

145 FERC ¶ 62,213
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Portland General Electric Company
BA Leasing BSC, LLC
Fale-Safe, Incorporated

Docket No. EC14-13-000

ORDER AUTHORIZING THE DISPOSITION OF FACILITIES

(Issued December 19, 2013)

On October 16, 2013 Portland General Electric Company (Portland General); BA Leasing BSC, LLC (BA Leasing); and Fale-Safe, Incorporated (Fale-Safe, collectively Applicants) filed an application pursuant to section 203(a)(1) of the Federal Power Act (FPA)¹ for authorization for a series of transactions whereby certain interests in Portland General's Boardman Unit No. 1 (Boardman), along with related easements and contract rights (Boardman Assets), and certain portions of the Pacific Northwest Intertie (Intertie) transmission line along with related easements and contract rights (Transmission Assets, together with Boardman Assets, the Subject Interests) will return to Portland General (Proposed Transaction). The jurisdictional facilities involved in the Proposed Transactions include the jurisdictional transmission facilities associated with Boardman and the Intertie.

BA Leasing is a wholly owned subsidiary of Bank of America, N.A. engaged in the business of financing and leasing infrastructure and other assets. BA Leasing is only a passive investor in assets such as the Subject Interests. BA Leasing currently owns 100 percent beneficial interest in the Subject Interests. However, Applicants state that BA Leasing does not operate or control the Subject Interests or any other public utility assets, and is not otherwise engaged in jurisdictional activities.

Portland General is a vertically integrated electric utility located in the Western Electric Coordinating Council that provides electric service in Oregon. Portland General owns or has under long term contracts approximately 3,000 megawatts (MW) of generating capacity and approximately 1,100 miles of transmission lines, as well as distribution lines to deliver electricity to its customers. Portland General owns a 79.5 percent interest in the 17-mile Kelso-Beaver gas pipeline. Access to Portland General's

¹ 16 U.S.C. § 824b (2012).

transmission system is provided pursuant to Portland General's open access transmission tariff (OATT). Portland General is authorized by the Commission to sell energy, capacity, and ancillary services at market-based rates.

Fale-Safe is a single-purpose entity, formed for the purpose of holding interests in the Subject Interests. Portland General performs all services and functions for Fale-Safe including operating, maintaining and managing Fale-Safe's interests in the Subject Interests. Fale-Safe intends to cease all operations and cancel its tariff on file with the Commission as of January 1, 2014.

Subject Interests consist of a 15 percent undivided interest in Boardman, a single-unit, 642.2 MW coal-fired generating facility located in Boardman, Oregon in the Portland General balancing authority area, and the related easements and contract rights; and a 2.12 percent ownership interest in the portion of the 500 kV eastern circuit of the Intertie commencing at the Grizzly substation in Jefferson County, Oregon, and terminating at the Malin substation in Klamath County, Oregon along with associated easements and 10.714 percent of Portland General's rights under various agreements among Bonneville Power Administration, Portland General, and certain other parties providing for the construction, operation, maintenance, ownership and/or use of portions of the Intertie and other transmission facilities.

Applicants explain that in 1985, the Commission authorized a transaction whereby Portland General would sell the Subject Interests to J. Henry Schroder Bank & Trust Company (later succeeded by The Bank of New York Mellon Trust Company, N.A.) as owner trustee (Owner Trustee), who would hold legal title to the Subject Interests on behalf of General Electric Credit Corporation (later succeeded by BA Leasing) as owner participant (Owner Participant).

In addition, Portland General proposed that the Owner Trustee would lease the subject facilities to a then unnamed lessee. Applicants note that in 1985 Fale-Safe assumed responsibility as the lessee under the lease. Portland General noted it would continue to be responsible for the operation and maintenance of the Subject Interests pursuant to certain agreements.

The lease of the facilities along with certain contracts for the sale of power and transmission service to San Diego Gas & Electric Company will terminate as of December 31, 2013. Upon termination the Subject Interests will return to the Owner Trustee. Simultaneously with the return of the Subject Interests to the Owner Trustee, the Trust Estate including the Owner Trustee's right, title and interest in and to the Subject Interests, will be distributed to BA Leasing as the Owner Participant; the trust agreement will be terminated; and BA Leasing will dispose of the Subject Interests to Portland General through one of two paths. Either BA Leasing and Portland General will enter into a transfer agreement where Portland General will acquire all rights, title and interests

in the Subject Interests (Path One); or, upon conveyance of the Trust Estate to BA Leasing, Portland General will have full operational control over the Subject Interests and BA Leasing will hold legal title to the Subject Interests (Path Two).

Applicants state that the Proposed Transaction does not have an adverse effect on competition. Applicants state that the Proposed Transaction does not change operational control over the Subject Interests. Applicants state that Portland General will continue to operate and manage the Boardman plant through 2020. Applicants state that pursuant to the 1976 operating agreement and Intertie agreements, Fale-Safe possesses no authority to operate or manage the Subject Interests. Applicants state that the Proposed Transaction involves a nominal change in the identity of the public utility subject to the Commission's jurisdiction with respect to the Subject Interests (from Fale-Safe to Portland General) however, there is no change over the management and operational control over the Subject Interests. Additionally, Applicants state that the Boardman assets constitute 88 MW or 1.9 percent of the Portland General market.

Applicants explain that there are certain circumstances present that the Commission has found to mitigate potential horizontal market power concerns. The Boardman Assets are coal-fired baseload resources; revenue from Portland General's wholesale sales are credited to its retail customers pursuant to an Annual Power Cost Variance Mechanism tariff; and Portland General is a net purchaser during the winter and summer seasons. Applicants state that, under the totality of the circumstances, the Proposed Transaction does not raise horizontal market power concerns.

Applicants explain that the Proposed Transaction does not raise vertical market power concerns. Applicants state that the transmission assets being acquired will be subject to the open access provisions of Portland General's OATT.

Applicants explain that the Proposed Transaction will have no adverse effect on rates. Applicants state that wholesale power rates will be unaffected by the Proposed Transaction. Applicants explain that no transmission customers of Portland General will be adversely affected by the Proposed Transaction. Applicants state that Portland General will provide open access transmission service over the transferred transmission assets pursuant to its OATT at Commission-approved rates, terms and conditions, and will otherwise operate and control the Subject Interests. Applicants further state that Portland General pledges to hold harmless all current transmission and wholesale customers from any costs associated with the Proposed Transaction for a period of five years to the extent that such costs exceed savings related to the Proposed Transaction. Applicants state that transaction costs includes all transaction-related costs, not only costs related to consummating the Proposed Transaction.

Applicants state that: (a) if Portland General seeks to recover transaction-related costs through its wholesale power or transmission rates, it must submit a compliance

filing that details how it is satisfying the hold harmless requirement; (b) if it seeks to recover transaction-related costs in an existing formula rate that allows for such recovery, then that compliance filing must be filed in the FPA section 205 docket in which the formula rate was approved by the Commission as well as the instant FPA section 203 docket; and (c) if it seeks to recover transaction-related costs in a filing whereby it is proposing a new rate (either a new formula rate or a new stated rate), then that filing must be made in a new FPA section 205 docket as well as the instant FPA section 203 docket. In any such filing Portland General will (1) specifically identify the transaction-related costs it is seeking to recover, and (2) demonstrate that those costs are exceeded by the savings produced by the transaction, in addition to any requirements associated with filings made under FPA section 205.

Applicants state that, the Proposed Transaction, will not diminish federal regulatory authority over the Boardman Assets or the Transmission Assets. Following the Proposed Transaction, Portland General will remain subject to the Commission's jurisdiction under the FPA. Applicants also state that the Proposed Transaction will not adversely affect state regulation as it will have no effect on the jurisdictional status of Portland General.

Applicants state that the Commission requires a showing that Proposed Transaction will not result in: (1) any transfers of facilities between a traditional 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 issuances of securities by a traditional 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 pledges or encumbrances of assets of a traditional 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 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. Applicants state that the Proposed Transaction will not result in any proscribed cross-subsidization or the pledge or encumbrance of utility assets for the benefit of an associate company. Specifically Applicants state, (1) Portland General is neither an associate company nor an affiliate of either BA Leasing or Fale-Safe; (2) Portland General will not be issuing any new securities to effectuate the Proposed Transaction; (3) Portland General will not be pledging or encumbering any assets to effectuate the Proposed Transaction, and (4) the Proposed Transaction will not result in any new affiliate contract between Portland General and an associate company.²

² Application at Exh. M.

The original filing was noticed on October 24, 2013. Comments, protests or interventions were due on or before November 16, 2013. None were filed.

Applicants explain that after exercising the termination right, BA Leasing (after the distribution of the Trust Estate by Owner Trustee), and Portland General may proceed down Path One or Path Two. Applicants provided *pro forma* journal entries to illustrate the accounting related to the proposed transaction that may result under each of the two paths for Portland General.

Applicants did not propose to use Account 102, Electric Plant Purchased and Sold, to record the acquisition transaction, as required by Electric Plant Instruction (EPI) No. 5, Electric Plant Purchased or Sold. Account 102 is used as an interim control account to record all aspects of a transaction involving the acquisition or transfer of operating units or systems. The use of this account is an important accounting control that helps ensure that acquisitions and transfers of operating units or systems are properly accounted for. Therefore, we will require Applicants subject to the Commission's Uniform system of Accounts (USofA) to record the Proposed Transaction through Account 102 consistent with the instructions of Electric Plant Instruction No. 5 of the Commission's Uniform System of Accounts.

Applicants subject to the Commission's USofA shall submit their proposed final accounting entries within six months after the transaction is consummated. The accounting shall provide all transaction-related accounting entries made to the books and records of Applicants, along with appropriate narrative explanations describing the basis for the entries.

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 of the FPA.³ 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. The Commission, North American Electric Reliability Corporation or the relevant regional entity may audit compliance with reliability and cyber security standards.

³ 16 U.S.C. § 824o.

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.

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.⁴ 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 addition, Applicants shall make any necessary filings under section 205 of the FPA to implement the transaction.

After consideration, it is concluded that the Proposed Transaction is consistent with the public interest and is authorized, subject to the following conditions:

(1) The Proposed Transaction is authorized upon the terms and conditions and for the purposes set forth in the application;

(2) 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;

(3) 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;

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

(5) If the Proposed Transaction results in changes in the status or the upstream ownership of Applicant's affiliated qualifying facilities, if any, an appropriate filing for recertification pursuant to 18 C.F.R. § 292.207 (2013) shall be made;

⁴ *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).

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

(7) Applicants must inform the Commission within 30 days of any change in circumstances that would reflect a departure from the facts the Commission relied upon in authorizing the Proposed Transaction;

(8) Applicants subject to the Commission's USofA shall submit their proposed final accounting for the merger within six months after the transaction is consummated. The accounting submission shall provide all transaction-related accounting entries made to the books and records of Applicants, along with appropriate narrative explanations describing the basis for the entries.

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

This action is taken pursuant to the authority delegated to the Director, Division of Electric Power Regulation -- West, under 18 C.F.R. § 375.307. This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. § 385.713.

Steve P. Rodgers
Director,
Division of Electric Power Regulation -- West