, or otherwise dispose of jurisdictional facilities.”²⁷ The Commission has interpreted the “or otherwise dispose” language of section 203(a)(1) to include transfers of control of jurisdictional facilities.²⁸ However, the Commission has recognized that some investments are passive and do not convey control as regulated by section 203. In the *Supplemental Policy Statement*, the Commission explained that an investment may be passive if, among other things,

- (1) the acquired interest does not give the acquiring entity authority to manage, direct or control the day-to-day wholesale power sales activities, or the transmission in interstate commerce activities, of the jurisdictional entity; and
- (2) the acquired interest gives the acquiring entity only limited rights (e.g., veto and/or consent rights necessary to

²⁵ Petitioners recognize that any Commission order granting the Petition will not apply to those situations “where the LP Investor has taken an active role” in an investment. *Id.* at 15.

²⁶ 18 C.F.R. § 33.1(c)(2)(i) (2015).

²⁷ *FPA Section 203 Supplemental Policy Statement*, FERC Stats. & Regs. ¶ 31,253, at P 45 (2007) (*Supplemental Policy Statement*).

²⁸ *Id.*

protect its economic investment interests, where those rights will not affect the ability of the jurisdictional public utility to conduct jurisdictional activities); and (3) the acquiring entity has a principal business other than that of producing, selling, or transmitting electric power.²⁹

17. In *AES Creative Resources, L.P.*, the Commission made clear that the ability of an investor to consent to limited matters necessary to protect their investments does not mean that the securities in question are voting securities that may convey control.³⁰ In addition, the Commission has previously granted requests for a disclaimer of jurisdiction under section 203 with respect to transfers of passive interests. In *NextEra Energy Partners, LP*, the Commission disclaimed jurisdiction under FPA section 203(a)(1)(A) over the future public offering and sale of passive non-voting securities with rights similar to those of the LP Interests as described in the Petition.³¹ In *NextEra*, the Commission found certain limited partnership interests in *NextEra* to be passive investments that did not provide the holders of these interests with the “authority to manage, direct, or control the day-to-day activities of NextEra Partners or any of its subsidiaries, or its jurisdictional facilities.”³² As in *NextEra*, in this case the LP Investors have no ability to control the day-to-day management or operations of the Starwood Funds or the Project Companies, and have the same limited consent rights as other passive ownership interests that the Commission found to be non-voting securities in *AES Creative* and other cases cited in that order.³³

²⁹ *Id.* P 54.

³⁰ *AES Creative Resources, L.P.*, 129 FERC ¶ 61,239, at P 25 (2009) (quoting *Solios Power LLC*, 114 FERC ¶ 61,161, at PP 9-10 (2006)) (*AES Creative*). While made in the context of a market-based rate proceeding, the Commission’s discussion in *AES Creative* addressed voting securities as defined under PUHCA. *Id.* P 24.

³¹ *NextEra Energy Partners, LP*, 150 FERC ¶ 61,071, at PP 29-30 (2015) (*NextEra*).

³² *Id.* P 30.

³³ As discussed above in footnotes 6 and 19, *supra*, as defined by Petitioners, LP Investors have principal businesses other than producing, selling, or transmitting electric power. However, we note that, in *AES Creative* and *NextEra*, the Commission’s determinations that the securities at issue were not “voting securities” did not turn on the status of entities acquiring and holding those securities.

18. We find that, based on the facts outlined in the Petition, and subject to the conditions described below, the LP Interests are passive investments. We disclaim jurisdiction under FPA section 203 as it concerns the purchase and sale of current and future LP Interests, and in so doing, specifically disclaim jurisdiction over case-specific transactions involving (1) the ability of the LP Investors to co-invest in jurisdictional facilities, with the understanding that the agreement governing the co-investment will contain the same rights and restrictions as set forth above in the LP/LLC Agreements, and (2) the sale by Starwood Energy Group from time to time in the future of additional passive LP Interests in the Starwood Funds. We also confirm that, to the extent relevant, these transactions will qualify for the blanket authorization under section 203(a)(2) of the FPA as provided by section 33.1(c)(2)(i) of the Commission's regulations.³⁴

19. These declarations apply to future LP Investors in Starwood Funds, so long as the Petitioners honor their commitment to make no material changes in the rights and obligations of the LP Investors or the Starwood Funds, as described in the Petition and LP/LLC Agreements. In honoring this commitment, the rights and obligations provided to the LP Investors are to be limited to veto and consent rights necessary to protect their economic interests, and are to provide no authority to manage, direct or control the activities of a jurisdictional assets.³⁵ As a result, this declaration will not apply to any circumstance in which an LP Investor has taken an active role in an investment in a jurisdictional facility or where LP Investors have removed the general partner with or without cause.³⁶ In addition, the Commission requires that Petitioners inform it of any material change in circumstances that would reflect a departure from the facts the Commission relied upon in granting this request for a declaratory order.

³⁴ 18 C.F.R. § 33.1(c)(2)(i) (2015). That provision provides blanket authorization under FPA section 203(a)(2) for any holding company in a holding company system that includes a transmitting utility or an electric utility to purchase, acquire, or take “any non-voting security (that does not convey sufficient veto rights over management actions so as to convey control) in a transmitting utility, an electric utility company, or a holding company in a holding company system that includes a transmitting utility or an electric utility company.”

³⁵ Petitioners describe these rights as being “with respect to incurrence or forgiveness of debt, changes to the business, the disposal of substantially all of the assets of the business, the filing of a petition for bankruptcy, and other actions of a similar business, financial or organizational nature.” *Id.* at 7. *See also AES Creative*, 129 FERC ¶ 61,239.

³⁶ Petition at 15.

B. LP Investors Status as Affiliates**1. Petitioners' Request**

20. Petitioners request that the Commission declare that, because the LP Interests are passive, non-voting interests, the Starwood Funds or their affiliates do not need to identify the LP Investors in any future section 203 application, section 205 market-based rate application, notice of change in status, or updated market power analysis,³⁷ subject to the commitment that there will be no material changes in the rights and obligations of the LP Investors or the Starwood Funds from what is set forth in the Petition. Petitioners argue that the limited rights held by the LP Investors with respect to the Starwood Funds and the Project Companies' activities are intended to protect the LP Investors' economic interests and do not confer control over the Petitioners, or any Commission-jurisdictional facilities. Petitioners note that the LP Investors do not have control over day-to-day operations of the Project Companies and future LP Investors in the Starwood Funds will also hold only passive LP Interests.

2. Commission Determination

21. The Commission's regulations require the identification of an applicant's energy affiliates when applying for or filing (1) authorizations under section 203, (2) market-based rate authority under section 205, (3) an updated market power analysis under section 205, or (4) a notice of change in status under section 205.³⁸ However, the Commission has determined that passive equity investors are not considered to be affiliates in certain circumstances. As noted by Petitioners, in *AES Creative*, the Commission found that certain investors owning passive interests in public utilities that had been granted market-based rate authorization were not "affiliates" of such companies, as defined under the Commission's market-based rate regulations, because the passive interests there at issue were not "voting securities."³⁹ In addition, in Order

³⁷ *Id.* at 18-20, citing *AES Creative*, 129 FERC ¶ 61,239 at PP 21, 24-28 and *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) (Order No. 669).

³⁸ *See* 18 C.F.R. §§ 33.2(c)(2), 35.37(a)(1) & (2), and 35.42(c) (2015).

³⁹ *AES Creative*, 129 FERC ¶ 61,239 at PP 21-22 (referencing the definition of "affiliate" in section 35.36(a)(9) of the Commission's market-based rate regulations, 18 C.F.R. § 35.36(a)(9) (2015)). The Commission concluded that the term "voting securities," as used in that definition, was intended to have the same meaning as under

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No. 669 the Commission granted “a blanket authorization for the purchase by a holding company of any amount of *non-voting securities* of a public utility or of another holding company.”⁴⁰ Consistent with our finding here that the LP Interests are passive investments with limited voting rights necessary to protect their economic interests, and in accordance with Commission precedent, we find that the Starwood Funds or their affiliates (including Starwood Energy Group) do not need to identify the LP Investors in any future section 205 market-based rate application, updated market power analysis, or notice of change in status.⁴¹ Likewise, and for the same reason, we confirm that in any future application under section 203 filed by the Starwood Funds or their affiliates (including Starwood Energy Group), the LP Investors do not need to be identified as energy affiliates.⁴²

C. Commission Jurisdiction Under FPA Section 201 and Exemption From PUHCA

1. Petitioners’ Request

22. Petitioners request a Commission finding that the Starwood Funds and LP Investors should be deemed to not be public utilities under section 201(e).⁴³ In addition, Petitioners request that the Commission find that LP Investors are exempt from regulation under PUHCA pursuant to section 366.3(b)(2)(i) of the Commission’s regulations.⁴⁴ In support of these requests, Petitioners reiterate that none of the Starwood

PUHCA, which was adapted from the Public Utility Holding Company Act of 1935. *Id.* P 24.

⁴⁰ Order No. 669, FERC Stats. & Regs. ¶ 31,200 at P 144 (emphasis supplied).

⁴¹ As explained in Paragraph 19, *supra*, the declarations in this order are subject to the commitment that there will be no material changes in the rights and obligations of the LP Investors or the Starwood Funds.

⁴² The Commission’s regulations provide that an applicant under section 203 must identify and describe all of its “energy subsidiaries and energy affiliates.” *See* 18 C.F.R. § 33.2-3 (2015).

⁴³ 16 U.S.C. § 824(e), which defines a public utility as “any person who owns or operates facilities subject to the jurisdiction of the Commission....”

⁴⁴ 18 C.F.R. § 366.3(b)(2)(i) (2015). Under this provision, the Commission shall exempt specified persons and classes of transactions from the record keeping, accounting, and reporting requirements applicable to holding companies under the PUHCA

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Funds or LP Investors will have any direct ownership or operational interests in any Commission-jurisdictional facilities and therefore do not come within the definition of a public utility in section 201(e). In addition, as described in the Petition, LP Investors acquire only a passive upstream interest in any Commission-jurisdictional facility through Starwood Funds. As a result, LP Investors have no control over the operation or day-to-day management of any Commission-jurisdictional facility. Petitioners again state that the rights conferred to the LP Investors serve only to protect their financial investments and do not confer control.

2. Commission Determination

23. Under section 201(e) of the FPA, a public utility is defined as “any person who owns or operates facilities subject to the jurisdiction of the Commission....” As defined by Petitioners, none of the Starwood Funds, or LP Investors by investing in the Starwood Funds or otherwise, has a direct ownership or operational interest in any Commission-jurisdictional facility. In addition, the Commission has found that upstream owners of a public utility are not themselves public utilities as a result of that ownership.⁴⁵ Furthermore, as we have found previously in this order, LP Interests are passive investments that do not allow for the exercise of control of any Commission-jurisdictional facilities.⁴⁶ In *D.E. Shaw Plasma Power*, the Commission disclaimed jurisdiction over the holders of passive interests, as they did not have the authority to manage, direct or control the activities of a Commission-jurisdictional entity in its day-to-day operations. Accordingly, we find that the Starwood Funds and LP Investors are not public utilities, as defined under FPA section 201(e), as they do not own or operate Commission-jurisdictional facilities.

24. Having determined that the LP Interests are non-voting securities, it follows that the LP Investors are not holding companies or affiliates or associate companies with respect to any public-utility companies in which the Starwood Funds hold investments,

regulations if the Commission finds that any such persons are “[p]assive investors, so long as the ownership remains passive,” including mutual funds and other categories of investment asset managers and fiduciaries.

⁴⁵ Compare 16 U.S.C. § 824(e) (2012) (defining “public utility” under Federal Power Act) with 42 U.S.C. § 16451(8) (2012) (defining “holding company” under Public Utility Holding Company Act of 2005); see generally, e.g., *Richard A. Meserve*, 150 FERC ¶ 61,070, at P 13 n.5 (2015); *D.E. Shaw Plasma Power, L.L.C.*, 102 FERC ¶ 61,265, at P 15 (2003).

⁴⁶ See *supra* P 18.

provided that the LP Interests remain passive. As a result, it is unnecessary to grant Petitioners' request for a determination that the LP Investors are exempt from regulation under PUHCA pursuant to section 366(b)(2)(i) of the Commission's regulations.

The Commission orders:

(A) The Petition is granted, as discussed in the body of this order.

(B) These declarations will not apply to any circumstance in which an LP Investor has taken an active role in an investment in a jurisdictional facility or where LP Investors exercise their right to remove the general partner with or without cause, as discussed in the body of this order.

(C) Petitioners must inform the Commission of any material change in circumstances that departs from the facts or representations that the Commission relied upon in making the declarations within 30 days from the date of the material change in circumstances.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.