



Control Number: 48139



Item Number: 13

Addendum StartPage: 0

DOCKET NO. 48139

JOINT APPLICATION OF NRG  
ENERGY, INC. AND GIP III ZEPHYR  
ACQUISITION PARTNERS, L.P.  
UNDER § 39.158 OF THE PUBLIC  
UTILITY REGULATORY ACT §

2018 JUN 29 PM 4:04  
PUBLIC UTILITY COMMISSION  
OF TEXAS

## ORDER

This Order addresses the joint application of NRG Energy, Inc. and GIP III Zephyr Acquisition Partners, L.P. (GIP III) (collectively, applicants) for approval of GIP III's acquisition of certain NRG Energy assets. Commission Staff recommends approval of the application. The Commission approves the application.

The Commission adopts the following findings of fact and conclusions of law.

### I. Findings of Fact

#### Procedural History, Description, and Background

1. On March 5, 2018, NRG Energy and GIP III filed a joint application for approval of GIP III's acquisition of Wildorado Wind LLC, a power generation company located in Texas and in the Southwest Power Pool (SPP). GIP III will also acquire all membership interests of Zephyr Renewables LLC, a subsidiary of NRG Energy.
2. GIP III, formed as a vehicle to facilitate the transaction, is a subsidiary of Global Infrastructure Partners. Global Infrastructure Partners owns generation in the SPP via its subsidiary Competitive Power Ventures, but has no ownership or control interest in generation assets in Texas.
3. As a result of the transaction, GIP III will acquire all of NRG Energy's membership interests in NRG Yield, Inc. and NRG Renew LLC, and thereby, each entities' interests in generation facilities in the SPP.
4. In Order No. 1 issued on March 12, 2018, the administrative law judge (ALJ) directed Commission Staff to file comments on the sufficiency of the application and notice.

5. On March 29, 2018, Commission Staff recommended that the ALJ find the application and notice sufficient and proposed a procedural schedule.
6. In Order No. 2 issued on April 6, 2018, the ALJ deemed the application and notice sufficient and established a procedural schedule.
7. On April 17, 2018, Commission Staff recommended approval of the application.
8. On May 4, 2018, the applicants filed a joint motion to admit evidence.
9. In Order No. 3 issued on May 9, 2018, the ALJ admitted evidence into the record.

#### **Notice**

10. On March 5, 2018, contemporaneously with the filing of the application, the applicants provided notice of the application to Commission Staff.
11. Notice of the application appeared in the March 23, 2018 issue of the *Texas Register*.

#### **Informal Disposition**

12. More than 15 days have passed since completion of notice provided in this docket.
13. No parties filed protests, motions to intervene, or requests for hearing.

#### **Installed Generation Capacity**

14. GIP III currently owns, either directly or indirectly through affiliates or subsidiaries, installed generation capacity or generation capacity planned for installation within the next twelve months in the SPP totaling approximately 871.4 MW of wind generation.
15. Zephyr Renewables currently owns, through affiliates, Wildorado Wind with a capacity totaling 161 MW.
16. GIP III together with its affiliates will own interests in generation assets in adjacent power regions, including Pennsylvania, Jersey, Maryland (PJM) Interconnection; Midcontinent Independent System Operator (ISO); New York ISO; and ISO New England (collectively the Eastern Power Regions) and the Electric Reliability Council of Texas (ERCOT).
17. The combined installed generation capacity that is capable of delivery into the SPP by way of imports from the Eastern Power Regions and from the maximum capacity of the DC ties from ERCOT total 4,053.6 MW.

18. SPP has determined that the maximum total summer import capability for that power region is limited to 3,782 MW.
19. With the addition of the 3,782 MW of import capability, the total installed capacity located in SPP, or capable of delivering electricity into SPP, is 87,727 MW.
20. After the transaction, the combined potential direct and indirect generation ownership of GIP III, together with its affiliates, would equal approximately 4,814.4 MW, or approximately 5.48% of the installed generation capacity in SPP or capable of delivery into SPP.
21. After the transaction, the total electricity directly or indirectly owned and offered for sale in SPP by GIP III and its affiliates will not exceed 20% of the total installed generation capacity in SPP.
22. It is appropriate to use nameplate capacity to calculate the share of installed generation capacity because no data was provided to support actual capacity as provided in 16 TAC § 25.91(f).

## II. Conclusions of Law

1. The Commission has jurisdiction over the proposed transaction under PURA §§ 39.154 and 39.158.
2. Notice of the application was provided in compliance with 16 Texas Administrative Code (TAC) §§ 22.54(a) and 22.55.
3. The Commission must approve the transaction unless it finds that the proposed transaction results in a violation of PURA § 39.154.
4. A power generation company may not own and control more than 20% of the installed generation capacity located in or capable of delivering electricity to a power region under PURA § 39.154.
5. The relevant power region for purposes of this analysis is the SPP.
6. In determining the percentage share of installed generation capacity, the installed generation capacity owned and controlled by a power generation company must be increased by the transmission import capability that is available for importing electricity

during the summer peak season into the power region from generation facilities that are owned by the power generation company or an affiliate in another power region.

7. The proposed transaction will not result in the combined ownership and control of more than 20% of the installed generation capacity located in or capable of delivering electricity to the SPP, under PURA § 39.154.
8. The proposed closing date complies with the 120-day requirement in PURA § 39.158.
9. This application does not constitute a major rate proceeding as defined in 16 TAC § 22.2(27).
10. The requirements for informal disposition in 16 TAC § 22.35 have been met in this proceeding.

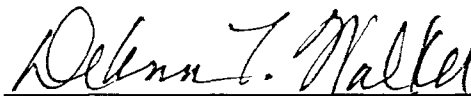
### **III. Ordering Paragraphs**

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders:

1. The Commission approves the application.
2. All other motions and any other requests for general or specific relief, if not expressly granted, are denied.

Signed at Austin, Texas the 29<sup>th</sup> day of June 2018.

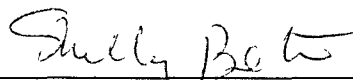
PUBLIC UTILITY COMMISSION OF TEXAS



DEANN T. WALKER, CHAIRMAN



ARTHUR C. D'ANDREA, COMMISSIONER



SHELLY BOTKIN, COMMISSIONER

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