

170 FERC ¶ 61,290  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Richard Glick and Bernard L. McNamee.

Gauley River Power Partners, LLC

Docket No. EC20-12-001

ORDER AUTHORIZING AMENDED TRANSACTION

(Issued March 30, 2020)

1. On October 21, 2019, pursuant to section 203(a)(1) of the Federal Power Act (FPA)<sup>1</sup> and Part 33 of the Commission's regulations,<sup>2</sup> Gauley River Power Partners, LLC (Gauley River) filed an application (Application) requesting authorization for the disposition of its upstream ownership interests to Central Rivers Powers US, LLC (Buyer) (Proposed Transaction).
2. On January 30, 2020, the Commission issued an order authorizing the Proposed Transaction (January Order).<sup>3</sup> On the same date, Gauley River filed an amendment (Amendment) to its Application to reflect an Amended and Restated Purchase and Sale Agreement (Amended PSA) that revises the Proposed Transaction (Amended Transaction).
3. As explained below, we authorize the Amended Transaction under section 203(b) of the FPA<sup>4</sup>.

**I. Background**

**A. January Order**

4. In its Application, Gauley River stated that it is a limited liability company that was formed to finance, construct, operate, and maintain an approximately 80 megawatt (MW) hydroelectric generating facility (Summersville Project) located in the PJM

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<sup>1</sup> 16 U.S.C. § 824b (2018).

<sup>2</sup> 18 C.F.R. pt. 33 (2019).

<sup>3</sup> *Gauley River Power Partners, LLC*, 170 FERC ¶ 61,065 (2020).

<sup>4</sup> 16 U.S.C. § 824b(b).

Interconnection, L.L.C. (PJM) market.<sup>5</sup> Gauley River stated that it is wholly owned by EGPNA REP Hydro Holdings, LLC (EGPNA REP Hydro), which is wholly owned by EGPNA Renewable Energy Partners, LLC (EGPNA Renewable Energy). Gauley River stated that EGPNA REP Holdings, LLC (EGP Seller) and EFS Green Power Holdings, LLC (EFS Seller) (together, Sellers) are the sole members of EGPNA Renewable Energy. Gauley River further stated that EGP Seller is an indirect, wholly owned subsidiary of Enel S.p.A. (Enel), an Italian joint-stock company, and EFS Seller is an indirect, wholly owned subsidiary of General Electric Company.

5. Gauley River explained in its Application that Buyer is a limited liability company that was formed for the purpose of acquiring EGPNA REP Hydro. According to Gauley River, the ultimate upstream controlling entity of Buyer is Hull Street Energy, LLC (Hull Street), which is a private equity firm primarily involved in the development and acquisition of, and investment in, energy infrastructure assets, and related ownership, operation and management of these assets, including electric generation. Following the consummation of the Proposed Transaction, Buyer would be the indirect, upstream owner of 100% of the interests in Gauley River.<sup>6</sup> City of Summersville, West Virginia (Summersville) and Noah Corporation (together, Protesters) protested the initial Application, arguing among other things that Gauley River's owner had violated a Participation Agreement requiring that an offer for the sale of the Summersville Project be made first to Summersville.<sup>7</sup>

6. In the January Order, the Commission approved the Proposed Transaction as consistent with the public interest.<sup>8</sup> The Commission found that the Proposed Transaction would not have an adverse effect on horizontal or vertical competition, rates or regulation, and would not result in the cross-subsidization of a non-utility associate company by a utility company, or in a pledge or encumbrance of utility assets for the benefit of an associate company. The Commission also found that Protesters' arguments regarding the contractual dispute between themselves and Gauley River were outside the scope of the proceeding.<sup>9</sup>

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<sup>5</sup> Application at 2.

<sup>6</sup> *Id.* at 11.

<sup>7</sup> January Order, 170 FERC ¶ 61,065 at PP 27-28.

<sup>8</sup> *Id.* P 2.

<sup>9</sup> *Id.* P 34.

**B. Amendment**

7. In its Amendment, Gauley River states that, subsequent to the filing of the Application, Sellers and Buyer entered into an Amended PSA that revises the Proposed Transaction structure to provide for: (i) a two-step closing, with the first closing involving only the transfer of qualifying facilities that are not subject to or are exempt from the Commission's jurisdiction under FPA section 203; and (ii) an additional pre-closing internal corporate reorganization of Gauley River's upstream ownership to facilitate a possible subsequent closing upon the sale of Gauley River.<sup>10</sup> Gauley River notes that, under the Amended PSA, as with the original PSA, the Proposed Transaction ultimately will result in Buyer owning 100% of the upstream ownership interests in Gauley River.<sup>11</sup>

8. Gauley River states that, pursuant to the Amended PSA and prior to the sale of EGPNA REP Hydro to Buyer, EGPNA REP Hydro conducted an internal corporate reorganization whereby EGPNA REP Hydro: (i) established GRPP Holdings, LLC (GRPP Holdings); (ii) distributed all of the membership interests in Gauley River to GRPP Holdings; and (iii) distributed 100% of the class A membership interests in GRPP Holdings to EGP Seller and 100% of the class B membership interests in GRPP Holdings to the EFS Seller.<sup>12</sup> Gauley River notes that, while it is now a wholly owned subsidiary of GRPP Holdings, its ultimate upstream ownership has not changed.

9. Gauley River states that, upon receipt of Commission approval of the Amended Transaction, Sellers will sell 100% of the membership interests in GRPP Holdings to Buyer, which will be the indirect upstream owner of 100% of both the class A interests and the class B interests in GRPP Holdings.<sup>13</sup>

10. Gauley River states that the Amended Transaction is consistent with the public interest because it will not have an adverse effect on competition, rates, or regulation, and will not result in any cross-subsidization concerns.<sup>14</sup> According to Gauley River, the

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<sup>10</sup> Amendment at 2.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 3.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 4.

competitive analysis will not change as a result of the corporate reorganization described in the Amendment.<sup>15</sup>

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

11. Notice of the Amendment was published in the *Federal Register*, 85 Fed. Reg. 6939 (Feb. 6, 2020), with interventions and protests due on or before February 20, 2020. None was filed.

## **III. Discussion**

12. Under section 203(b) of the FPA, the Commission “may from time to time for good cause shown make such orders supplemental to any order made under this section as it may find necessary or appropriate.”<sup>16</sup> The Commission’s standard for review under section 203(b) is the same as the standard under section 203(a) – the proposed transaction must continue to be “consistent with the public interest.”<sup>17</sup>

13. Based on Gauley River’s representations, we find that the Amended Transaction continues to be consistent with the public interest as described in the January Order. Although the internal corporate reorganization described in the Amendment changes the direct upstream owner of Gauley River, it does not change the Sellers or Buyer involved in the Proposed Transaction, or the ultimate upstream ownership of Sellers or Buyer. Thus, there is no change to the effect of the Proposed Transaction on competition, rates, or regulation, or cross-subsidization. We note that no party argues otherwise. Accordingly, we authorize the Amended Transaction under section 203(b) of the FPA.

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<sup>15</sup> *Id.*

<sup>16</sup> 16 U.S.C. § 824b(b).

<sup>17</sup> See *Westar Energy, Inc.*, 164 FERC ¶ 61,060, at P 15 (2018).

The Commission orders:

The Amended Transaction is hereby authorized, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.