

180 FERC ¶ 62,085
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Berkshire Hathaway Inc.

Docket No. EC22-87-000

ORDER AUTHORIZING ACQUISITION OF SECURITIES

(Issued August 19, 2022)

On July 11, 2022, Berkshire Hathaway Inc. (Applicant) filed an application pursuant to section 203(a)(2) of the Federal Power Act (FPA)¹ requesting authorization for Applicant to acquire in secondary market transactions up to 50% of the common stock of Occidental Petroleum Corporation (Occidental) (Proposed Transaction).

Applicant states that it is a holding company whose subsidiaries are engaged in a number of diverse business activities. Berkshire Hathaway Energy Company (BHE), a consolidated subsidiary of Applicant, is the holding company for Applicant's energy subsidiaries and affiliates.

Applicant states that Occidental is a publicly traded international oil and gas exploration and production company, and a manufacturer and marketer of chemicals. Occidental is the upstream owner of certain qualifying facilities (QF). Occidental Chemical Corporation (OxyChem), an indirect, wholly owned subsidiary of Occidental, owns and operates the 894 megawatt (MW) Taft cogeneration QF (Taft Facility) located in the Midcontinent Independent System Operator, Inc. (MISO) market. OxyChem has executed a power purchase agreement (PPA) with Entergy Louisiana, LLC (Entergy Louisiana) for the sale of capacity and associated energy from the Taft Facility for a term expiring May 31, 2028, and the remaining capacity of the Taft Facility serves host load at the company's adjacent chemical complex with any excess available for sale at wholesale. OxyChem has been granted market-based rate authorization. Oxy Salt Creek Pipeline LLC, an affiliate of Occidental, owns approximately 38.6 miles of intrastate natural gas transportation pipeline located in Kent and Scurry counties, Texas.

Applicant explains that it currently holds approximately 18.72% of the outstanding common shares of Occidental. Applicant seeks authorization to acquire up to 50% of Occidental common stock in secondary market transactions under the Proposed Transaction.

Applicant represents that the Proposed Transaction will not have an adverse effect on competition. With respect to horizontal competition, Applicant has demonstrated that

¹ 16 U.S.C. § 824b (2012).

the Proposed Transaction does not materially increase concentration in the MISO market and that the Taft Facility comprises 0.48% of the approximately 187,000 MW of installed capacity in the unconcentrated MISO market. With respect to vertical competition, Applicant states that Occidental's affiliates do not own or control any transmission facilities, and while affiliates of BHE own transmission facilities in MISO, service on their transmission systems is provided under the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff. In addition, the Proposed Transaction does not involve any inputs to electricity production. Applicant explains that, although an interstate pipeline owned by affiliates of BHE reaches the MISO market, it is located hundreds of miles away from the Taft Facility and does not present vertical market power concerns.

Applicant represents that the Proposed Transaction will not have an adverse effect on rates because wholesale sales of electric energy, capacity, and ancillary services by OxyChem from the Taft Facility will continue to be made at market-based rates or pursuant to the terms of the PPA with Entergy Louisiana. Furthermore, there are no jurisdictional transmission or other rates at issue in the Proposed Transaction.

Applicant represents that the Proposed Transaction will not have an adverse effect on regulation because it will not diminish the regulatory authority of the Commission or any state commission, create a regulatory gap, or shift regulatory authority between the Commission and any state commission.

Applicant verifies that, based on facts and circumstances known to it or that are reasonably foreseeable, the Proposed Transaction will not result in, at the time of the Proposed Transaction or in the future, any cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company, including: (1) any transfer of facilities between a traditional public 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 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; (3) any new pledge or encumbrance of assets of 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; or (4) any new affiliate contract 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 service agreements subject to review under sections 205 and 206 of the FPA.

The filing was noticed on July 12, 2022, with comments, protests, or interventions due on or before August 1, 2022. None were filed.

Information and/or systems connected to the bulk system involved in these transactions may be subject to reliability and cybersecurity standards approved by the Commission pursuant to FPA section 215. Compliance with these standards is mandatory and enforceable regardless of the physical location of the affiliates or investors, information database, 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 cybersecurity standards. The Commission, North American Electric Reliability Corporation or the relevant regional entity may audit compliance with reliability and cybersecurity standards.

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 the Proposed Transaction is based on such examination ability.

Section 35.42 of the Commission's regulations 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.² To the extent that a transaction authorized under FPA section 203 results in a change in status, sellers that have market-based rates are advised that they must comply with the requirements of section 35.42.

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) Applicant must inform the Commission of any material change in circumstances that departs from the facts or representations that the Commission relied upon in authorizing the Proposed Transaction within 30 days from the date of the material change in circumstances;

² 18 C.F.R. § 35.42 (2021).

- (3) 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;
- (4) 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;
- (5) If the Proposed Transaction results in changes in the status or upstream ownership of Applicant's affiliated qualifying facilities, an appropriate filing for recertification pursuant to 18 C.F.R. § 292.207 (2021) shall be made;
- (6) The Commission retains authority under sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate;
- (7) Applicant shall make any appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transaction; and
- (8) Applicant shall notify the Commission within 10 days of the date that the acquisition of securities 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 (2021). 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 (2021).

Carlos D. Clay, Acting Director
Division of Electric Power
Regulation - West