

PUBLIC SERVICE COMMISSION OF WISCONSIN

Application of Consolidated Water Power Company for Approvals
Associated with the Acquisition of its Corporate Parent, NewPage
Corporation by Verso Paper Corporation

1330-EI-100

FINAL DECISION

This is the Final Decision regarding the application for approvals associated with the proposed acquisition of NewPage Holdings Inc. by Verso Paper Corporation under the Wisconsin holding company statute, Wis. Stat. § 196.795.

Introduction

On January 24, 2014, NewPage Holdings Inc. (NewPage Holdings), NewPage Investment Company, LLC, NewPage Corporation (NewPage Corp.), NewPage Consolidated Papers Inc., NewPage Wisconsin System Inc. (NewPage Wisconsin) and Consolidated Water Power Company (CWP) (together, NewPage) and Verso Paper Corporation (Verso Paper) and Verso Merger Sub Inc. (together, Verso) submitted an application for various approvals under the provisions of the Wisconsin holding company statute, Wis. Stat. § 196.795.

NewPage and Verso (together, Applicants) have entered into a transaction (Transaction) by which Verso will acquire NewPage Holdings, which is CWP's ultimate corporate parent.

The Applicants request that the Commission approve the Transaction under Wis. Stat. § 196.795(3) with the same conditions relating to application of the holding company statute which the Commission applied to the approval of NewPage Corp.'s acquisition of Stora Enso

North America Inc., a Delaware corporation¹ (SENA Delaware) in 2007 (Newpage–SENA Wisconsin Final Decision²). The Applicants also request the Commission’s confirmation that, but for those specific subsections of Wis. Stat. § 196.795(5) imposed in accordance with the Newpage–SENA Wisconsin Final Decision, the holding company system resulting from the Transaction will remain exempt from the holding company statute under the provisions of Wis. Stat. § 196.795(8)(a).

The Applicants state that the Transaction will not affect the direct ownership of CWP or the Commission’s ongoing regulation of CWP and the holding company system of which CWP is part. The Applicants further state that the combination of NewPage and Verso will result in a larger, more efficient, and financially stronger North American printing and specialty paper manufacturing business which will continue to have sizable operations and a substantial number of employees in Wisconsin.

The Commission issued a Notice of Investigation on February 21, 2014. No person requested party status or asked for a hearing. A Memorandum prepared for the Commission was sent out for comments on March 7, 2014. Comments were filed by the Applicants and the Wisconsin Paper Council. The Commission considered this matter at its open meeting on March 21, 2014.

Background

CWP is an electric public utility as defined by Wis. Stat. § 196.01(5). CWP provides retail electric service in the village of Biron to approximately 110 residential and small

¹ It is important to distinguish the difference between Stora Enso North America Inc., a Delaware corporation, and Stora Enso North America Corporation, a Wisconsin corporation.

² Final Decision, docket 1330-DR-101, issued December 11, 2007, [PSC REF#: 86937](#).

commercial customers and to paper mills owned by NewPage in Stevens Point, Biron and Wisconsin Rapids and to a water treatment facility associated with the Wisconsin Rapids paper mill. CWP also owns and operates five hydroelectric generating facilities on the Wisconsin River which have a total generating capacity of about 33 megawatts (MW). Over 99.9 percent of CWP's revenue comes from sales to NewPage.

In 2000, CWP's then corporate parent, Consolidated Papers, Inc. (CPI), was merged into SENA Wisconsin. The Commission made a determination that the 2000 transaction did not require any prior or subsequent Commission approval, that SENA Wisconsin succeeded CPI's exemption under the holding company statute pursuant to Wis. Stat. § 196.795(8), and that SENA Wisconsin would be exempt from the provisions of the asset cap restrictions in Wis. Stat. § 196.795(5)(p).^{3, 4}

The acquisition of SENA Wisconsin by NewPage Holdings was addressed by the Commission in the Newpage–SENA Wisconsin Final Decision. The Commission determined that the acquisition of SENA Wisconsin was governed by Wis. Stat. § 196.795(3), the takeover provision of the holding company statute. The Commission did not address the exemption of the upstream holding companies under Wis. Stat. § 196.795(8)(a). The Commission conditioned its approval on a requirement that CWP prepare a reliability study, that CWP establish a dividend policy based upon the financial health of the utility and that CWP submit a ten-year financial forecast in its next rate proceeding. The Commission also imposed the requirements of Wis. Stat. §§ 196.795(5)(b), (c), (d), (f), (g), (m), (r), and (s) to the applicable entities involved in that transaction.

³ This statute has been re-designated as Wis. Stat. § 196.795(6m)(b).

⁴ Order, docket 1330-DR-100, issued August 2, 2000, [PSC REF#: 2369](#).

After the merger of SENA Delaware and NewPage Holdings, SENA Wisconsin became known as NewPage Wisconsin System Inc. (NewPage Wisconsin). NewPage Wisconsin is the immediate parent of CWP. Therefore NewPage Wisconsin is the entity that holds the exemption granted by the Commission in the NewPage–SENA Wisconsin Final Decision.

On September 7, 2013, NewPage and 13 of its subsidiaries (not including CWP) filed for relief under Chapter 11 of the Federal Bankruptcy Code. Under the restructuring plan approved by the United States Bankruptcy Court at the end of 2012, all of NewPage Corp.’s stock is now owned by NewPage Investment Company LLC, a direct, wholly-owned subsidiary of NewPage Holdings. Most of the stock of NewPage Holdings is owned by financial institutions and investment funds that were first lien creditors of NewPage Corp. prior to the bankruptcy.

Proposed Transaction

Verso Paper is headquartered in Memphis, Tennessee. Verso Paper has approximately 2,100 employees and owns three paper mills in Maine and Michigan with the total annual production capacity of 1.5 million tons of paper and 930,000 tons of pulp. Verso Paper owns a substantial amount of generating capacity including 450 MW of gas-fired generation, 130 MW of biomass-fueled generation and 30 MW of hydroelectric generation. Verso Paper participates in the New England Power Pool and Midcontinent Independent System Operator, Inc., regional power markets. Apollo Global Management, LLC, beneficially owns 68 percent of the outstanding shares of Verso Paper’s common stock.

Under the terms of the Transaction, Verso will acquire NewPage Holdings by means of a merger of Verso Merger Sub Inc. with Newpage Holdings. NewPage Holdings will survive the merger as an indirect wholly-owned subsidiary of Verso Paper. Verso Paper will provide to

NewPage Holdings' equity holders cash and debt consideration of \$900 million and shares of Verso Paper common stock representing about 20 percent of the outstanding shares. The total value of the Transaction, including the refinancing of about \$500 million of NewPage Holdings' debt, is approximately \$1.4 billion.

Findings of Fact

1. CWP is an electric public utility, as defined in Wis. Stat. § 196.01(5), and a public utility affiliate, as defined in Wis. Stat. § 196.795(1)(L).
2. Verso Paper, as the owner of all of the voting securities of CWP, will be a holding company as defined in Wis. Stat. § 196.795(1)(h)1.a.
3. The proposed Transaction, as conditioned by this Final Decision, is in the best interests of utility consumers, investors, and the public.

Conclusions of Law

1. The Commission has authority under Wis. Stat. §§ 196.02(1) and 196.795 to consider the Applicants' request for approval of the Transaction under Wis. Stat. § 196.795(3) and for a determination as to whether the exemption provided for in Wis. Stat. § 196.795(8)(a) will carry forward.
2. The Commission concludes that following the Transaction, NewPage Wisconsin will maintain its exemption under Wis. Stat. § 196.795(8)(a).
3. The Commission has authority under Wis. Stat. §§ 196.395 and 196.795 to apply conditions to its approval.

Opinion

The Applicants have requested two specific approvals from the Commission regarding the Transaction.

Wis. Stat. § 196.795(3)–Takeover of a Holding Company

The Applicants request approval of the Transaction under Wis. Stat. § 196.795(3), which provides that no person may acquire more than 10 percent of the outstanding securities of a holding company, with the unconditional power to vote those securities, unless the Commission has determined that the acquisition is in the best interest of utility consumers, investors, and the public. The Commission finds that Verso’s acquisition of NewPage Holdings is in the public interest. The acquisition should result in a stronger, more competitive paper company with a stronger capital structure.

The Transaction is similar in nature to the 2007 acquisition of SENA Delaware by NewPage, in that the acquisition occurs upstream of the public utility and its immediate parent and the merger partner. The merger partner, Verso, is a participant in the electric markets and is ultimately held by an investment fund. In order to protect CWP’s financial integrity, the Commission finds it necessary to impose the same conditions imposed in the NewPage–SENA Final Decision. The Applicants have agreed to these conditions in the application. Specifically, the Commission will require CWP continue to set its dividend policy based on the financial health of the utility and in compliance with dividend restrictions established by the Commission in appropriate proceedings. The Commission will also require CWP to continue to submit a ten-year financial forecast in future rate proceedings. The Commission will also continue to impose

the provisions of Wis. Stat. § 196.795(5)(b), (c), (d), (f), (g), (m), (r) and (s) to the applicable entities involved in the Transaction.

Wis. Stat. § 196.795(8)(a) Exemption

The Applicants have requested confirmation that the holding company system resulting from the Transaction will retain the existing exemption under the holding company statute. Wisconsin Stat. § 196.795 (8)(a), provides that the holding company statute does not apply to any holding company that was organized or created before November 28, 1985, and which was not organized or created by or at the direction of a public utility. The facts of this acquisition are similar to the 2007 acquisition of Stora Enso by NewPage. The Commission finds that it is reasonable to maintain the exemption of NewPage Wisconsin, which is the successor corporation to SENA Wisconsin. The Commission again declines to rule on whether and to what extent the exemption extends to any other entity in the resulting holding company system.

Order

1. The application is approved, subject to the conditions in this Final Decision.
2. CWP shall set a dividend policy based on the financial health of the utility and in compliance with any dividend restrictions established by the Commission in CWP rate proceedings.
3. CWP shall submit a ten-year financial forecast in its rate proceedings.
4. The Commission imposes the requirements of Wis. Stat. § 196.795(5)(b), (c), (d), (f), (g), (m), (r), and (s) to the applicable entities involved in this Transaction.

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5. The Applicants shall inform the Commission periodically of the status of the Transaction.

6. Jurisdiction is retained.

Dated at Madison, Wisconsin, this 3rd day of April, 2014.

By the Commission:

A handwritten signature in cursive script, appearing to read "Sandra J. Paske".

Sandra J. Paske
Secretary to the Commission

SJP:JEF:jlt:DL: 00909887

See attached Notice of Rights

PUBLIC SERVICE COMMISSION OF WISCONSIN
610 North Whitney Way
P.O. Box 7854
Madison, Wisconsin 53707-7854

**NOTICE OF RIGHTS FOR REHEARING OR JUDICIAL REVIEW, THE
TIMES ALLOWED FOR EACH, AND THE IDENTIFICATION OF THE
PARTY TO BE NAMED AS RESPONDENT**

The following notice is served on you as part of the Commission's written decision. This general notice is for the purpose of ensuring compliance with Wis. Stat. § 227.48(2), and does not constitute a conclusion or admission that any particular party or person is necessarily aggrieved or that any particular decision or order is final or judicially reviewable.

PETITION FOR REHEARING

If this decision is an order following a contested case proceeding as defined in Wis. Stat. § 227.01(3), a person aggrieved by the decision has a right to petition the Commission for rehearing within 20 days of the date of service of this decision, as provided in Wis. Stat. § 227.49. The date of service is shown on the first page. If there is no date on the first page, the date of service is shown immediately above the signature line. The petition for rehearing must be filed with the Public Service Commission of Wisconsin and served on the parties. An appeal of this decision may also be taken directly to circuit court through the filing of a petition for judicial review. It is not necessary to first petition for rehearing.

PETITION FOR JUDICIAL REVIEW

A person aggrieved by this decision has a right to petition for judicial review as provided in Wis. Stat. § 227.53. In a contested case, the petition must be filed in circuit court and served upon the Public Service Commission of Wisconsin within 30 days of the date of service of this decision if there has been no petition for rehearing. If a timely petition for rehearing has been filed, the petition for judicial review must be filed within 30 days of the date of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition of the petition for rehearing by operation of law pursuant to Wis. Stat. § 227.49(5), whichever is sooner. If an *untimely* petition for rehearing is filed, the 30-day period to petition for judicial review commences the date the Commission serves its original decision.⁵ The Public Service Commission of Wisconsin must be named as respondent in the petition for judicial review.

If this decision is an order denying rehearing, a person aggrieved who wishes to appeal must seek judicial review rather than rehearing. A second petition for rehearing is not permitted.

Revised: March 27, 2013

⁵ See *State v. Currier*, 2006 WI App 12, 288 Wis. 2d 693, 709 N.W.2d 520.