

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Nora Mead Brownell, and Suedeen G. Kelly.

MACH Gen, LLC  
Millenium Power Partners, L.P.  
New Athens Generating Company, LLC  
New Covert Generating Company, LLC  
New Harquahala Generating Company, LLC

Docket No. EC05-97-000

ORDER CONDITIONALLY AUTHORIZING DISPOSITION  
OF JURISDICTIONAL FACILITIES

(Issued November 7, 2005)

1. On June 17, 2005, MACH Gen, LLC (MACH Gen), Millenium Power Partners, L.P. (Millenium), New Athens Generating Company, LLC (New Athens), New Covert Generating Company, LLC (New Covert) and New Harquahala Generating Company, LLC (New Harquahala) (collectively, Applicants) filed a joint application under section 203 of the Federal Power Act (FPA),<sup>1</sup> requesting Commission authorization for a disposition of jurisdictional facilities that would result from certain transfers of ownership or control of equity interests in MACH Gen. The jurisdictional facilities include market-based rate tariffs, related books and records and interconnection facilities associated with generating facilities owned by Millenium, New Athens, New Covert and New Harquahala (collectively, Project Companies).

2. The Commission will grant the authorizations requested by Applicants. Specifically, Applicants request section 203 authorization for three groups of transactions. One group of transactions would involve transfers of equity interests in MACH Gen (which owns the Project Companies) from current owners to buyers that are specifically identified in the application (Proposed Transaction). A second group of transactions would involve transfers of equity interests from current owners or future owners to other existing owners or new buyers that have not yet been determined and thus are not identified in the application (Future Transactions). The third group of

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<sup>1</sup> 16 U.S.C. § 824b (2000).

transactions would involve transfers of interests from current or future holders to direct or indirect wholly-owned subsidiaries of the ultimate parent of such current or future holders (Future Subsidiary Transactions). The Commission has reviewed all three groups of transactions under the Merger Policy Statement<sup>2</sup> and will authorize them as consistent with the public interest, subject to certain conditions.

## **I. Background**

### **A. Description of the Applicants**

3. Millenium owns a 360 megawatt (MW) generating facility in Massachusetts that is interconnected with the New England Power Company. Millenium sells power to, and receives energy management and marketing services from, Merrill Lynch Commodities, Inc. (Merrill Lynch Commodities) under an Energy Management and Marketing Agreement. In turn, Merrill Lynch Commodities sells the power purchased from Millenium into markets administered by ISO New England, Inc. (ISO-NE). Millenium is authorized to sell wholesale power at market-based rates.

4. New Athens owns a 1,080 MW generating facility in New York that is interconnected with Niagara Mohawk Power Company. New Athens sells power to, and receives energy management and marketing services from, Merrill Lynch Commodities under an Energy Management and Marketing Agreement. Merrill Lynch Commodities in turn sells the power into markets administered by the New York Independent System Operator, Inc. (NYISO). New Athens is authorized to sell wholesale power at market-based rates.

5. New Covert owns a 1,200 MW generating facility in Michigan that is interconnected with the transmission system owned by Michigan Electric Transmission Company, LLC. New Covert sells power to, and receives energy management and marketing services from, The Cincinnati Gas & Electric Company (CG&E) under an Energy Management and Marketing Agreement. The facility is in the Michigan Electric Control System control area in the Midwest Independent Transmission System Operator, Inc. (Midwest ISO). New Covert is authorized to sell wholesale power at market-based rates.

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<sup>2</sup> See *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, 61 Fed. Reg. 68,595 (1996); FERC Stats. & Regs. ¶ 31,044 (1996), *reconsideration denied*, Order No. 592-A, 62 Fed. Reg. 33,341 (1997), 79 FERC ¶ 61,321 (1997) (*Merger Policy Statement*); see also *Revised Filing Requirements Under Part 33 of the Commission's Regulations*, Order No. 642, 65 Fed. Reg. 70,983 (2000), FERC Stats. & Regs., Regulations Preambles July 1996-Dec. 2000 ¶ 31,111 (2000), *order on reh'g*, Order No. 642-A, 66 Fed. Reg. 16,121 (2001), 94 FERC ¶ 61,289 (2001) (*Merger Filing Requirements*).

6. New Harquahala owns a 1,050 MW generating facility in Arizona that is located in the control areas operated by Arizona Public Service Company and Salt River Project (APS-SRP control area) within the Western Electricity Coordinating Council Area. New Harquahala sells power to and receives energy management and marketing services from Merrill Lynch Commodities under an Energy Management and Marketing Agreement. New Harquahala is authorized to sell wholesale power at market-based rates.

7. MACH Gen, which holds all of the ownership interests in the Project Companies, is owned directly or indirectly by a group of lender-owners. The ownership interests in the Project Companies were transferred from National Energy & Gas Transmission, Inc. (NEGT) to the lender-owners as a result of NEGTS restructuring of debt obligations.<sup>3</sup> Each lender-owner is a bank, institutional investor, financial institution, investment company, or related entity that is not primarily engaged in energy-related business activities.

## **B. Description of the Transactions**

8. Under the Proposed Transaction, certain of the existing lender-owners of MACH Gen (Sellers) will transfer their debt and associated equity interests to various parties (Buyers), whose interests will be held either directly or indirectly or through a direct or indirect wholly-owned subsidiary of the Buyer's ultimate corporate parent after the transfers have been consummated.<sup>4</sup> More than 90 percent of the equity interests in MACH Gen will change ownership. Applicants state that none of the Buyers is a public utility under the FPA and that none of the Buyers is acquiring an interest in MACH Gen on behalf of a public utility. Applicants further state that no Buyer will obtain operational or commercial control over any of the generating facilities owned by the Project Companies or any portion of the output of those facilities by virtue of the Proposed Transaction.

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<sup>3</sup> The Commission authorized these transfers under section 203 of the FPA. *See Athens Generating Co., L.P., et al.*, 103 FERC ¶ 61,290 (2003); *Athens Generating Co., L.P., et al.*, 104 FERC ¶ 62,076 (2003).

<sup>4</sup> Applicants state that in some instances, a particular Buyer (A) may have obtained rights to purchase equity interests in MACH Gen but, before closing on such purchase, agreed to transfer such rights or a portion of such rights to another Buyer (B), whose purchases are also covered by this application. In other instances, Buyer A may retain title to the equity interests but transfer to Buyer B through an agreement that may not be a full assignment of equity rights the full economic benefits of Buyer A's titular interests. In these cases, Buyer B is listed as the Buyer for purposes of the application and section 203 authorization is being sought for the final position that each Buyer will hold or control after all of the above-described transactions.

9. Of the 26 Buyers, nine, together with affiliates, will hold a five percent or greater equity interest in MACH Gen after the transfers have been completed. Bear, Stearns & Co., Inc. (Bear Stearns), which will hold eight percent of MACH Gen, indirectly owns four power marketers, none of which owns or controls electric assets or assets used for natural gas activities or other inputs into electric generation. Applicants also state that Bear Stearns and its affiliates have other limited investments in the electricity sector, but that they do not directly or indirectly own or control electric or natural gas facilities or other inputs into electric generation in any of the markets relevant to this application (NEPOOL market, NYISO market, Midwest ISO market and APS-SRP control area). However, Bear Stearns expects to acquire a 12 percent indirect interest in the 750 MW Lake Road generating facility in Connecticut as part of a proposed transfer of equity interests in a holding company, a transaction for which the Commission recently granted section 203 authorization.<sup>5</sup>

10. Cargill Financial Services International, Inc. (Cargill Financial), which will hold approximately seven percent of MACH Gen, and its affiliates have investments in debt and equity of electric generating companies in various parts of the United States. Applicants state that Cargill Financial and its affiliates do not own or control electric or natural gas assets or other inputs into electric generation in any of the relevant markets. They also state that Cargill Financial's electric interests are *de minimis*, except for: (1) an expected acquisition of an approximately 18 percent indirect interest in the 750 MW Lake Road generating facility in Connecticut; and (2) another expected acquisition that will increase its interest in a 720 MW generating facility in New Hampshire to 40 percent.<sup>6</sup> Also, Cargill Financial expects to soon hold an approximately eight percent indirect interest in a 2,200 MW generating facility in Arizona. Applicants further state that Cargill Financial's acquisition of holdings in these facilities located in New Hampshire and Arizona will not give it sole control over either generating facility or over the current day-to-day operations, maintenance and sale arrangements for the projects and that their output will not change as a result of those acquisitions.

11. Credit Suisse First Boston LLC (Credit Suisse) and LSP MACH Gen, LLC (LSP MACH Gen) are expected to own approximately 19 percent of MACH Gen. Credit Suisse is expected to first acquire the 19 percent interest and then subsequently transfer it

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<sup>5</sup> See *Lake Road Holding Company, LLC, and Lake Road Generating Company, L.P.*, 112 FERC ¶ 61,051 (2005) (*Lake Road*).

<sup>6</sup> As noted above, the transfer of indirect equity interests in the Lake Road facility has recently been authorized under section 203 of the FPA. The Commission also has recently authorized under delegated authority the transfer of equity interests in the New Hampshire facility. See *Granite Ridge Energy, LLC, et al.*, 110 FERC ¶ 62,304 (2005).

to LSP MACH Gen.<sup>7</sup> Credit Suisse or its affiliates indirectly own 79 percent of a 720 MW generating plant in Maine and an 11 percent interest in a 315 MW generation facility in New York, whose output is primarily sold under a long-term agreement.<sup>8</sup> Other Credit Suisse affiliates own just over 24 percent of an entity (that, in turn, owns four generation facilities with a total of approximately 2,500 MW of capacity), which were recently transferred to third party service providers.<sup>9</sup> Applicants further state that Credit Suisse and its affiliates own interests in various funds that invest in energy-related companies, including public utilities, but that they do own less than five percent of the voting securities of any public utility and that these ownership interests do not confer on Credit Suisse or its affiliates the right to control the management or operation of any public utility. Applicants state that LSP MACH Gen, a wholly-owned indirect subsidiary of LS Power Partners, L.P. (LSP), and its affiliates do not own or control any electric or natural gas facilities or other inputs into electric generation in the relevant markets.

12. The other Buyers that will have a five percent or more equity interest in MACH Gen are Bank of America Securities, LLC (6.66 percent), Stanfield Offshore Leveraged Assets, Ltd. (9.52 percent), Strategic Value Partners, L.L.C. (7.35 percent), Shepherd Investments International, Ltd. and Stark Trading (Stark) (7.13 percent), and Varde Partners, Inc. (Varde) (8.05 percent). Applicants state that, other than certain *de minimis* or other limited interests, none of these Buyers owns or controls any electric or natural gas assets or other inputs into electric generation in the relevant markets. Stark holds an approximately 10 percent interest in International Coal Group, Inc. (International Coal), a company that mines and markets coal in five states. Varde Partners will acquire approximately nine percent indirect equity interest in the Lake Road generating facility and presently has about a nine percent interest in International Coal.

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<sup>7</sup> Because it is unclear how long Credit Suisse will hold these interests before the transfer occurs, Applicants are requesting authorization for the two-part transaction whereby the Sellers transfer the 19 percent interest to Credit Suisse, which it then will transfer to LSP MACH Gen.

<sup>8</sup> At the time of the application Credit Suisse or its affiliates managed several equity funds that combined owned 60 percent of American Ref-Fuel Holdings Corp., which owns majority interests in six generation facilities (Ref-Fuel Companies) located in the NEPOOL and NYISO markets. The Commission has since authorized the transfer of indirect ownership of the ARC Project Companies to an unaffiliated entity and the transaction has been consummated. Credit Suisse is no longer affiliated with Ref-Fuel Companies. *See American Ref-fuel Holdings Corp.*, 110 FERC ¶ 62,332 (2005).

<sup>9</sup> *See Exelon New England Holdings, LLC*, 107 FERC ¶ 61,148 (2004); *Boston Generating, LLC*, 108 FERC ¶ 62,122 (2004).

13. Applicants also request advance authorization for a two-year period without further section 203 filings for Future Transactions involving transfers of ownership or control of equity interests in MACH Gen to existing owners or new buyers that are banks, institutional investors, financial institutions, or investment or related entities not primarily engaged in energy-related business activities. These Future Transactions may result in the acquiring party owning or controlling an investment in MACH Gen equal to an equity interest of 20 percent or less.

14. In addition, Applicants seek advance authorization for Future Subsidiary Transactions, i.e., to allow any current or future holders of equity interests in MACH Gen to transfer such interests to direct or indirect wholly-owned subsidiaries of the ultimate corporate parent of such current or future holder.

## **II. Notice and Intervention**

15. Notice of the filing was published in the *Federal Register*, 70 Fed. Reg. 44,607 (2005), with interventions or protests due on or before July 8, 2005. The Shaw Group, Inc., Stone & Webster, Inc. and Stone & Webster Michigan, Inc. (Shaw Group) filed an intervention and comments. On July 25, 2005, Applicants filed an answer to Shaw Group's comments.

16. By letter filed September 29, 2005 (September 29 Letter), Applicants informed the Commission that LSP Services will cease providing, and Competitive Power Ventures, Inc. (Competitive Power Ventures) will begin providing, asset management services to the Project Companies. On October 12, 2005 (October 12 Letter), Shaw Group filed a letter in response to the September 29 Letter. On October 14, 2005 (October 14 Letter), Applicants filed a letter in response to the October 12 Letter.

## **III. Discussion**

### **A. Procedural Issues**

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

18. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Applicants' answer because it has provided information that assisted us in our decision-making process.

## **B. Standard of Review**

19. Section 203(a) of the FPA provides that the Commission must approve a proposed disposition if it finds that the disposition “will be consistent with the public interest.”<sup>10</sup> The Commission generally takes account of three factors in analyzing proposed dispositions of facilities: (a) the effect on competition; (b) the effect on rates; and (c) the effect on regulation. As discussed below, we will approve the Proposed Transaction as consistent with the public interest. In addition, we will also grant authorization for Future transactions and Future Subsidiary Transactions without further section 203 application, subject to certain conditions, as discussed below, because these transactions are also consistent with the public interest.

## **C. Proposed Transaction**

20. We note that Shaw Group raises an argument as to who controls the jurisdictional facilities in this case. Shaw Group states that this argument is relevant to all three of the factors noted above. Therefore, we will address its argument separately after our discussion of the three factors.

### **1. Effect on Competition**

21. Applicants state that the Proposed Transaction will not adversely affect competition. Applicants claim that the Proposed Transaction does not raise horizontal market power concerns because the amount of generation that will be owned or arguably controlled by the buyers or their affiliates is very small compared to the total capacity in each of the relevant markets and will remain so after the Proposed Transaction. Applicants further state that no Buyer will obtain commercial or operational control over the generating projects or any portion of the output of the projects because no individual Buyer will have the ability, under the ownership agreements or otherwise, to direct any aspect of the commercial operation of the projects, including the sales of output and dispatch schedules, or to block any action with respect to the commercial operation of the projects.

22. Applicants also contend that the Proposed Transaction does not present vertical market power concerns. Applicants state that none of the Buyers or their affiliates that have a five percent or greater equity interest in MACH Gen will have a five percent or greater ownership interest in any electric transmission company in the relevant markets. Also, Varde and Stark are the only Buyers acquiring five percent or more interest in MACH Gen that will own, directly or indirectly, a five percent or more interest in fuel assets or other inputs into electric generation. Varde and Stark each own approximately 10 percent or less of International Coal, which mines and markets coal within the

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<sup>10</sup> 16 U.S.C. § 824b(a) (2000).

Midwest ISO. Applicants state that neither is in a position to control the management and daily operations of International Coal and thus that they cannot act to increase the supply costs to coal-fired generation in the Midwest ISO.

23. Based on the statements in the application and in the absence of information to the contrary, the Commission finds that the Proposed Transaction will not adversely affect competition.

## **2. Effect on Rates**

24. Applicants state that rates will not be adversely affected because all sales of power from the projects will continue to be made at market-based rates and the Proposed Transaction will not change the rates, terms or conditions of wholesale power agreements. Applicants note that none of the Project Companies provides unbundled transmission service.

25. Nothing in the application indicates that rates to customers will increase as a result of the Proposed Transaction, and no customer argues otherwise. Therefore, the Commission finds that the Proposed Transaction will not adversely affect rates.

## **3. Effect on Regulation**

26. Applicants assert that neither Commission nor state regulation will be adversely affected. They note that the Proposed Transaction does not result in the formation of a registered holding company under the Public Utility Holding Company Act of 1935. They also note that all sales of power by the Project Companies will continue to be made at wholesale and are not subject to state regulation.

27. No entity has raised concerns about the Proposed Transaction's effect on Commission or state regulation, and no state regulatory authority has indicated that it lacks jurisdiction to consider the effect on retail rates. Therefore, the Commission finds that the Proposed Transaction will not adversely affect Commission or state regulation.

## **4. Control of New Covert and New Harquahala Project Companies**

### **a. Intervenors' Comments**

28. Shaw Group states that, as creditors of New Harquahala and New Covert Project Companies, they have an economic interest in identifying the persons who own or control these entities in order to resolve its claims against them. It states that these companies notified Shaw Group in August 2004 that they had hired an Asset Manager, which was authorized to perform the obligations of the New Covert and New Harquahala Project Companies under the construction contract between the Project Companies and the Shaw

Group.<sup>11</sup> Shaw Group suggests that these asset management agreements may enable the Asset Manager to control the jurisdictional facilities of the New Covert and New Harquahala Project Companies within the meaning of section 203 of the FPA. Shaw Group notes that Applicants themselves state that none of the lender-owners have operational or commercial control over the projects because of their equity interest in MACH Gen. Also, based on their own commercial contacts with the Asset Manager, Shaw Group believes that the Asset Manager may exercise significant operational and commercial control over the jurisdictional facilities of the Project Companies. Because the lender-owners are not primarily engaged in energy-related business activities, Shaw Group suggests that they may not be competent to exercise control except on a shared basis. Shaw Group asserts that until facts are disclosed as to the scope of the Asset Manager's control, the Commission cannot determine that the Proposed Transaction will not adversely affect competition, rates or regulation.

29. Shaw Group emphasizes that the energy management and marketing agreements for the New Covert and New Harquahala Project Companies are not filed with the Commission, but rather are reported to the Commission only in summary form in the change-in-status reports that market-based rate sellers must file. They note that recently-issued orders provide that agreements relating to operation, including scheduling and dispatch, maintenance, fuel supply, risk management and marketing, are also subject to the change-in-status reporting requirement for market-based rate sellers.<sup>12</sup> Because the asset management agreements have not been filed, Shaw Group contends that it is not possible to discern the nature and scope of authority that has been delegated to the Asset Manager or the interplay between the asset management agreements and the energy management and marketing agreements. They conclude that the asset management agreements and the energy management and marketing agreements must be filed to enable the Commission to determine which party is the decision-maker regarding power sales and marketing. Furthermore, because it is not clear who controls the New Harquahala and New Covert Project Companies, Shaw Group urges the Commission to deny Applicants' request for waivers of the requirements to file all contracts related to the proposed transaction and to provide a description of tolling arrangements or other business arrangements.

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<sup>11</sup> LSP Services was the Asset Manager at this time. However, as noted above, Applicants informed the Commission by a letter dated September 29, 2005, that LSP Services would cease providing asset management services to the Project Companies and would be replaced by Competitive Power Ventures.

<sup>12</sup> *Reporting Requirement for Changes in Status for Public Utilities With Market-Based Rate Authority*, Order No. 652, 110 FERC ¶ 61,097 (2005) (Order No. 652), *order on reh'g*, 111 FERC ¶ 61,413 (2005).

30. While Applicants claim that LSP MACH Gen (one of the Buyers) and its affiliates do not own or control any electric facilities in the relevant markets, Shaw Group states that the Asset Manager may be an affiliate of LSP MACH Gen. If so, to the extent that the Asset Manager controls the New Harquahala and New Covert Project Companies, Shaw Group asserts that Applicants' claim is untrue.

31. Shaw Group states that they are aware that in *LenderCo*,<sup>13</sup> the Commission denied relief requested by Shaw Group in a section 203 proceeding where the purpose was solely to raise issues related to a contract dispute. However, they assert that *LenderCo* did not present issues concerning control of jurisdictional facilities. Shaw Group contends that their claims against the New Harquahala and New Covert Project Companies are relevant under section 203 because the ambiguity as to who controls them, the Asset Manager, Merrill Lynch Commodities, CG&E, or the lender-owners, makes it difficult for Shaw Group to resolve its claims against them.

**b. Applicants' Response**

32. Applicants argue that Shaw Group's comments should be rejected because they have failed to demonstrate a legitimate interest in this proceeding. Furthermore, Applicants assert that Shaw Group's comments are a transparent attempt to pressure New Covert and New Harquahala to settle an unrelated contractual dispute that is being addressed in another proceeding.

33. Finally, Applicants contend that, in any case, New Covert and New Harquahala have control and decision-making authority over the facilities they own and that Shaw Group's allegation that the Asset Manager or energy managers have control over these Project Companies is unfounded and without merit. Applicants have notified the Commission that, as of September 30, 2005, the asset manager of each Project Company will change from the Asset Manager to Competitive Power Ventures. Applicants state that CPV does not own or control Applicants and is not affiliated with any of the buyers that are acquiring interests in MACH Gen.

**c. Further Pleadings**

34. In their October 12 Letter responding to Applicants' September 29 Letter, Shaw Group notes that Applicants have provided neither a copy of the new asset management agreement between Applicants and Competitive Power Ventures nor relevant information regarding: (1) the identity of Competitive Power Ventures, any ownership or control of electric facilities or facilities providing inputs into electric generation by Competitive Power Ventures, its directors and officers; or (2) the nature and degree of Competitive Power Ventures' control of the New Covert and New Harquahala facilities. Shaw Group

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<sup>13</sup> *LenderCo, et al.*, 110 FERC ¶ 61,044 (2005).

states, therefore, that the same issues they raised previously concerning control of jurisdictional facilities remain unresolved. Shaw Group reiterates, as in their prior motion to intervene, that the resolution of their claims against New Covert and New Harquahala has been impaired because of ambiguity as to who has control over the jurisdictional facilities. They assert that, in *R.W. Beck Plant Management LTD*,<sup>14</sup> the Commission held that the “asset manager” was an “operator” of jurisdictional facilities and hence controlled a jurisdictional facility. They contend that analysis of the information requested above is necessary before the Commission determines whether Competitive Power Ventures is an operator of jurisdictional facilities, as contemplated in *Beck*, and whether to authorize the Proposed Transaction.

35. Responding to Shaw Group’s October 12 letter, Applicants reiterate that Shaw Group continues to raise concerns that are irrelevant to review of the Proposed Transaction under section 203 of the FPA. Applicants state that Asset Manager information is not required under section 203 or the Commission’s regulations. They assert that authorization of the Proposed Transaction will not affect the Asset Manager’s relationship to the Project Companies and that the Asset Manager relationship to the Project Companies does not affect authorization of the Proposed Transaction. Moreover, Applicants state that, in contrast to the circumstances in *Beck* (where the asset manager had complete authority to manage, control and make all decisions), here each Project Company has a chief executive officer, who, together with the MACH Gen independent board of directors, retains the ultimate decision-making authority and control over the Project Companies. Applicants urge the Commission to reject the delay tactics of Shaw Group, which they say are designed to extract unrelated concessions from two of the Project Companies in a non-jurisdictional contract dispute that is the subject of a separate arbitration.

**d. Commission Determination**

36. The Commission finds that the issues raised by Shaw Group are not relevant to the determination of whether the Proposed Transaction is consistent with the public interest and that those issues need not be resolved before the Commission authorizes the Proposed Transaction. In this proceeding, Applicants sought a determination that the Proposed Transaction, to the extent that the transfers of equity interests in MACH Gen could result in a change of control of jurisdictional facilities, will not adversely affect competition, rates, or regulation. As discussed above, the Commission has found that the Proposed Transaction will not adversely affect competition, rates or regulation.

37. Applicants have not asked in this proceeding for approval of the change in the Asset Manager under section 203. The authorization granted herein makes no

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<sup>14</sup> 109 FERC ¶ 61,135 (2004) (*Beck*).

determination whether a section 203 application is required (or that a prior section 203 application should have been filed) as a result of the change in the Asset Manager and no determination under section 203 that the change in the Asset Manager is consistent with the public interest. It is not necessary to make either determination in this proceeding for purposes of ruling on the issue of whether the Proposed Transaction is consistent with the public interest. As discussed below, Applicants will be required to provide the asset management agreement with Competitive Power Ventures to the Commission.

**D. Future Transactions and Future Subsidiary Transactions**

38. To facilitate a more liquid market for the trading of equity interests in MACH Gen, Applicants request that the Commission grant advance authorization under section 203, without further section 203 application, for future transfers of ownership and/or control of equity interests in MACH Gen for a two-year period for buyers that are banks, institutional investors, financial institutions, investment companies, or related entities not primarily engaged in energy-related business activities and not acting on behalf of a public utility. Such transfers are to result in the acquiring party, either individually or together with its affiliates, owning or controlling an investment in MACH Gen of not greater than a 20 percent equity interest. Similarly, Applicants request advance authorization for transfers of equity interests in MACH Gen from the current and future owners of such interests to direct or indirect wholly-owned subsidiaries of the ultimate corporate parent of each such current or future owner.

39. Applicants' application for advance authorizations of Future Transactions is essentially identical to those granted in *La Paloma*<sup>15</sup> and *Lake Road*.<sup>16</sup> For the same reasons set forth in *La Paloma* and *Lake Road*, the Commission finds that the Future Transactions and Future Subsidiary Transactions will not adversely affect competition, rates, or regulation and will grant the request for these advance authorizations, subject to certain conditions.

40. Specifically, with regard to the effect on competition, Future Transactions will be permitted during the two-year period requested by the Applicants without further section 203 application only if the buyer and its affiliates do not collectively own or control five percent or more voting interest in any generation facilities or engage in any jurisdictional activities in the geographic markets in which the Project Companies are located, namely, the ISO-NE, NYISO, or Midwest ISO markets or the APS-SRP control area.<sup>17</sup> Also,

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<sup>15</sup> *La Paloma Holding Company, LLC and La Paloma Generating Company, LLC*, 112 FERC ¶ 61,052 (2005) (*La Paloma*).

<sup>16</sup> *Lake Road*, 112 FERC ¶ 61,051 (2005).

<sup>17</sup> These geographic market are based on the facts of this application and are not dispositive of relevant market determinations in any other context.

Applicants must revise their proposed notification condition (i.e., that transferors of interests report the transfers within 10 days) to require that transferors submit within 10 days of the transactions a statement describing the generating or power marketing interests directly or indirectly owned by the buyer or its affiliates, irrespective of the market or region of the country in which such interests are located. In addition, Applicants must submit both in a compliance filing within 30 days of the closing of the initial sales transaction, and in any subsequent notification of holding company equity sales transactions, the following information:

- The identity of both pre- and post-transaction equity holders and the percentage of their ownership of the holding company;
- Any contracts for (or a summary of) power purchase agreements, energy management services, asset management services, and any fuel supply services provided to the Project Companies' facilities, including the contract counterparty, and any affiliation between that counterparty and post-transaction equity holders; and
- The identity of any parties acquiring equity interests that are subject to the Commission's code of conduct rules as a result of acquiring these equity interests.

41. These requirements do not relieve the buyer or its affiliates from complying with the Commission's other reporting requirements, in particular, the change-in-status reporting requirement<sup>18</sup> and the requirement to file electric quarterly reports.<sup>19</sup>

42. The Commission is also satisfied that advance authorization of Future Transactions and Future Subsidiary Transactions will not adversely affect rates or regulation. All sales of wholesale power from the generating projects owned by the Project Companies are currently made at market-based rates and none of the Project Companies provide transmission service or retail service. Furthermore, none of the transactions is likely to involve the formation of a registered public utility holding company, and the sales of energy by the Project Companies are not now subject to state regulation and are not likely to be subject to state regulation in the future. These circumstances are not likely to change in the future.

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<sup>18</sup> *Reporting Requirements for Changes in Status for Public Utilities with Market-Based Rate Authority*, 110 FERC ¶ 61,097 (2005), *order on reh'g*, 111 FERC ¶ 61,413 (2005).

<sup>19</sup> *Revised Public Utility Filing Requirements, Order No. 2001*, 67 Fed. Reg. 31,043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127 (2002).

43. As was required in *La Paloma*,<sup>20</sup> Applicants are required to identify the direct or indirect subsidiaries of the ultimate parent company that will hold the equity interests in MACH Gen.

The Commission orders:

(A) Applicants' proposed disposition of jurisdictional facilities with respect to the Proposed Transaction, Future Transactions, and Future Subsidiary Transactions is authorized, subject to conditions, as discussed in the body of this order.

(B) 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.

(C) 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.

(D) The Commission retains authority under sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate.

(E) Applicants shall make any appropriate filings under section 205 of the FPA, as necessary, to implement the transactions.

(F) If the transactions result in changes in the status or the upstream ownership of Applicants' affiliated qualifying facilities, if any, an appropriate filing for recertification pursuant to 18 C.F.R. § 292.207 shall be made.

(G) This order does not relieve acquirers of securities in this transaction from the necessity of making appropriate filings under section 203 of the FPA, as required.

(H) None of the buyers shall acquire MACH Gen ownership interests in excess of 20 percent without prior Commission approval under section 203 of the FPA.

(I) Applicants shall notify the Commission within 10 days of the date that the Proposed Transaction has been consummated.

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<sup>20</sup> *La Paloma*, 112 FERC ¶61,052 at P21.

(J) Applicants shall notify the Commission that Future Transactions and Future Subsidiary Transactions have been consummated in accordance with the discussion in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.