

131 FERC ¶ 61,275  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
and John R. Norris.

Sharyland Utilities, L.P. Docket No. EC10-53-000  
Sharyland Distribution & Transmission Services, L.L.C.  
Hunt Transmission Services, L.L.C.  
NewCorp Resources Electric Cooperative, Inc.  
SDTS FERC, L.L.C.  
SU FERC, L.L.C.

ORDER AUTHORIZING DISPOSITION AND ACQUISITION  
OF JURISDICTIONAL FACILITIES

(Issued June 28, 2010)

1. On March 18, 2010, Sharyland Utilities, L.P. (Sharyland Utilities), Sharyland Distribution & Transmission Services, L.L.C. (Sharyland DTS), Hunt Transmission Services, L.L.C. (Hunt Transmission), NewCorp Resources Electric Cooperative, Inc. (NewCorp), SDTS FERC, L.L.C. (New Owner), and SU FERC, L.L.C. (New Operator) (collectively, Applicants) filed an application pursuant to sections 203(a)(1) and 203(a)(2) of the Federal Power Act (FPA)<sup>1</sup> requesting authorization for a multi-step transaction (Proposed Transaction) resulting in the disposition, acquisition, and lease of transmission facilities, which include 305 miles of 138 kilovolt (kV) transmission lines and 17 substations (FERC Transmission Facilities). Applicants request disposition and acquisition authorization for the FERC Transmission Facilities and the FERC Paper Facilities, which include a Commission-filed Open Access Transmission Tariff (OATT), a transmission service agreement, and jurisdictional books and records (collectively, FERC Jurisdictional Assets).

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<sup>1</sup> 16 U.S.C. § 824b (2006).

2. The Commission has reviewed the application under the Commission's Merger Policy Statement.<sup>2</sup> As discussed below, we will authorize the Proposed Transaction as consistent with the public interest.

## **I. Background**

### **A. Description of the Parties**

#### **1. Sharyland Utilities and Hunt Transmission**

3. Sharyland Utilities is a transmission and distribution utility regulated by the Public Utility Commission of Texas (Texas Commission) and operating solely within the Electric Reliability Council of Texas (ERCOT). It is a wholly-owned indirect subsidiary of HH-SU Investments, L.L.C. which, in turn, is owned by Hunter L. Hunt and other members of his family. Neither Sharyland Utilities nor any of its affiliates is affiliated with an entity that owns or controls any generation facilities.

4. Hunt Transmission, a wholly-owned subsidiary of Hunt Consolidated Inc., is a privately-held company managed by Ray L. Hunt. Hunt Transmission is engaged in the development of electric infrastructure projects.

5. Sharyland DTS, a Texas limited liability company, was formed by the owners of Sharyland Utilities. Sharyland Utilities is the managing member of and maintains day-to-day operational control over Sharyland DTS. The other member of Sharyland DTS is Transmission and Distribution Company, L.L.C. (Transmission and Distribution), which is owned by Hunt Transmission. Transmission and Distribution's governance rights are limited to consent to certain actions by Sharyland Utilities including: borrowing money, the acquisition or sale of material assets, the incurrence of indebtedness outside the ordinary course of business, the issuance of equity interests, approval of the annual budget, mergers, bankruptcy, the initiation or settlement of material litigation, the

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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, FERC Stats. & Regs. ¶ 31,044 (1996), *reconsideration denied*, Order No. 592-A, 79 FERC ¶ 61,321 (1997) (Merger Policy Statement). See also *FPA Section 203 Supplemental Policy Statement*, 72 Fed. Reg. 42,277 (Aug. 2, 2007), FERC Stats. & Regs. ¶ 31,253 (2007) (Supplemental Policy Statement). See also *Revised Filing Requirements Under Part 33 of the Commission's Regulations*, Order No. 642, FERC Stats. & Regs. ¶ 31,111 (2000), *order on reh'g*, Order No. 642-A, 94 FERC ¶ 61,289 (2001). See also *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).

voluntary initiation of rate cases, and material changes to service.<sup>3</sup> In December 2009, Sharyland Utilities transferred its ownership interests in its transmission and distribution assets to Sharyland DTS. In turn, Sharyland DTS leases such assets back to Sharyland Utilities to continue in its role as the operator of the assets.

6. New Owner is a wholly-owned subsidiary of Sharyland DTS. New Owner's sole purpose will be to own the FERC Transmission Facilities and to lease the FERC Transmission Facilities to New Operator. Applicants state that New Owner will not be in the business of selling or transmitting electric energy.

7. New Operator is a wholly-owned subsidiary of Sharyland Utilities. Its sole purpose is to lease, maintain, and operate the FERC Transmission Facilities. Following the closing of the Proposed Transaction, New Operator will succeed to NewCorp's FERC Paper Facilities, and will be a public utility under the FPA.

## **2. NewCorp and Related Entities**

8. NewCorp, a Texas corporation, is a transmission-only electric cooperative with a single member and customer, Cap Rock Energy Corporation (Cap Rock Energy). NewCorp is the current owner of the FERC Jurisdictional Assets. NewCorp's transmission system is interconnected with that of Southwestern Public Service Company (Southwestern PSC). NewCorp provides transmission services to Cap Rock Energy's Stanton and Lone Wolf divisions under an OATT on file with the Commission.

9. Cap Rock Energy, an indirect wholly-owned subsidiary of Cap Rock Holding Corporation (Cap Rock Holding), provides electric distribution services under the jurisdiction of the Texas Commission to customers in Texas. Cap Rock Energy has approximately 12,000 miles of distribution lines; it does not own any generation. Cap Rock Energy's Stanton and Lone Wolf divisions are located in West Texas and operate in the Southwest Power Pool (SPP). Cap Rock Energy purchases all of its capacity and energy requirements for the Stanton and Lone Wolf divisions from Southwestern PSC. Cap Rock Energy has two other divisions that are located within ERCOT. Cap Rock Energy owns 18 miles of transmission lines within ERCOT, which are currently leased to the Lower Colorado River Authority. Cap Rock Holding is a holding company under the FPA.

10. Continental Energy Systems L.L.C. (Continental Energy), through subsidiaries, provides natural gas distribution services to customers in Alaska, Michigan, and New Mexico. Continental Energy currently holds approximately 94 percent of the shares of Cap Rock Holding with the balance held by unaffiliated minority investors. After the

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<sup>3</sup> Application at n.14.

Proposed Transaction is completed, Continental Energy will not own any shares in Cap Rock Holding.

**B. Description of the Transaction**

11. Applicants seek authorization under section 203(a)(1) and 203(a)(2) of the FPA for the jurisdictional aspects of a multi-step transaction in which Hunt Transmission will indirectly acquire all of the outstanding stock of Cap Rock Holding for approximately \$221.5 million. Next, Hunt Transmission will initiate a series of transactions that will result in an ownership structure that is consistent with the ownership structure previously approved by the Texas Commission in which: (1) Cap Rock Energy will merge with and into Sharyland DTS and Cap Rock Energy will cease to exist such that Cap Rock Energy's ERCOT transmission and distribution facilities will be owned and operated by Sharyland DTS; (2) the FERC Transmission Facilities will be transferred to New Owner from NewCorp and NewCorp will be dissolved; (3) New Owner will lease the FERC Transmission Facilities to New Operator; (4) employees of NewCorp and Cap Rock Energy will become employees of New Operator and Sharyland Utilities respectively. As the result of these interrelated transactions, New Owner will become a wholly-owned subsidiary of Sharyland DTS and owner of the FERC Transmission Facilities. New Owner will lease the FERC Transmission Facilities to New Operator, and New Operator (as lessee) will operate the facilities.<sup>4</sup>

**II. Notice of Filing and Responsive Pleadings**

12. Notice of the application was published in the *Federal Register*, 75 Fed. Reg. 15,702 (2010), with interventions and protests due on or before April 8, 2010. Xcel Energy Services, Inc. (Xcel) on behalf of itself and its utility operating company affiliate, Southwestern PSC, filed a timely motion to intervene. Xcel also filed a request for conditioned approval, Applicants filed an answer, and Xcel filed an answer to Applicants' answer. Xcel later withdrew its request for conditioned approval and answer.<sup>5</sup>

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<sup>4</sup>Although Applicants assert that New Owner will be a passive owner-lessor of the FERC Transmission Facilities and, as such, will not be a public utility under the FPA, they do not seek any determination of New Owner's status. Accordingly, this order makes no determination as to New Owner's status as a public utility under the FPA.

<sup>5</sup> In light of Xcel's withdrawal of its pleadings, we will dismiss Applicants' answer as moot.

### **III. Discussion**

#### **A. Procedural Issues**

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), Xcel's timely, unopposed motion to intervene serves to make it a party to this proceeding.

#### **B. Standard of Review Under Section 203**

14. Section 203(a)(4) requires the Commission to approve a transaction if it determines that the transaction will be consistent with the public interest. The Commission's analysis of whether a transaction will be consistent with the public interest generally involves consideration of three factors: (1) the effect on competition; (2) the effect on rates; and (3) the effect on regulation.<sup>6</sup> Section 203 also requires the Commission to find that the transaction "will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company, unless the Commission determines that the cross-subsidization, pledge, or encumbrance will be consistent with the public interest."<sup>7</sup> The Commission's regulations establish verification and informational requirements for applicants that seek a determination that a transaction will not result in inappropriate cross-subsidization or pledge or encumbrance of utility assets.<sup>8</sup>

#### **C. Analysis Under Section 203**

##### **1. Effect on Competition – Horizontal Market Power**

###### **a. Applicants' Analysis**

15. Applicants state that the Proposed Transaction will not adversely affect horizontal competition. The Proposed Transaction is a wires-only transaction that does not involve any generating assets. Applicants also state that neither Cap Rock Holding, Hunt Transmission, Sharyland DTS, Sharyland Utilities, nor any of their affiliates own or control any generating facilities or capacity or make any wholesale sales of electricity in interstate commerce. The Proposed Transaction does not involve a combination of entities that compete in common wholesale electric power markets and will not result in any change in market concentration for wholesale capacity or energy. Applicants state that the Proposed Transaction does not result in an entity obtaining ownership or control

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<sup>6</sup> See Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,111.

<sup>7</sup> 16 U.S.C. § 824b(a)(4) (2006).

<sup>8</sup> 18 C.F.R. § 33.2(j) (2009).

over the generating facilities of previously unaffiliated merging entities, and therefore, no competitive analysis screen is necessary.<sup>9</sup>

**b. Commission Determination**

16. We find that the Proposed Transaction does not raise horizontal market power concerns. Applicants have demonstrated that the Proposed Transaction will not affect market concentration in the relevant markets or result in any change in control of generating facilities owned by unaffiliated entities.

**2. Effect on Competition – Vertical Market Power**

**a. Applicants' Analysis**

17. Applicants also state that the Proposed Transaction does not raise any vertical market power concerns. The electric transmission facilities owned by NewCorp are subject to an OATT on file with the Commission and upon receiving approval for the Proposed Transaction, New Operator will file a notice of succession to the OATT to reflect its lease and operation of the FERC Transmission Facilities. Applicants also state that the transmission facilities currently owned by Sharyland DTS and Cap Rock Energy operating within ERCOT are subject to regulation by the Texas Commission as open-access facilities. Applicants argue that open access to transmission facilities will not allow them to use control of transmission assets to harm competition. Applicants also argue that the Proposed Transaction presents no vertical competition concerns related to the Applicants' ownership of transmission lines because none of the Applicants owns any generation facilities.<sup>10</sup> Further, Applicants state that the Proposed Transaction will not provide them or their affiliates any ability to erect barriers to entry because none of these entities owns or controls any resources or infrastructure used to deliver inputs to competing generating facilities or sites for new potential generation.<sup>11</sup>

**b. Commission Determination**

18. We find that the Proposed Transaction does not raise any vertical market power concerns. The Proposed Transaction will not allow Applicants to erect barriers to entry and will not adversely affect competition.

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<sup>9</sup> Application at 14-15.

<sup>10</sup> Application at 16.

<sup>11</sup> Application at 17.

### **3. Effect on Rates**

#### **a. Applicants' Analysis**

19. Applicants state that the Proposed Transaction will have no adverse effect on rates. In this regard, Applicants note that NewCorp provides network integration transmission service to one customer, Cap Rock Energy, pursuant to a service agreement entered into under the NewCorp OATT. Applicants state that, under NewCorp's OATT, NewCorp is unable to pass on any transaction-related costs to transmission customers (current or future) and is unable to change its transmission rates without filing an application with the Commission under section 205 of the FPA. Accordingly, Applicants state that the Proposed Transaction will not have any effect on New Operator's jurisdictional transmission rates as the successor to NewCorp. Further, Applicants state that New Operator intends to set its rates using the same methodology that NewCorp would have used if the Proposed Transaction had never occurred. To accomplish this, New Operator will propose that rates be set on a combined basis with New Owner. Also, Applicants will make available to the Commission the books and records of both New Operator and New Owner and state that the combined revenue requirement will be equal to the revenue requirement that would apply if the companies had not been reorganized. Further, Applicants agree to hold transmission customers harmless from any increase in Commission-jurisdictional transmission rates that result from costs related to the Proposed Transaction for a period of five years to the extent that such costs exceed savings related to the Proposed Transaction. Therefore, Applicants conclude that rates will not be adversely affected by the Proposed Transaction.

#### **b. Commission Determination**

20. We find that the Proposed Transaction will not have an adverse impact on rates. Applicants have stated that New Operator intends to use the same methodology currently used by NewCorp for rate-setting purposes.<sup>12</sup> Further, Applicants have committed to hold transmission customers harmless from costs related to the Proposed Transaction. We accept this commitment. We also note that nothing in the application indicates that rates to customers will increase as a result of the Proposed Transaction, and no customer argues otherwise. We will require that New Operator, as NewCorp's successor, make a section 205 rate filing prior to attempting to recover costs associated with the Proposed Transaction. In addition, the Commission will be able to monitor the Applicants' hold harmless provision under the books and records provision of the Public Utility Holding

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<sup>12</sup> We do not, however, make any findings concerning the appropriateness of Applicants' "combined company" rate methodology in the context of a section 205 rate proceeding, as such matter is beyond the scope of this proceeding.

Company Act of 2005.<sup>13</sup> Therefore, we find that the Proposed Transaction will not adversely affect rates.

**4. Effect on Regulation**

**a. Applicants' Analysis**

21. Applicants assert that the Proposed Transaction will not adversely affect federal or state regulation. Applicants state that the FERC Transmission Facilities will remain subject to Commission jurisdiction after closing the Proposed Transaction. Applicants further state that the Proposed Transaction will not adversely affect state regulation because the Proposed Transaction is conditioned on approval of the Texas Commission.

**b. Commission Determination**

22. We find that neither state nor federal regulation will be impaired by the Proposed Transaction. The Commission's review of a transaction's effect on regulation focuses on ensuring that it does not result in a regulatory gap at the federal or state level.<sup>14</sup> We find that the Proposed Transaction will not create a regulatory gap at the federal level because the Commission will retain its regulatory authority over the FERC Transmission Facilities. We note that no party alleges that state regulation would be impaired by the Proposed Transaction, and no state commission has requested that the Commission address the issue of the effect on state regulation.

**5. Cross-Subsidization**

**a. Applicants' Analysis**

23. Applicants state that the Proposed Transaction will not result in any cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company. Applicants also verify that there are no existing pledges or encumbrances of traditional utility assets for the benefit of an associate company relating to the Proposed Transaction.

24. Applicants also state that based on known or reasonably foreseeable information, the Proposed Transaction will not result in, at the time of the transaction or in the future: (1) transfers of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional

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<sup>13</sup> Energy Policy Act of 2005, 42 U.S.C. §§ 16,451 *et seq.* (2006). Also, section 301 of the FPA provides the Commission access to books and records. 16 U.S.C. § 825 (2006).

<sup>14</sup> Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,124.

transmission facilities, and an associate company; (2) any new issuances 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 contracts 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 services agreements subject to review under sections 205 and 206 of the FPA, except for the lease between New Owner and New Operator.<sup>15</sup> However, Applicants state that, although the lease will technically be a new affiliate contract between a traditional public utility and a non-utility associate company, it will not result in inappropriate cross-subsidization of an associate company. Applicants state that the sole purpose of New Owner will be to hold legal title to the FERC Transmission Facilities and to lease the FERC Transmission Facilities to New Owner, a public utility, in return for a lease payment. New Owner will not engage in any non-utility business activities. Applicants further state that New Operator intends to establish the transmission rates for the FERC Transmission Facilities on a combined basis with New Owner. Under such methodology, the lease payment by New Operator to New Owner would be eliminated when the entities are viewed on a combined basis and there would be no potential for inappropriate cross-subsidization.

25. Finally, Applicants commit that although New Owner will not be a public utility, New Owner will not pledge or encumber the FERC Transmission Facilities without obtaining prior authorization from the Commission under section 204 of the FPA.<sup>16</sup>

**b. Commission Determination**

26. Based on the facts as presented in the application and the commitments and verifications made by Applicants in Exhibit M, we find that the Proposed Transaction will not result in inappropriate cross-subsidization or the pledge or encumbrance of utility assets for the benefit of an associate company. Although the lease is a new affiliate contract between New Operator and New Owner, the lease will not result in inappropriate cross-subsidization by New Operator because Applicants have committed that New

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<sup>15</sup> Application at 22-23.

<sup>16</sup> Application at 23. As noted above, *supra* note 4, we make no determination here regarding the status of New Owner as a public utility.

Owner will not engage in any non-utility business activities.<sup>17</sup> Since New Owner will not conduct any non-utility business activities, New Operator will not have the ability to engage in a cross-subsidy of New Owner in the first place.

**D. Accounting Analysis**

27. Applicants provided proposed accounting entries recording New Owner's and New Operator's acquisition of transmission facilities from NewCorp.<sup>18</sup> However, the proposed accounting entries do not provide sufficient explanation and support to determine whether the proposed accounting is consistent with the Commission's Uniform System of Accounts. Further, NewCorp has not provided any entries recording its transfer of transmission facilities to New Owner and New Operator. NewCorp, New Owner,<sup>19</sup> and New Operator must file final accounting entries, consistent with Electric Plant Instruction No. 5 and Account 102, Electric Plant Purchased or Sold,<sup>20</sup> with the Commission within six months of the consummation of the Proposed Transaction.

**E. Other Considerations**

28. Information and/or systems connected to the bulk power system involved in this transaction may be subject to reliability and cyber security 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 databases, 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 cyber security standards.

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<sup>17</sup> Application at 24. As previously noted, *supra* note 11, we do not make any determination here concerning Applicants' commitment to establish rates for the FERC Transmission Facilities on a combined basis by New Owner and New Operator. Accordingly, we do not consider Applicants' proposed rate methodology relevant to the question of whether the Proposed Transaction will result in inappropriate cross-subsidization. The appropriateness of Applicants' proposed rate methodology will be considered in a future section 205 proceeding.

<sup>18</sup> See Application at Attachment 2.

<sup>19</sup> Applicants state that while New Owner is not a public utility, it has committed to maintain its books and records in accordance with the Commission's Uniform System of Accounts for ratemaking purposes.

<sup>20</sup> 18 C.F.R. Pt. 101 (2009).

The Commission, the North American Electric Reliability Corporation or the relevant Regional Entity may audit compliance with reliability and cyber security standards.

The Commission orders:

(A) The Proposed Transaction is hereby authorized, 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 cost, or any other matter whatsoever now pending or which may become 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 appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transaction.

(F) New Operator shall make a section 205 rate filing prior to attempting to recover costs associated with the Proposed Transaction.

(G) Applicants must inform the Commission within 30 days of any material change in circumstances that would reflect a departure from the facts the Commission relied upon in authorizing the transaction.

(H) NewCorp, New Owner, and New Operator shall account for the transaction in accordance with Electric Plant Instruction No. 5 and Account 102, Electric Plant Purchased or Sold, of the Uniform System of Accounts. They shall submit their final accounting entries within six months of the date that the transaction is consummated, and the accounting submission shall provide all the accounting entries and amounts related to the transaction along with narrative explanations describing the basis for the entries.

(I) Applicants shall notify the Commission within 10 days of the date on which the disposition and acquisition of the FERC Jurisdictional Assets is consummated.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.