

136 FERC ¶ 61,049
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Entegra Power Group, LLC
Gila River Power, L.P.
Gila River Energy Supply LLC
Union Power Partners, L.P.
Entegra Power Services LLC
Merrill Lynch GENCO II, LLC

Docket No. EC11-68-000

ORDER AUTHORIZING DISPOSITION OF JURISDICTIONAL FACILITIES

(Issued July 21, 2011)

1. On April 15, 2011, Entegra Power Group, LLC (Entegra), Gila River Power, L.P. (GR Power), Gila River Energy Supply, LLC (GR Supply), Union Power Partners, L.P. (Union Power) (together with GR Power and GR Supply, the Entegra Project Companies), Entegra Power Services, LLC (EPS), and Merrill Lynch GENCO II, LLC (ML GENCO) (collectively, Applicants) filed a joint application under section 203(a)(1) of the Federal Power Act (FPA)¹ requesting that the Commission grant, for a three-year period and subject to certain conditions, authorization for an indirect disposition of jurisdictional facilities as a result of the acquisition of up to 20 percent of the equity interests (Class A Units) in Entegra² by ML GENCO (Proposed Transaction).³

¹ 16 U.S.C. § 824b (2006).

² Entegra has two classes of ownership interests. Class A Unit holders are active investors with full voting rights. Class B Unit holders are passive investors with few voting rights. *Entegra Power Group, LLC*, 115 FERC ¶ 62,038, at n.3 (2006).

³ April 15, 2011 Application at 1-2 (Application).

2. The Commission has reviewed the application under the Merger Policy Statement.⁴ As discussed below, we will authorize the Proposed Transaction with conditions under section 203(a)(1), as we find that, with these conditions, it is consistent with the public interest.

I. Background

Description of the Parties

3. Applicants state that GR Power is an exempt wholesale generator (EWG) that sells wholesale energy, capacity, and ancillary services at market-based rates, principally in the Arizona Public Service Company (APS) balancing area and Salt River Project Agriculture Improvement and Power District balancing area in the Western Electricity Coordinating Council (WECC) region.⁵ It is wholly owned by EPG LLC (EPG),⁶ which is wholly owned by Entegra TC LLC (Entegra TC) and certain intermediate entities that are wholly owned by Entegra TC. Entegra TC, in turn, is wholly owned by Entegra. Applicants state that GR Power owns and operates three of the four units (also referred to as “Power Blocks”) that comprise the Gila River Facility (the Facility).⁷ Each of the four Power Blocks has an approximate installed capacity of 550 MW. They also state that GR Power holds a 75 percent undivided interest in the Facility’s common assets. The

⁴ *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 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 642-A, 94 FERC ¶ 61,289 (2001); *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); *FPA Section 203 Supplemental Policy Statement*, FERC Stats. & Regs. ¶ 31,253 (2007) (Supplemental Policy Statement).

⁵ Application at 5.

⁶ EPG was formerly known as Entegra Power Group LLC.

⁷ Power Blocks 1, 3, and 4 are currently owned by GR Power, and Power Block 2 is owned by Sundevil Power Holdings, LLC. On March 22, 2011, Entegra and GR Power submitted a joint application in which GR Power would sell Power Block 1, together with a 25 percent undivided co-ownership interest in the common assets of the Facility, to Wildcat Power Holdings, LLC. *Entegra Power Group LLC*, 135 FERC ¶ 62,110 (2011).

Facility is interconnected to the APS transmission system. GR Power makes long-term sales to APS from Power Block 4 of the Facility pursuant to a unit-contingent power purchase agreement. It makes other sales on a merchant basis primarily through deliveries to the Palo Verde hub for redelivery to other WECC markets.⁸

4. Applicants state that on April 11, 2011, Entegra, GR Power, and GR Supply filed a joint application under FPA section 203 for approval to transfer GR Power's ownership interests in Power Blocks 3 and 4 and a 50 percent undivided co-ownership interest in the Facility's common assets to GR Supply.⁹ GR Supply, a special purpose entity formed by Entegra to acquire these interests, is wholly-owned by Gila River Energy LLC, which is wholly owned by EPG.¹⁰

5. Entegra is a holding company that indirectly holds all of the equity interests in GR Power and GR Supply. Each current owner of equity interests in Entegra is a bank, institutional investor, financial institution, investment company, or a related entity that is not primarily engaged in energy-related business activities. Applicants state that equity ownership interests in Entegra are frequently traded in secondary market transactions pursuant to various blanket authorizations.¹¹

6. Applicants state that Entegra has other indirect, wholly-owned energy subsidiaries, which include Union Power and EPS. Union Power is an EWG that has authority to make sales of wholesale energy, capacity, and ancillary services at market-based rates within Entergy's balancing authority area. It owns and operates a natural gas-fired, combined-cycle electric generating facility with an installed capacity of approximately 2,200 MW in Arkansas (Union Power Facility) that is interconnected with the transmission system of Entergy Arkansas, Inc.¹²

⁸ Application at 5.

⁹ April 11, 2011 Application for Approval Under Section 203 of the Federal Power Act (Docket No. EC11-65-000).

¹⁰ Application at 6.

¹¹ *Id.* at 3-4.

¹² *Id.* at 6.

7. According to Applicants, EPS provides certain non-power related services to Entegra, GR Power, GR Supply, and Union Power.¹³ It does not own any electric generation or transmission assets, or interstate natural gas transportation or storage assets. EPS is authorized by the Commission to sell wholesale energy, capacity, and ancillary services at market-based rates.¹⁴

8. Applicants also state that another wholly-owned subsidiary of Entegra is Trans-Union Interstate Pipeline, L.P. (Trans-Union). Trans-Union owns and operates a natural gas transmission system that extends from interconnections with Texas Gas Transmission, an interstate natural gas pipeline, and Regency Intrastate Gas LLC, an intrastate pipeline, near Sharon, Louisiana to its sole delivery point at the Union Power Facility three miles northeast of El Dorado, Arkansas.¹⁵

9. Applicants state that ML GENCO, a wholly-owned indirect subsidiary of Bank of America, is not primarily engaged in energy-related business activities.¹⁶ Its affiliate, Merrill Lynch Commodities, Inc. (MLCI), has authority to sell wholesale power at market-based rates. Applicants state that MLCI does not own or otherwise control electrical generation, transmission, or distribution facilities or natural gas pipeline or storage facilities. MLCI owns Merrill Lynch Commodities Canada (MLCC), a booking vehicle for certain natural gas and electricity transactions, including imports and exports, between the United States and Canada.¹⁷

10. Applicants state further that Merrill Lynch Credit Products (MLCP), which is also an ML GENCO affiliate, owns an interest of approximately 13 percent in Granite Ridge Energy, LLC (Granite Ridge), which is located in the ISO-New England control area.¹⁸ MLCP also owns an interest of less than 10 percent in La Paloma Generating Company, LLC, the owner of a 1,040 MW generating project in California. Another ML GENCO

¹³ *Id.* at 6.

¹⁴ *Entegra Power Servs. LLC*, 128 FERC ¶ 61,019 (2009)

¹⁵ Application at 7.

¹⁶ Bank of America is a Delaware corporation, a bank holding company, and a financial holding company under the Gramm-Leach-Bliley Act, subject to the primary regulation of the Board of Governors of the Federal Reserve System.

¹⁷ Application at 8.

¹⁸ Granite Ridge owns and operates a 720 MW EWG located in Londonderry, New Hampshire. MLCP states that it has no ability to direct, manage, or control the operations of Granite Ridge. Application at 9 n.27.

affiliate, Merrill Lynch Pierce Fenner & Smith, Inc. (MLPFS), owns an interest of 25 percent in Thermo No. 1 BE-01, LLC the owner of a 10 MW geothermal qualifying small power production facility in Utah.¹⁹

11. According to Applicants, ML GENCO and its affiliates own less than 20 percent of MACH Gen, LLC (MACH Gen). MACH Gen owns New Harquahala Generating Company, LLC (New Harquahala), which owns a natural gas-fired combined cycle electric generating plant with a nominal rating of approximately 1,050 MW.²⁰ New Harquahala is an EWG and is authorized by the Commission to make sales at market-based rates. Additionally, ML GENCO has an affiliate with leasehold interests in Nevada that may be used to develop geothermal capacity and another affiliate that holds passive interests in certain wind generation facilities.²¹

12. In addition, Applicants assert that ML GENCO and its affiliates occasionally may hold other debt and equity positions in energy companies in connection with their broker/dealer, financial trading, banking, or market-making activities. They state that these are transitory, passive, non-controlling interests that change frequently. Applicants state that the Commission does not ascribe control to entities with transitory holdings of electric utility stocks that are held in connection with investment or merchant banking, market-making, or asset management activities.²²

Description of the Proposed Transaction

13. Applicants request authorization for a period of three years for the transfer of ownership of Entegra Class A Units by current and future owners of such interests to ML GENCO or a wholly-owned subsidiary of ML GENCO's ultimate parent. Within 45 days of the end of each quarter, ML GENCO will file with the Commission a quarterly report listing these holdings stated as a percentage of the outstanding shares of Entegra. As a result of the Proposed Transaction, ML GENCO and its affiliates will be able to hold, in aggregate, up to 20 percent of the Class A Units in Entegra.

¹⁹ Applicants state that MLPFS is unable to exert control over this facility pursuant to the terms of the facility's operating agreement.

²⁰ New Harquahala operates in the APS balancing authority area. The Commission has granted approval for ML GENCO and its affiliates to acquire up to 20 percent in MACH Gen in aggregate. *MACH Gen LLC*, 127 FERC ¶ 62,166 (2009).

²¹ Application at 10-11.

²² *Id.* at 11 (citing *Morgan Stanley Capital Group Inc.*, 69 FERC ¶ 61,175 (1994)).

II. Notice of Filing and Responsive Pleadings

14. Notice of Applicants' April 15, 2011, filing was published in the *Federal Register*, 76 Fed. Reg. 22,691 (2011), with comments, protests, or interventions due on or before May 6, 2011. None was filed.

III. Discussion

A. Standard of Review Under Section 203

15. Section 203(a)(4) requires the Commission to approve a transaction if it determines that it will be consistent with the public interest.²³ 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.²⁴ 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."²⁵ 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.²⁶

B. Analysis Under Section 203

1. Effect on Competition – Horizontal Market Power

a. Applicants' Analysis

16. Applicants state that the Proposed Transaction is consistent with the public interest and will not have an adverse effect on competition, rates, or regulation, or result in any cross-subsidization or the pledge or encumbrance of utility assets to any associated company. With respect to the effect on competition, Applicants request that the

²³ 16 U.S.C. § 824b(a)(4).

²⁴ See Merger Policy Statement, FERC Stats. & Regs. at 30,111.

²⁵ 16 U.S.C. § 824b(a)(4).

²⁶ 18 C.F.R. § 33.2(j) (2011).

Commission approve the Proposed Transaction without requiring the filing of a horizontal competitive screen analysis.²⁷

17. Applicants state that neither ML GENCO nor its affiliates have any interest in generation in the Entergy control area and, therefore, the Proposed Transaction will not create overlap in generation capacity in that market. Applicants state that to the extent that the generation capacity of GR Power and New Harquahala are attributed to the same market, the Proposed Transaction may result in overlap in generation. Applicants assert, however, that because the commitments and conditions proposed in the joint application, as described below, will ensure that ML GENCO cannot exercise control over the Entegra Project Companies, this overlap raises no competitive concerns.²⁸

18. Specifically, ML GENCO asserts that it would not be able to exercise control over Entegra's generating assets based on the following commitments:

First, neither ML GENCO nor its affiliates will take any action that directly or indirectly exerts decision-making over the sale of electric energy by the Entegra Project Companies, including any discretion as to how or when power generated by such companies will be sold.

Second, absent express prior authorization from the Commission, ML GENCO, in aggregate with its affiliates, will not increase its aggregate holdings beyond 20 percent in Entegra.

Third, neither ML GENCO nor its affiliates will seek or hold representation on Entegra's board or the boards of the Entegra Project Companies.²⁹

²⁷ Application at 13.

²⁸ *Id.* at 13-14; We note that Applicants also asked the Commission to authorize the Proposed Transaction based on the "non-controlling nature" of ML GENCO's investment in MACH Gen, as well as Entegra. *Id.* at 15. However, in authorizing the Proposed Transaction, it is not necessary to make any findings concerning ML GENCO's existing investment in MACH Gen.

²⁹ ML GENCO states that it proposes this condition in the interests of expedited action, even though the Commission has, in other cases, indicated that limited, non-majority Board membership does not create control over a company. *See, e.g., LS Power Development, LLC*, 125 FERC ¶ 61,146 (2008).

Fourth, ML GENCO will be able to represent that it has not acquired the shares of Entegra with any purpose of, or with the effect of, changing or influencing the control of the Entegra Project Companies.

Fifth, ML GENCO will not seek to circumvent these commitments by acting in concert with other holders of Entegra equity.³⁰

Sixth, ML GENCO will not provide to Entegra any non-public information on the operations and plans of New Harquahala and it will not provide to MACH Gen any non-public information on the operations and plans of the Entegra Project Companies. In particular, ML GENCO will not provide any information on: (a) planned maintenance windows, (b) outages, (c) marketing strategies, (d) contracts, (e) volumes, (f) prices, or (g) other operational data.

Seventh, ML GENCO proposes that these conditions remain in place until such time, if any, as its holdings in either MACH Gen or Entegra are reduced to, and remain, below 10 percent.³¹

Finally, ML GENCO shall report to the Commission, no later than 45 days after the end of each calendar quarter: (a) the level of ML GENCO holdings in Entegra for the three-year period for which authorization to acquire Entegra interests is effective, and (b) its continued compliance with the conditions proposed herein for as long as ML GENCO holds 10 percent or more of the interests in both Entegra and MACH Gen.³²

19. Applicants conclude that, subject to these conditions, the Commission can determine that the Proposed Transaction will not result in a consolidation of generation assets that would increase concentration in any relevant market. Additionally, they argue that the Proposed Transaction will not affect the circumstances the Commission relied

³⁰ ML GENCO would be allowed to consult with other Entegra equity holders with respect to matters that are subject to voting, such as asset sales or Board elections, but it could take no actions that determine how the Entegra Project Companies sell power.

³¹ Application at 16.

³² *Id.* at 15-17.

upon when granting market-based rate authorization for the Entegra Project Companies or MCLI.³³

b. Commission Determination

20. Applicants acknowledge that the Proposed Transaction will result in overlap in generation capacity to the extent that the Commission finds that GR Power, GR Supply, and New Harquahala operate in the same market. Applicants have not submitted an Appendix A analysis or presented any horizontal market power impact analysis. Instead, rather than demonstrate a lack of control or influence over Entegra, ML GENCO committed to abide by certain conditions that the Commission has accepted in another section 203 authorization. These conditions were designed to guard against the harm to competition that could otherwise result from the proposed acquisition of up to 20 percent of the Class A Units of Entegra.³⁴ For this reason, we accept ML GENCO's commitments as conditions and find that the Proposed Transaction will have no adverse effect on competition in terms of horizontal market power.

21. We find that, because our approval of the Proposed Transaction is conditioned on our acceptance of ML GENCO's specific commitments by Applicants as discussed above, which are intended to prevent ML GENCO from controlling Entegra's generating assets, the Proposed Transaction will not result in a consolidation of generation assets that would increase concentration in any relevant market. Further, because the conditions will effectively prevent ML GENCO from exercising control over Entegra's generating assets, the Proposed Transaction does not affect the circumstances the Commission relied upon when granting the Entegra Project Companies market-based rate authority.³⁵

2. Effect on Competition – Vertical Market Power

a. Applicants' Analysis

22. With respect to vertical market power concerns, Applicants state that neither ML GENCO nor its affiliates own or control electric transmission facilities in the relevant markets other than discrete and limited facilities necessary to interconnect generating facilities to the transmission grid. As such, Applicants conclude that there is no need to submit a vertical competitive screen analysis in connection with the Proposed

³³ *Id.* at 17 (citing *MACH Gen, LLC*, 127 FERC ¶ 61,127, at P 40 (2009) (*MACH Gen, LLC*)).

³⁴ *MACH Gen, LLC*, 127 FERC ¶ 61,127 at P 36.

³⁵ *Id.* P 40; *see also Entegra*, 125 FERC ¶ 61,143 at P 44.

Transaction. In addition, Applicants state that neither ML GENCO nor its affiliates own or control any fuel or fuel transport systems that sell or transport fuel into the relevant markets.

b. Commission Determination

23. Based on the facts presented, we agree that the Proposed Transaction does not raise any vertical market power concerns. The limited transmission facilities involved in the Proposed Transaction, ML GENCO's lack of control over fuel resources and the lack of operational control of these facilities demonstrate that the Proposed Transaction will not result in the ML GENCO's ability to exert vertical market power in wholesale power markets.

3. Effect on Rates

a. Applicants' Analysis

24. Applicants state that the Proposed Transaction will not have any adverse effect on rates because all sales of electric energy from the Entegra Project Companies will continue to be made at market-based rates previously authorized by the Commission. In addition, Applicants state that they do not have any transmission customers whose rates could be affected by the Proposed Transaction.

b. Commission Determination

25. We agree that the Proposed Transaction will not have an adverse effect on rates as the Entegra Project Companies will continue to make sales at market-based rates.³⁶ We also note that no customer has argued that consummation of the Proposed Transaction would have an adverse effect on rates.

4. Effect on Regulation

a. Applicants' Analysis

26. With respect to regulation, Applicants state that the Proposed Transaction will not diminish the Commission's regulatory authority because each of the Entegra Project Companies will remain a public utility subject to the Commission's jurisdiction. Applicants also assert that the Proposed Transaction will not result in a merger of public utilities and that the Proposed Transaction will not have any adverse effect on state commission regulation, because all sales from the Entegra Project Companies will continue to be at wholesale and not subject to state commission regulation.

³⁶ See *Union Electric Co. d/b/a Ameren UE*, 114 FERC ¶ 61,255, at P 45 (2006).

b. Commission Determination

27. Based on the facts presented, we find that the Proposed Transaction will not adversely affect regulation because each of the Entegra Project Companies remains subject to the Commission's jurisdiction following the Proposed Transaction. We note that no state commission has intervened in this proceeding.

5. Cross-Subsidization

a. Applicants' Analysis

28. Applicants state that the Proposed Transaction will not result in the cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company. They note that in the Supplemental Policy Statement the Commission recognized three classes of transactions that are unlikely to present cross-subsidization concerns, one of which involves transactions in which no franchised public utility with captive customers is involved in the transactions.³⁷ Applicants state that the Proposed Transaction falls into the "safe harbor" for transactions that do not involve a franchised public utility with captive customers because none of the Applicants is a franchised public utility, and none of the Applicants has captive customers. Applicants further state that none of ML GENCO's or Entegra's upstream owners is a franchised public utility with captive customers.

29. Applicants further state that the Proposed Transaction will not result in, now or in the future: (1) any transfer of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company; (2) any new issuance of securities by a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; (3) any new pledge or encumbrance of assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; and (4) any new affiliate contract between a non-utility associate company and a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, other than non-power goods and services agreements subject to review under sections 205 and 206 of the FPA.³⁸

³⁷ Application at 18 (citing *FPA Section 203 Supplemental Policy Statement*, FERC Stats. & Regs. ¶ 31,253 (2007)).

³⁸ *Id.* at Exhibit M.

b. Commission Determination

30. Based on the facts presented, we find that the Proposed Transaction will not result in cross-subsidization, or the pledge or encumbrance of utility assets for the benefit of an associate company as the Proposed Transaction does not involve a public utility with franchised customers.

C. Other Issues

31. Information and/or systems connected to the bulk power system involved in this transaction may be subject to reliability and cybersecurity standards approved by the Commission pursuant to FPA section 215.³⁹ 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 cybersecurity standards. The Commission, North American Electric Reliability Corporation or the relevant regional entity may audit compliance with reliability and cybersecurity standards.

32. When a controlling interest in a public utility is acquired by another company, whether a domestic company or a foreign company, the Commission's ability to adequately protect public utility customers against inappropriate cross-subsidization may be impaired absent access to the parent company's books and records. Section 301(c) of the FPA gives the Commission authority to examine the books and records of any person who controls, directly or indirectly, a jurisdictional public utility insofar as the books and records relate to transactions with or the business of such public utility. The approval of this transaction is based on such examination ability.

33. Order No. 652 requires that sellers with market-based rate authority timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.⁴⁰ The foregoing authorization may result in a change in status. Accordingly, the Applicants are advised that they must comply with the requirements of Order No. 652. In

³⁹ 16 U.S.C. § 824o (2006).

⁴⁰ *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 70 Fed. Reg. 8,253 (Feb. 18, 2005), FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005).

addition, Applicants shall make any necessary filings under section 205 of the FPA to implement the Proposed Transaction.

The Commission orders:

(A) We hereby grant authorization under section 203(a)(1) for the disposition of up to 20 percent of the Class A Units in Entegra as a result of the acquisition of up to 20 percent of the Class A Units in Entegra by ML GENCO, 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) ML GENCO will comply with the commitments as interpreted and conditioned by the Commission in the body of this order.

(F) ML GENCO must notify the Commission, within 15 days of the issuance of this order, whether it accepts each of the conditions stated in the body of this order.

(G) ML GENCO must file with the Commission, for informational purposes, within 45 days after the end of each calendar quarter, a report certifying that ML GENCO is in compliance with each of the conditions stated in the body of this order, and such report must be verified by a duly authorized corporate official under 18 C.F.R. § 385.2005 (2011).

(H) Applicants shall make the appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transaction.

(I) ML GENCO shall file with the Commission, on a quarterly basis, within 45 days of the end of the quarter, a quarterly report listing their holdings of the outstanding shares of Entegra and MACH Gen, stated in terms of the number of shares held and as a percentage of the outstanding shares.

(J) Applicants are subject to audit to determine whether they are in compliance with the representations, conditions, and requirements based upon which authorization is

granted and with Commission Rules, Regulations, and Policies. In the event of a violation, the Commission may take action within the scope of its oversight and enforcement authority.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.