

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Boston Generating, LLC, *et al.*

Docket No. EC05-119-000

ORDER GRANTING IN PART, DENYING IN PART, AND DEFERRING IN PART  
AUTHORIZATION TO DISPOSE OF JURISDICTIONAL FACILITIES

(Issued October 7, 2005)

**I. Introduction**

1. On August 5, 2005, as amended on September 13, 2005, Boston Generating, LLC (Boston Generating); its three wholly-owned subsidiaries, Mystic I, LLC (Mystic I), Mystic Development, LLC (Mystic Development), and Fore River Development, LLC (Fore River) (collectively, Project Companies); Tyr Energy, LLC (Tyr); K Road Management LLC (K Road Management); EBG Holdings, LLC (EBG Holdings); and K Road BG LLC (K Road) (collectively, Applicants) filed a joint application under section 203 of the Federal Power Act (FPA)<sup>1</sup> requesting Commission authorization for an indirect disposition of jurisdictional facilities that would result from changes in ownership and operational structure, including certain transfers of ownership or control of equity interests in EBG Holdings. The jurisdictional facilities involved include generator leads, generator step-up transformers, a market-based rate tariff, related books and records, interconnection facilities, and power sales contracts associated with generating facilities owned and operated by the Project Companies.

2. As further described below, Applicants seek section 203 authorization for three groups of transactions. One group of transactions would involve the restructuring of EBG Holdings, which would change the ownership, management, and operational structure of Boston Generating and the Project Companies (Proposed Transaction). A second group of transactions would involve transfers of equity interests from current

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<sup>1</sup> 16 U.S.C. § 824b (2000).

owners to other existing owners or new buyers that have not yet been determined (Future Transactions). The third group of transactions would involve transfers of interests from current or future holders of equity interests to direct or indirect wholly-owned subsidiaries of their ultimate parents (Future Subsidiary Transactions).

3. The Commission has reviewed the Application under the Merger Policy Statement<sup>2</sup> and will grant partial authorization for the Proposed Transaction. Because Applicants do not identify the purchasers of 90 percent of the EBG Units, we will only approve the Proposed Transaction as it applies to K Road, the purchaser of 10 percent of the Class A units (Proposed Transaction – K Road). We will deny the Proposed Transaction involving the unidentified purchasers of the EBG Units.

4. Applicants amended their application on September 13, 2005, requesting expedited review of the Proposed Transaction and stating that the Commission could address their requests for blanket authorization for Future Transactions at a later date. Accordingly, we will address the Future Transactions and Future Subsidiary Transactions in a future order.

## II. Background

### A. Description of the Applicants

5. EBG Holdings is a limited liability company that owns the membership interests of Boston Generating.<sup>3</sup> EBG Holdings is a passive financial owner with a management

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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*).

<sup>3</sup> Exelon New England Holdings, LLC transferred Boston Generating's membership interests to a group of lenders as part of a settlement in lieu of foreclosure following Boston Generating's default under a credit agreement (2001 Credit Agreement) with a group of financial institutions (Lenders).

structure that consists of a single member Class B Manager and Class A Members with rights typically allowed to passive investors.<sup>4</sup>

6. Boston Generating purchases the output of each of the jurisdictional Project Companies and then resells that output to Sempra Energy Trading Corporation (Sempra). Boston Generating also owns two non-jurisdictional companies that provide operational services.

7. The Project Companies are limited liability companies that are authorized to sell power at market-based rates. Mystic I owns and operates Mystic Jet and Mystic Unit 7, which are oil- and gas-fired generating units with an aggregate installed capacity of 631 megawatts (MW). Mystic Development owns and operates Mystic Units 8 and 9, which are gas-fired generating units with an aggregate installed capacity of 1,744 MW. Fore River owns and operates the Fore River plant, which is a gas-fired plant with an installed capacity of 872 MW.

8. K Road is a limited liability company that will purchase 10 percent of the Units of EBG Holdings.<sup>5</sup> At closing, K Road will become an indirect subsidiary of WBD K Road Power BC LLC (WBD). WBD will manage K Road through another wholly-owned subsidiary, K Road BG MM LLC, which will be the Managing Member of K Road. Applicants state that WBD does not control or operate any generating or electric transmission assets, fuel transportation assets, or related facilities.

9. Tyr, a limited liability company, provides comprehensive management and restructuring services to financial owners of electric generation and gas storage assets. Tyr has contracted with Boston Generating to provide management services to Boston Generating and to the Project Companies. The contract is expected to terminate following approval of K Road Management as the new asset manager.

10. Applicants have designated K Road Management, a limited liability company, as the replacement for Tyr. K Road Management is an affiliate of K Road.

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<sup>4</sup> *Exelon New England Holdings, LLC*, 107 FERC ¶ 61,148 at P 19 (2004).

<sup>5</sup> Under the Restated LLC, members will own “Units” rather than “Membership Interests.” Application at 5.

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

### **1. Proposed Transaction**

11. Applicants state that the current ownership and operational structure of Boston Generating and the Project Companies was intended to be an interim arrangement until they could put in place longer-term ownership and management structures.<sup>6</sup>

12. The Proposed Transaction contemplates the restructuring of EBG Holdings through four agreements: the Investment Agreement, the Warrant, the Restated Limited Liability Company (LLC) Agreement, and the Management Agreements. The Restated LLC Agreement would replace the Class B Member Manager with a Board of Directors and would create two new classes of unit holders: Class A and Class B. The Class A Unit holders would be active investors with full voting rights, including the right to elect members of the Board of Directors. K Road would become one of the Class A Unit holders by acquiring a 10 percent equity interest in EBG Holdings.<sup>7</sup> The Class B Unit holders would be passive investors with few voting rights.<sup>8</sup> As provided by the Management Agreements, a Board of Directors would manage EBG Holdings. K Road would have the right to designate two of the seven Directors, one of whom will also be the Chief Executive Officer. K Road would also have the right to appoint the officers of EBG Holdings.<sup>9</sup>

13. Applicants state that future EBG Unit holders will continue to be financial institutions, institutional investors, investment companies or related entities that are not engaged in energy-related business activities.<sup>10</sup> They further state that, by closing, the Current Class A Members must choose whether they will become Class A or Class B Unit holders. Applicants note that some of the current Class A Members may transfer their membership interests to affiliates or new entities before the closing of the Proposed

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<sup>6</sup> Application at 4.

<sup>7</sup> Applicants also request authorization for K Road to exercise a Warrant to acquire up to an additional 10 percent of the Class A Units without further order of the Commission. Application at 6.

<sup>8</sup> *Id.* at 6.

<sup>9</sup> *Id.* at 6.

<sup>10</sup> *Id.* at 11-12.

Transaction. Applicants state that they will provide the Commission with a final list of the Class A and Class B Unit holders within 10 days of closing.<sup>11</sup>

14. Applicants state that EBG Holdings will no longer be a passive entity. Rather, the Proposed Transaction contemplates allowing EBG Holdings to exert some managerial control over Boston Generating and the Project Companies.

## **2. Future Transactions**

15. Applicants also request authorization for a two-year period without further section 203 filings for Future Transactions involving transfers of ownership or control of EBG Holdings' Class A Units to other existing owners or new buyers that are banks, institutional investors, financial institutions, investment or related entities not primarily engaged in energy-related business activities. These Future Transactions may result in the acquiring party's owning or controlling an investment in EBG Holdings equal to an equity interest of 20 percent or less. Applicants state that they seek this additional authorization to facilitate the trading of equity interests in EBG Holdings to enhance the financial stability and flexibility of the projects.<sup>12</sup>

## **3. Future Subsidiary Transactions**

16. In addition, Applicants seek authorization for Future Subsidiary Transactions, i.e., to allow any current or future holders of equity interests in EBG Holdings to transfer such interests to direct or indirect wholly-owned subsidiaries of their ultimate corporate parents.<sup>13</sup>

## **III. Notice and Responsive Pleadings**

17. Notice of Applicants' filing was published in the *Federal Register*, 70 Fed. Reg. 48,116 (2005), with interventions and protests due on or before August 26, 2005. On August 26, 2005, the Reading Municipal Light Department, Wellesley Municipal Light Plant, and Concord Municipal Light Plant (collectively, Municipals) jointly filed a

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<sup>11</sup> *Id.* at 12-13.

<sup>12</sup> Applicants state that these limitations are similar to those the Commission established in *Lake Road Holding*, 112 FERC ¶ 61,051 (2005) (*Lake Road*) and *La Paloma*, 112 FERC ¶ 61,052 (2005) (*La Paloma*).

<sup>13</sup> Applicants state that these transactions are similar to those in *Lake Road* and *La Paloma*. See Application at 24.

motion to intervene and protest, and Local 369, Utility Workers Union of America, AFL-CIO (Local 369)<sup>14</sup> filed a motion to intervene and protest. On August 31, 2005, Applicants filed an answer to the protests. On September 2, 2005, NSTAR Electric & Gas Corporation (NSTAR)<sup>15</sup> filed a motion to intervene and protest. On September 6, 2005, Applicants filed a response opposing NSTAR's motion to intervene. On September 7, 2005, the Municipals and Local 369 filed separate answers to Applicants' response to the protests. On September 13, 2005, Applicants amended their application to state that EBG Holdings would have no objection to the Commission's deferring action on its requests for blanket authorization for the Future Transactions and Future Subsidiary Transactions in order to obtain expedited treatment of the Application. The Municipals and NSTAR filed separate responses opposing the Applicants' request for expedited treatment on September 30 and October 5, 2005, respectively.

#### **IV. Discussion**

##### **A. Procedural Matters**

18. 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. We will grant NSTAR's motion to intervene out-of-time, given its interest, the early stage of this proceeding, and the absence of undue prejudice or delay.

19. 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 the answers filed in this proceeding because they have provided information that assisted us in our decision-making process.

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<sup>14</sup> Local 369 represents electrical workers that perform operations and maintenance on the Boston Generating generation facilities.

<sup>15</sup> NSTAR moved to intervene and protest on behalf of its affiliated public utility operating companies, Boston Edison Company, Cambridge Electric Light Company, and Commonwealth Electric Company.

**B. Proposed Transaction****1. Standard of Review**

20. 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>16</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. We will approve the Proposed Transaction – K Road as being consistent with the public interest but will deny authorization to dispose of jurisdictional facilities to unidentified purchasers of the EBG Units.

**2. Effect on Competition**

21. Applicants state that the Proposed Transaction will not adversely affect competition and raises no horizontal market power concerns. Applicants submit that the transaction will not result in any increase in market concentration. They claim that the approximately 3,248 MW of generation controlled by Tyr, the current asset manager, is less than 10 percent of the total capacity in the relevant geographic market, and that this market share will not change when K Road Management becomes the new asset manager. The Applicants also state that the amount of generation or distribution facilities in the relevant markets owned by EBG Holdings and its Members is *de minimis* and will remain so after the transaction.<sup>17</sup>

22. Applicants also maintain that the Proposed Transaction does not raise any vertical market power concerns. Neither the Applicants nor their affiliates own more than a *de minimis* interest in fuel sources, fuel transportation systems, or other inputs to electricity products. They further state that none of the Applicants or their affiliates has operational control of such facilities. Accordingly, the Commission finds that the Proposed Transaction – K Road will not have an adverse effect on competition.

**3. Effect on Rates**

23. Applicants state that the Proposed Transaction will have no effect on rates for wholesale sales of power or transmission services because all sales will continue to be

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

<sup>17</sup> Application at 18.

made at market-based rates.<sup>18</sup> As discussed below, the Commission finds that the Proposed Transaction – K Road will not have an adverse effect on rates.

24. Municipals and NSTAR argue that the application fails to reveal that Boston Generating filed cost-based Reliability Must Run (RMR) Agreements for various generating units four days after filing this application.<sup>19</sup> According to Municipals, the filing of the RMR Agreements undercuts the assertion in the application that the transaction will not adversely affect rates because all sales of electric energy from Boston Generating and the Project Companies will continue to be at market-based rates. Municipals also assert that the application fails to reveal that the restructuring for which the Applicants seek authorization involves the cancellation of \$585 million in project debt. They argue that the cancellation of this debt may affect rates, at least as far as the calculation of RMR cost-of-service rates is concerned.<sup>20</sup>

25. Applicants submit that the Application is complete and accurate. Even if the RMR Agreements become effective, the Mystic Project Companies will continue to sell under market-based rates and will offset the monies received from the market against the units' RMR cost-of-service.<sup>21</sup> Applicants also submit that if there are any cost-of-service issues from the cancellation of debt, those issues belong in the RMR Proceedings, not in this one.<sup>22</sup>

26. In reviewing an application under section 203, the Commission looks at the effects of the transaction on rates, not at rate changes that may occur regardless of the transaction. We find that the Proposed Transaction – K Road will have no adverse effect on rates regardless of the outcome of the RMR proceeding. The Commission is examining the RMR cost-of-service issue in the RMR Proceedings, and whether or not Applicants are entitled to RMR rates will be decided in that case. If, as a result of those

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<sup>18</sup> *Id.* at 19. See also Local 369 Protest at 5-7.

<sup>19</sup> On August 9, 2005, Boston Generating *et al.* filed RMR Agreements seeking cost-of-service treatment for the Mystic 7 generating unit held by Mystic I, LLC (in Docket No. ER05-1305-000) and the Mystic 8 and 9 generating units held by Mystic Development, LLC (in Docket No. ER05-1304-000).

<sup>20</sup> Municipals Protest at 7-8.

<sup>21</sup> Applicants' Answer at 14.

<sup>22</sup> *Id.* at 12-14.

proceedings, customers do face rate increases, it will be because the Commission finds that it is justified for RMR treatment, not because of this transaction.

27. Municipals and NSTAR ask the Commission to consolidate this proceeding with the RMR Proceedings. Municipals argue that all three dockets involve common issues of law and fact and consolidating them into one proceeding would allow the Commission to proceed more efficiently.<sup>23</sup> NSTAR is concerned that the Mystic Project Companies<sup>24</sup> may pay plant or capital costs or costs for non-power goods or services at levels that exceed market cost or provide affiliates with services that are below market cost and then use RMR rates to pass the resulting costs through to NSTAR.<sup>25</sup>

28. This proceeding is under FPA section 203, and the issue is whether the transaction is consistent with the public interest.<sup>26</sup> In the RMR Proceedings, the Commission is reviewing proposed rates and conditions to ensure that they are just and reasonable.<sup>27</sup> Because the section 203 application does not share common issues of law and fact with the section 205 proceedings, we will deny the request for consolidation.<sup>28</sup>

29. NSTAR refers to section 1289(a)(4) of the Energy Policy Act of 2005 (EPAct 2005),<sup>29</sup> which requires the Commission, in addition to its public interest finding, to determine that a merger or other section 203 transaction will not result in cross-

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<sup>23</sup> Municipals Protest at 11.

<sup>24</sup> The Mystic Project Companies are EBG Holdings subsidiaries that own the Mystic 7 generating unit (Mystic I, LLC) and the Mystic 8 and 9 generating units (Mystic Development, LLC) and that are parties to the Mystic RMR Proceedings.

<sup>25</sup> NSTAR Protest at 5-6.

<sup>26</sup> 16 U.S.C. 824b (2000).

<sup>27</sup> 16 U.S.C. 824d (2000).

<sup>28</sup> See *Old Dominion Electric Cooperative*, 110 FERC ¶ 61,274 at fn. 5, P 16, 22 (2005); *New York State Electric & Gas Corp.*, 86 FERC ¶ 61,014 at 61,038 (1999).

<sup>29</sup> Pub. L. No. 109-58, § 1289(a)(4), 119 Stat. 594 (2005).

subsidization by a regulated utility of its non-regulated affiliate.<sup>30</sup> While NSTAR acknowledges that EAct 2005 is not yet effective, it submits that the public interest concerns expressed in EAct 2005 are relevant to the Commission's determination of whether a merger or other disposition of facilities is consistent with the public interest.<sup>31</sup>

30. NSTAR states that the Proposed Transaction raises cross-subsidization and customer impact concerns because the Mystic Project Companies could be subject through their affiliates to plant or capital costs or to costs for non-power goods or services at levels that exceed cost or market. The Mystic Project Companies could also be required to provide affiliates with power or non-power services at prices that are below cost or market.

31. NSTAR asks that if the Commission approves the proposed transactions, we adopt reporting, Code of Conduct, and disclosure conditions designed to protect customers from undue costs due to affiliate abuse and require EBG Holdings to provide full disclosure of the details and costs associated with its acquisition of the membership interests in Boston Generating and the terms of the proposed transaction between EBG Holdings and K Road.<sup>32</sup>

32. With respect to NSTAR's arguments regarding potential cross-subsidization and the requirements in the EAct 2005 amendments to FPA section 203, we take cross-subsidization concerns seriously and will address them in the RMR Proceedings. NSTAR premises its request for relief on the Mystic Project Companies becoming RMR units, which is not at issue in this case. Thus, the issue of affiliate abuse does not arise in

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<sup>30</sup> Section 1289(a)(4) states:

After notice and opportunity for hearing, the Commission shall approve the proposed disposition, consolidation, acquisition, or change in control, if it finds that the proposed transaction will be consistent with the public interest, and 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>31</sup> NSTAR Protest at 5-6.

<sup>32</sup> *Id.* at 6-7.

this proceeding. The Mystic Project Companies' request for RMR rates will be decided in that case. The Commission will deal with any affiliate abuse problems in the RMR proceedings.

#### **4. Effect on Regulation**

33. Applicants assert that neither Commission nor state regulation will be affected by the transaction. The Proposed Transaction does not involve the formation of a registered holding company under the Public Utility Holding Company Act of 1935 that would have the effect of preempting the Commission's jurisdiction. Moreover, the sales of energy from the Project Companies are not now subject to state regulation. Thus, we conclude that Proposed Transaction – K Road will not adversely affect state or federal regulation.

#### **5. Other Issues**

##### **a. Whether EBG Holdings Will Be a Public Utility**

34. Local 369 asks that the Commission condition approval of the application on the finding that EBG Holdings is a public utility under section 201(e) of the FPA.<sup>33</sup> Local 369 notes that EBG Holdings is changing from a passive financial owner with no operating or marketing capability and no direct role in the day-to-day operations of Boston Generating and the Project Companies to an entity exerting some control over significant future decisions with respect to Boston Generating and the Project Companies. This is a material change in the conditions that led the Commission to authorize the transfer of ownership of Boston Generating and the Project Companies to EBG Holdings without asserting jurisdiction over EBG Holdings.<sup>34</sup>

35. Local 369 also says that the Application does not spell out the proposed ownership structure of and management control over the new organization. Rather, the Application says only that EBG Holdings will assume some measure of management control over Boston Generating,<sup>35</sup> without specifying the nature and extent of that control.<sup>36</sup> Local

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<sup>33</sup> 16 U.S.C. § 824 (2000).

<sup>34</sup> Local 369 Protest at 7, citing *Exelon New England Holdings, (Exelon)*, 107 FERC ¶ 61,148 at P 19 (2004) (Commission did not exert jurisdiction over EBG Holdings because it was a passive owner).

<sup>35</sup> Application at 11.

<sup>36</sup> Local 369 Protest at 7-8.

369 asks that the Commission require Applicants to explain EBG Holdings' role in managing Boston Generating and whether, following the proposed transactions, EBG Holdings will be a public utility subject to the Commission's jurisdiction by virtue of its owning and/or operating jurisdictional facilities.<sup>37</sup>

36. Local 369 argues that now that EBG Holdings will no longer be a passive investor and may become a Commission-jurisdictional entity because of the proposed transactions, the Commission should know its exact ownership and structure before approving the Application.<sup>38</sup>

37. Applicants oppose any suggestion that as a result of the Proposed Transaction EBG Holdings will become a public utility. Applicants state that EBG Holdings will not operate any of Boston Generating's or Project Companies' jurisdictional assets. K Road Management will be the operator of those assets and thus, will be the public utility.<sup>39</sup> Applicants note that the Commission has found that even when a parent company owns one hundred percent of the ownership interests of a public utility, the parent company is not itself a public utility unless it owns or operates jurisdictional facilities itself.<sup>40</sup>

38. The Commission finds that whether or not EBG Holdings would become a public utility as a result of this transaction is not an issue under section 203 and has no bearing on whether this transaction is consistent with the public interest. We do not need to know the exact ownership and structure of EBG Holdings in order to analyze the three factors on which our decision is based. Furthermore, the Commission has jurisdiction over the Project Companies, which own the jurisdictional facilities. The Commission will decide whether EBG Holdings is a public utility when either (1) Applicants ask for a declaratory order finding that it is not, or (2) a complaint is filed under section 206 arguing that we should find it to be a public utility. If as a result of this transaction EBG Holdings becomes a public utility, we will regulate it as such.

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<sup>37</sup> *Id.* at 7-9, *citing* 16 U.S.C. § 824 (2000).

<sup>38</sup> *Id.* at 9-10.

<sup>39</sup> Answer at 6-7.

<sup>40</sup> *Id.* at 7-8, *citing Missouri Basin Municipal Power Agency v. Midwest Energy Company & Iowa Resources, Inc.*, 53 FERC ¶ 61,368 at 62,298-299 (1990); *reh'g denied*, 55 FERC ¶ 61,464 (1991); *D.E. Shaw Plasma Power, L.L.C.*, 102 FERC ¶ 61,265 at 61,822-823 (2003).

**b. Request for Confidentiality**

39. Applicants request confidential treatment of certain documents that they say contain sensitive commercial and financial information.<sup>41</sup> Intervenors ask that the Commission deny the Applicants' request for confidential treatment of the proposed contracts in Confidential Exhibit 1.<sup>42</sup> We will not deny confidential treatment. Local 369 signed a non-disclosure agreement with respect to the confidential documents and has obtained them; other parties seeking this information can do the same.<sup>43</sup>

**c. Purchasers of EBG Units**

40. Applicants state that the reorganization of EBG Holdings provides for two new classes of Unit holders: Class A and Class B. Applicants identify K Road as the purchaser of 10 percent of the Class A Units. The identification of the purchasers of the remaining 90 percent of the EBG Units is unclear. Applicants state that on or before closing, Class A Members must decide to become either Class A or Class B Unit holders, or they may transfer their interests to other entities. Applicants will not provide the final list of the Class A and Class B Unit holders to the Commission until 10 days after closing the transaction.

41. Structuring the transaction in this manner creates uncertainty not only as to who will purchase 90 percent of the EBG Units, but also who will hold the final controlling interest in EBG Holdings. Applicants cannot specify whether any of the current owners (the Class A Members) will sell their interests to other entities, or whether the Class A Members that do not sell their interests will hold voting or non-voting shares by closing. It is possible, therefore, for one owner to end up with a controlling interest in EBG Holdings if enough of the other owners choose the non-voting shares. Because Applicants do not identify the purchasers of 90 percent of the EBG Units or the amounts of each class that they will hold, we will deny approval of the transfer of those 90 percent ownership purchases at this time, and we will only approve the Proposed Transaction as it applies to K Road, the purchaser of 10 percent of the Class A units.

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<sup>41</sup> Transmittal letter at 2 *citing* 18 C.F.R. ¶ 388.112 (2004).

<sup>42</sup> Local 369 Protest at 2, 12-13; Municipals Protest at 8-9.

<sup>43</sup> See *Exelon New England Holdings, LLC*, 107 FERC ¶ 61,148 at P 21 (2004).

**d. Request to Exercise Warrant**

42. The Proposed Transaction provides K Road with a warrant to purchase an additional 10 percent of the EBG Units. K Road requests authorization to exercise the rights granted by the warrant without further order of the Commission. Applicants state that K Road will be managed by WBD, which does not control or operate generating units, transmission assets, fuel transportation assets, or related facilities, thus removing potential market power concerns. Whether K Road owns a 10 or 20 percent ownership interest in EBG Holdings will not affect the conditions of the markets in which the Project Companies operate their generating units. Accordingly, based on the facts in the application, we will grant K Road's request.

**e. Vivendi Connection**

43. Municipals state that financial backing for the Proposed Transaction comes from Vivendi, a French utility holding company, and that Applicants have failed to disclose this. Municipals do not state that Vivendi's involvement in the ownership and management of Boston Generating's assets would interfere with Commission regulation or create any other difficulties with the proposed transaction. Municipals only allege that failure to disclose Vivendi's interest in the proposed transaction makes the Application less than complete.<sup>44</sup>

44. Applicants respond that Vivendi has no interest in the Proposed Transaction.<sup>45</sup> Moreover, there is no reason to believe that the Application is incomplete; Municipals have not even explained the relevance of their argument. Therefore, the Commission finds that this issue has no relevance to whether this transaction is consistent with the public interest.

**C. Future Transactions and Future Subsidiary Transactions**

45. Applicants request blanket authorization under FPA section 203 for Future Transactions and Future Subsidiary Transactions that would involve transfers of equity interests to buyers that Applicants cannot now identify. These requests are opposed by the Intervenors. As requested by Applicants in their September 13 amendment to the filing, we will defer action on the Future Transactions and Future Subsidiary Transactions and will address these transactions in a future order.

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<sup>44</sup> Municipals Protest at 9.

<sup>45</sup> Applicants Answer at 17.

The Commission orders:

(A) Applicants' proposed disposition of jurisdictional facilities with respect to the Proposed Transaction is authorized in part, and denied in part 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 Proposed Transaction;

(F) If the Proposed Transaction results 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; and

(H) Applicants shall notify the Commission within 10 days of the date that the Proposed Transaction has been partly consummated as authorized in this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.