UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Morgan Stanley & Company, Inc. Docket No. EC06-144-000
EBG Holdings, LLC
Boston Generating, LLC
Mystic I, LLC
Mystic Development, LLC
Fore River Development, LLC

ORDER CONDITIONALLY AUTHORIZING DISPOSITION OF JURISDICTIONAL FACILITIES AND ACQUISITION OF SECURITIES

(Issued October 26, 2006)

1. On July 27, 2006, Morgan Stanley & Co. Incorporated (MS&Co), EBG Holdings, LLC (EBG Holdings), EBG Holdings' wholly-owned subsidiary, Boston Generating, LLC (Boston Generating), and Boston Generating's three wholly-owned jurisdictional subsidiaries, Mystic I, LLC, Mystic Development, LLC, and Fore River Development, LLC (collectively, Project Companies) (together, Applicants) filed under section 203 of the Federal Power Act (FPA)[1] for authorization for a blanket authorization for future transfers and acquisitions of voting equity interests in EBG Holdings.[2] The

[1] 16 U.S.C. § 824b (2000), *amended by* Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005) (EPAct 2005).

[2] July 27, 2006 Filing. Additionally, Applicants request that the Commission grant the requested authorizations without ruling on the threshold jurisdictional issue as to whether section 203 authorization is required for such transactions. Thus, jurisdiction over the proposed transactions is assumed, without making any determination of jurisdiction. *See Ocean State Power*, 47 FERC ¶ 61,321 at 62,130 (1989); and *Ocean State Power*, 43 FERC ¶ 62,466 (1988).

jurisdictional facilities consist of interconnection facilities, market-based rate tariffs, wholesale power sales contracts, and related books and records associated with generating facilities owned and operated by the Project Companies.[3]

2. The Commission has reviewed the proposed transactions under its Merger Policy Statement and Order Nos. 669, 669-A and 669-B.[4] We will authorize the transactions, subject to conditions. We find that the proposed transactions will not have an adverse effect on competition, rates or regulation and are thus consistent with the public interest, and that they 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.

I. Background

A. Description of the Parties

1. EBG Holdings, Boston Generating, and the Project Companies

4. Boston Generating is a wholly-owned subsidiary of EBG Holdings with market-based rate authority. It purchases the output of the Project Companies and then resells

[3] A similar application was filed on behalf of Entegra Power Group, LLC, Gila River Power, L.P., Union Power Partners, L.P., Morgan Stanley & Co. Incorporated, and Merrill Lynch, Pierce, Fenner & Smith Incorporated in Docket No. EC06-147-000. The Commission is acting concurrently on that application in a separate order.

[4] *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); *see also Transactions Subject to Federal Power Act Section 203*, Order No. 669, 71 Fed. Reg. 1348 (2006), FERC Stats. & Regs. ¶ 31,200 (2006), *order on reh'g*, Order No. 669-A, 71 Fed. Reg. 28,422 (2006), FERC Stats. & Regs. ¶ 31,214 (2006), *order on reh'g*, Order No. 669-B, 71 Fed. Reg. 42,579 (2006).

that output to Sempra Energy Trading Corporation. Boston Generating also owns two non-jurisdictional companies that provide operational services.

5. The Project Companies 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 (MWs). Mystic Development owns and operates Mystic Units 8 and 9, which are gas-fired generating units with an aggregate installed capacity of 1,744 MWs. Fore River owns and operates the Fore River plant, which is a gas-fired plant with an installed capacity of 872 MWs.

6. EBG Holdings owns the membership interests in Boston Generating. Following the *Reorganization Order*,[5] EBG Holdings made several changes to its management structure, including creation of two new classes of Unit holders to replace the Class A and Class B membership interests: Class A Unit holders, which are active investors with full voting rights, and Class B Unit holders, which are passive investors with limited voting rights. All former Class A membership interests (passive), comprising 90 percent of the Units of EBG Holdings, were recharacterized as Class B Units (passive). EBG Holdings also closed the transaction whereby K Road BG LLC (K Road BG) acquired Class A Units representing a 10 percent equity interest in EBG Holdings.[6] Later, Applicants confirmed that EBG Holding is a passive financial owner with respect to the management and operation of Boston Generating and the Project Companies.[7]

2. MS&Co

7. MS&Co is a wholly-owned subsidiary of Morgan Stanley and currently owns less than five percent of the equity interest in EBG Holdings. In addition, MS&Co owns non-controlling equity interests totaling less than five percent in MACH Gen, LLC, a power producer that owns four generating facilities with a total of 3,702 net MWs of generating capacity located in New York, Michigan, Massachusetts, and Arizona; and in Lake Road

[5] *Boston Generating, LLC*, 113 FERC ¶ 61,016 (2005) (*Reorganization Order)* (authorizing transfer of ownership of Boston Generating to EBG Holdings).

[6] This transaction was consummated on October 11, 2005 and noticed to the Commission in Docket No. EC05-119 by letter dated October 24, 2005.

[7] *Reorganization Order* at P 5 (EBG Holdings' management structure consists of a single member Class B manager and Class A members with rights typically permitted to passive investors).

Holding Company, LLC (Lake Road), which owns a 750 MW generating facility located in Connecticut. MS&Co's affiliate, Morgan Stanley Senior Funding, Inc. (MSSF) also owns non-controlling equity interests of less than five percent in MACH Gen, LLC as well as a portion of MACH Gen, LLC's bank debt. An affiliate of MS&Co, Morgan Stanley Capital Group Inc. (MSCG), has market-based rate authority and has several subsidiaries that are authorized by the Commission to sell power at market-based rates. Applicants state that MSCG and its subsidiaries do not own or control electric generation or transmission facilities.

B. The Proposed Transaction

8. Applicants request two-year blanket authorization for transfers (i) to MS&Co of up to 20 percent Class A voting Units in EBG Holdings, and (ii) by MS&Co to its affiliates of the voting Units acquired by MS&Co in EBG Holdings. In *Boston Generating, LLC* (*Boston Generating*),[8] the Commission granted blanket authorizations for certain future acquisitions and transfers of EBG Holdings Class A Units similar in many respects to those requested in this Application.[9] However, the authorizations in *Boston Generating* were conditioned upon none of the acquiring entities or their affiliates owning or controlling five percent or more voting interests in any public utility that has interests in any generation facilities or engages in jurisdictional activities within the Independent System Operator, Inc. New England (ISO-NE).[10] One of MS&Co's affiliates, Morgan Stanley Capital Group Inc., is a Commission-approved power marketer that operates in the ISO-NE market. Therefore, MS&Co seeks additional Commission authorization for the future acquisitions and future transfers.

9. Applicants argue that the requested blanket authorizations are consistent with the Commission's precedent.[11] Applicants further state that they will comply with additional notification conditions and filing requirements that are consistent with the conditions that

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[8] 113 FERC ¶ 61,109 (2005).

[9] *See* P 39, *infra*, for a more complete discussion.

[10] *Id.* at P 7.

[11] *See, e.g., Entegra Blanket Authorization Order*; *MACH Gen, LLC*, 113 FERC ¶ 61,138 (2005) (*MACH Gen*); *La Paloma Holding Co., LLC and La Paloma Generating Co., LLC*, 112 FERC ¶ 61,052(2005) (*La Paloma*); *Lake Road Holding Co., LLC and Lake Road Generating Co., L.P.*, 112 FERC ¶ 61,051 (2005) (*Lake Road*); and *Boston Generating, LLC*, 113 FERC ¶ 61,109 (2005) (*Boston Generating*).

the Commission has established when granting blanket authorization for transactions under section 203, including the conditions and requirements established in *Boston Generating*.[12]

10. Applicants request that the Commission grant blanket authorization for the following categories of transfers without additional filings under sections 203(a)(1) and 203(a)(2)[13] of the FPA:

(i) for a two-year period beginning on the date of a Commission order in this proceeding, transfers by any party to MS&Co of EBG Holdings Class A Units, subject to MS&Co and its affiliates owning no more than 20 percent of such Units at any one time (Future Acquisitions); and

(ii) for a two-year period beginning on the date of a Commission order in this proceeding, transfers of EBG Holdings Class A Units from MS&Co to direct or indirect wholly-owned subsidiaries of Morgan Stanley, the ultimate corporate parent of MS&Co (Future Transfers).

11. Applicants commit to complying with the following requirements for such Future Transfers and/or Future Acquisitions;

(i) Transferor of interests will report any transfer within 10 days and include a statement of other generating or power marketing interests directly or indirectly owned by the buyer or its affiliates, irrespective of the market or region of the country in which such interests are operated;

(ii) Applicants will submit, both in a compliance filing within 30 days of the closing of the individual sale transaction, and in any subsequent notification of any holding company equity sales transaction, the following information:

- The identity of both pre- and post-transaction equity holders (and percentage ownership) of the holding company;

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[12] *See, e.g.*, *MACH Gen* at P 40, *La Paloma* at P 18, *Lake Road* at P 17, and *Boston Generating* at P 8.

[13] Applicants state they are filing under section 203(a)(2) out of an abundance of caution. *See* July 27, 2006 Filing at 2.

- Any contracts (or summary) of power purchase agreements, energy management services, asset management services, and any fuel supply services provided to the Project Companies' facilities, including contract counterparty, and any affiliation between counterparty and post-transaction equity holders; and

- The identity of any parties acquiring equity interests that are subject to the Commission's Code of Conduct rules as a result of acquiring these interests.

12. In addition, Applicants state that Future Transfers would be subject to the reporting requirements established by the Commission in similar grants of blanket authorization under pre-EPAct 2005 section 203.[14] In particular, Applicants pledge to identify the affiliate that directly owns such EBG Holdings Class A Units within 10 days of any Future Transfer. Finally, to provide an extra measure of regulatory protection, and consistent with section 33.1(c)(4) of the Commission's regulations, 18 C.F.R. § 33.1(c)(4) (2006), any holding company that is required to file schedules 13D, 13G and form 13F of the Securities and Exchange Commission will file such document at the same time and on the same basis with the Commission.

II. Notice and Responsive Pleadings

13. Notice of the filing was published in the *Federal Register*, 71 Fed. Reg. 45,813 (2006), with comments, protests or interventions due on or before August 17, 2006. On August 16, 2006, Distrigas of Massachusetts LLC filed a motion to intervene. On August 17, 2006, NSTAR Electric & Gas Corporation filed a Motion to Intervene, Protest and Request for Rejection of the filing. On September 1, 2006, EBG Holdings filed an Answer to NSTAR's protest.

A. NSTAR's Protest

14. NSTAR argues that Applicants have not made the required cross-subsidization showing; therefore, the Commission should reject the application.[15] NSTAR contends that Applicants' statement that none of the Applicants are traditional utilities with captive customers ignores EBG Holdings and its affiliates, which are also parties to the application.[16] NSTAR asserts that because customers in the Northeastern

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[14] *See MACH Gen; La Paloma; Lake Road;* and *Boston Generating*.

[15] NSTAR Protest at 2.

[16] *Id.* at 4.

Massachusetts/Boston area must pay a share of the reliability-must-run (RMR) rates charged by Mystic Development for generation services, EBG Holdings and its affiliates do in fact have captive customers. It argues that the proposed transactions could affect the costs of the generating facilities and consequently affect the rates charged to the captive customers as well as the financial eligibility of Mystic Development to receive these rates.[17]

15. NSTAR also argues that this case is not similar to *Boston Generating*, in which the Commission rejected NSTAR's concerns over rate effects, because *Boston Generating* was decided before EPAct 2005 and before section 203(a)(4)'s cross-subsidization provision became effective. NSTAR states that the new section 203(a)(4) obligates the Commission to take a closer look at cross-subsidization.[18]

16. In addition, NSTAR contends that Applicants have not engaged in ratepayer protection discussions with Mystic Development's customers, as required by Order No. 669. NSTAR states that Applicants should be required to refile the Application after fulfilling this obligation and correcting the cross-subsidization deficiencies.[19]

17. If the Commission does authorize the proposed transactions, NSTAR argues that the Commission should treat Mystic Development as a cost-based utility subject to the reporting requirements of Parts 41, 101, and 141 of the Commission's regulations to protect NSTAR and its customers against affiliate abuse. NSTAR also suggests that the Commission impose strict Code of Conduct requirements to protect against abusive transactions, as well as requiring full disclosure of the details and costs associated with the proposed transactions.[20]

B. Applicants' Answer

18. Applicants assert that NSTAR's protest is a collateral attack on prior Commission orders.[21] Applicants argue that the Commission's reasoning in *Boston Generating* applies with equal if not greater force to NSTAR's concerns in this case. They note that NSTAR raised similar objections to Mystic Development's RMR contract, but the

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[17] *Id.* at 5.

[18] *Id.* at 6.

[19] *Id.* at 6, 7.

[20] *Id.* at 7.

[21] Applicants' Answer at 3.

Commission found that those arguments should be addressed in separate RMR proceedings. Applicants further state that even if the RMR Agreements become effective, the Commission found that the Project Companies will continue to sell under market-based rates, and will offset the revenues from those sales against the units' RMR cost-of-service.[22]

19. Applicants maintain that the proposed transactions will have no effect on the RMR agreements or any costs that may be passed on to NSTAR and its customers. In addition, Applicants note that the RMR agreements have been accepted for filing subject to refund and set for hearing in Docket Nos. ER06-427-001 and EL06-427-002,[23] so NSTAR can raise its concerns in that proceeding. Applicants note that NSTAR's request to subject Mystic Development to the reporting requirements of Parts 41, 101, and 141 has already been denied in that proceeding.[24]

20. Regarding NSTAR's assertion that the new provisions of EPAct 2005 render the *Boston Generation* rulings inapplicable, Applicants remark that the Commission relied on section 203(a)(4) in its decision, although the statute was not then effective. Thus, Applicants argue that NSTAR's reasoning that the Commission must review the proposed transactions under the new provision, separately from the *Boston Generating* decision, is not valid.[25]

III. Discussion

A. Procedural Matters

21. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the timely, unopposed motions to intervene serve to make those who filed them parties to this proceeding.

22. Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept EBG Holdings' Answer because it has provided information that assisted us in our decision-making process.

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[22] *Id.* at 3, 4.

[23] *Mystic Development, LLC*, 116 FERC ¶ 61,168 (2006).

[24] Applicants' Answer at 4, 5.

[25] *Id.* at 5.

B. Standard of Review

23. Section 203(a) of the FPA provides that the Commission must approve a transaction if it finds that the transaction "will be consistent with the public interest."[26] The Commission's analysis of whether a disposition is 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.[27] In addition, EPAct 2005 amended section 203 to specifically require that the Commission also determine that the disposition 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.[28] As discussed below, we will approve the proposed transaction because it meets these statutory standards.

1. Effect on Competition

24. Applicants argue that the proposed transactions will not have an adverse effect on competition because the transactions will not allow MS&Co and its affiliates to exercise market power in the relevant ISO-NE geographic market. Applicants state that the Commission previously granted blanket authorizations for similar cases[29] and required that unidentified acquirers and their affiliates must not own or control more than five percent of the voting interest in generation facilities or entities engaged in jurisdictional activities in the same geographic market.[30] Applicants argue that this condition was applied as a precaution in response to transactions that could consolidate unknown amounts of generating and transmission assets owned by unknown acquirers in future transactions, which could have adverse effects on competition. They state that in this case, the acquirer is known; therefore, the competitive effect of MS&Co's acquisition of indirect interests in the Boston Generating units should be considered on its own merits.[31]

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[26] 16 U.S.C. § 824b (2000).

[27] *See supra* note 3.

[28] EPAct 2005 § 1289, 119 Stat. 982-83, to be codified at 16 U.S.C. § 824b(a)(4).

[29] *See MACH Gen; La Paloma; Lake Road;* and *Boston Generating*.

[30] Application at 9.

[31] Application at 9.

25. Applicants argue that although MSCG operates in the ISO-NE region, there will be no competitive harm because market power concerns arise from transfers of control of public utilities, as opposed to every transfer of stock made by public utilities. Applicants state that MSCG sells power under market-based rates in the ISO-NE market, but it does not own or control any generation or transmission facilities within the region. Thus, Applicants assert that the proposed transactions will not harm competition.[32]

26. Applicants state that the proposed ownership of 20 percent of the Class A Units of EBG Holdings will not allow MS&Co to control the generating assets of the Project Companies. They state that under EBG Holdings' operating agreement, 20 percent ownership of Class A Units would not enable MS&Co to determine the conduct or management of the Project Companies. A majority vote of Class A Unit holders is needed to change active management, while certain actions require the majority vote of Class A and Class B Unit owners.[33] Thus, even if MS&Co and its affiliates gained 20 percent of the Class A Units, they would not be able to control the Project Companies in any way. Moreover, Applicants argue that Class A Units are not publicly traded and are held by a relatively small number of parties, so this situation is unlike situations where the ownership of shares in publicly-traded utilities is widely dispersed and the ownership of 20 percent of outstanding shares could convey control over the company. Thus, Applicants state that a 20 percent owner of Class A Units is unable to exercise control over EBG Holdings or the Project Companies.

27. Based on facts and safeguards as presented in this application, the Commission is satisfied that the consolidation of the additional ownership interests proposed here with MS&Co's existing ownership of generation do not raise competitive issues.[34] MS&Co's affiliated power marketers will not control generation in relevant control areas or markets. The Commission noted in *Duke Energy Corp.*[35] that without control of capacity, competition in wholesale energy markets cannot be harmed. Accordingly, we

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[32] *Id.* at 10.

[33] *Id.* at 11.

[34] As noted *supra*, P.7, MS&Co presently owns interests totaling less than five percent in EBG Holdings, and directly and indirectly owns interests in MACH Gen. To the extent that ownership would give control, the increase in concentration brought about by consolidation of these ownership interests with the additional ownership interests proposed here would not be enough to raise concern about market power in the generation market (if ISO-NE is defined as a market).

[35] 113 FERC ¶ 61,297 at P 15 (2005).

find that the affiliation of MS&Co with such power marketers, as identified in the application, does not pose competitive concerns and we will not interpret the restriction of less than five percent of a public utility that engages in jurisdictional activities, as stated in the *Entegra Blanket Authorization Order*, to apply to its affiliation with such power marketers. We note, however, that the *Entegra Blanket Authorization Order*'s restriction of less than five percent of the voting interests in other generation in the relevant control areas or markets continues in force. Therefore, subject to conditions as proposed in the application, we find that the proposed transactions will not adversely affect competition.

2. Effect on Rates

28. Applicants state that the proposed transactions will not have an adverse effect on rates. All sales of electric energy from the Project Companies will continue to be made at previously authorized market-based rates, and the proposed transactions will not have any effect on the rates, terms or conditions of wholesale power sales agreements. Applicants state that the Project Companies do not provide any unbundled transmission services.[36]

29. Based upon these representations, we find that the proposed transactions will have no adverse effect on rates.

3. Effect on Regulation

30. Applicants state that the proposed transactions will have no adverse effect on regulation. Applicants state that the Commission's regulatory authority will not be diminished by the proposed transactions, nor will the transactions result in the merger of public utilities. In addition, all sales from the Project Companies will continue to be made at wholesale rates and are not subject to state regulation.[37]

31. We find that the proposed transactions will have no adverse effect on regulation.

[36] *Id.* at 12.

[37] *Id.* at 12

4. Cross-Subsidization

32. FPA section 203(a)(4)[38] adds the requirement that the Commission must find that a proposed transaction under section 203 will not result in cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company, unless that cross-subsidization, pledge or encumbrance will be consistent with the public interest. Applicants say this concern is not applicable here, as one of the criteria for Future section 203(a)(1) Transfers and Future section 203(a)(2) Acquisitions is that the acquiring party not be affiliated with a traditional utility with captive customers.

33. Applicants verify that the proposed transactions 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. Applicants argue that because none of the Applicants has captive customers, there are no concerns regarding cross-subsidization. Applicants assert that as they are not traditional public utilities and do not have captive ratepayers, the disclosure of existing pledges and/or encumbrances of utility assets is not relevant to the Application.[39]

34. Applicants state that the proposed transactions will not result in the transfers of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional facilities, and an associate company. Applicants note that the only jurisdictional transmission facilities owned directly or indirectly by the Applicants are interconnection facilities of generation facilities that are used to sell wholesale power.[40]

35. Applicants state that the proposed transactions will not involve the new issuance of securities. Thus, there will be no 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.[41]

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[38] *See* 16 U.S.C. § 824b(a)(4).

[39] *Id.* at Exhibit M.

[40] *Id.* at Exhibit M.

[41] *Id.* at Exhibit M.

36. Applicants state that there will be no new pledges or encumbrances of assets of a traditional public utility associate company that has captive customers or that owns or provides transmission services over jurisdictional transmission facilities for the benefit of an associate company due to the proposed transactions.[42]

37. Applicants maintain that there will be no new affiliate contracts 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 as a result of the proposed transactions.[43]

38. Additionally, Applicants promise that any future transfer of EBG Holdings Class A Units that does not meet the criteria for proposed transactions described in their filing will be the subject of a separate application seeking Commission authorization under section 203.

39. We reject NSTAR's argument that Applicants have not complied with the section 203(a)(4) requirements relating to cross-subsidization and agree with Applicants that the issues raised by NSTAR are more appropriately addressed in the RMR proceedings. As discussed in *Boston Generating*:

> ….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] 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 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.

[42] *Id.* at Exhibit M.

[43] *Id.* at Exhibit M.

40. The facts in the present case are similar to those in *Boston Generating*, and the issues raised by NSTAR are subject to hearing in Docket Nos. EL06-427-001 and EL06-427-002.[44] As was the case with *Boston Generating*, NSTAR relied on cross-subsidization concerns under the new FPA section 203(a)(4)[45] to raise objections to Mystic Development's RMR contract with ISO-NE as in the instant proceeding. As was the case with *Boston Generating*, the transfers of Class A Units of EBG Holdings proposed in this proceeding have nothing to do with, and no effect upon, Mystic Development's RMR agreement with ISO-NE or any costs that may be passed through to NSTAR. Finally, as was the case with *Boston Generating*, we will consider affiliate abuse in the RMR proceedings.[46]

41. We find that Applicants have provided adequate assurance that the transaction will not result in cross-subsidization.

The Commission orders:

(A) Applicants' proposed disposition of jurisdictional facilities with respect to future acquisitions, and future transfers is authorized, 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.

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[44] In *Boston Generating*, we stated, "With respect to NSTAR's arguments regarding potential cross-subsidization and the requirements in the EPAct 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 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."

[45] *See* 16 U.S.C. § 824b(a)(4).

[46] We also note, however, that this case differs from *Boston Generating*, in that under the present facts, we know the identity of the buyers, specifically, MS&Co and its affiliates, in both the proposed transactions. We did not know who the buyers would be in the transfers authorized in *Boston Generating*.

(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 appropriate filings under section 205 of the FPA, as necessary, to implement the transactions.

(F) Applicants shall notify the Commission that future acquisitions and future transfers have been consummated in accordance with the discussion in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.