

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

CCI Roseton LLC

)

Docket No. ER13-__-000

**APPLICATION FOR MARKET-BASED RATE AUTHORITY
UNDER SECTION 205 OF THE FEDERAL POWER ACT AND
REQUEST FOR WAIVERS AND BLANKET AUTHORIZATIONS**

Pursuant to Section 205 of the Federal Power Act (“FPA”),¹ and Part 35 of the regulations of the Federal Energy Regulatory Commission (the “Commission”),² CCI Roseton LLC (“CCI Roseton” or “Applicant”) hereby requests that the Commission: (i) authorize Applicant to sell energy, capacity, and certain ancillary services at market-based rates; (ii) accept for filing the proposed market-based rate tariff contained in Attachment A hereto (the “Tariff”) with an effective date of January 18, 2013 (*i.e.*, one day after filing); and (iii) grant such waivers and blanket authorizations as the Commission has granted to other entities with market-based rate authorization, as described further herein. Applicant respectfully requests that the Commission issue an order granting it market-based rate authority, accepting the proposed Tariff, and granting the requested waivers and blanket authorizations. In support of this application, Applicant states as follows:

¹ 16 U.S.C. § 824d (2006).

² 18 C.F.R. Pt. 35 (2012).

I. NOTICES AND COMMUNICATIONS

All correspondence and communications concerning the above-captioned proceeding should be addressed to the following persons:³

Duane Duclaux
Senior Counsel
Castleton Commodities International
LLC
2200 Atlantic Street, Suite 800
Stamford, CT 06902
(203) 564-8107
(203) 564-8217 (facsimile)
duane.duclaux@cci.com

William R. Hollaway, Ph.D.
Brandon C. Johnson
GIBSON, DUNN & CRUTCHER, LLP
1050 Connecticut Ave., NW
Washington, DC 20036
(202) 955-8592
whollaway@gibsondunn.com
bcjohnson@gibsondunn.com

II. DESCRIPTION OF APPLICANT AND OTHER RELEVANT ENTITIES

A. Applicant

CCI Roseton, a Delaware limited liability company, is a direct, wholly owned subsidiary of CCI U.S. Asset Holdings LLC (f/k/a LDH U.S. Asset Holdings LLC) (“CCI Holdings”), a Delaware limited liability company, which is in turn a direct, wholly owned subsidiary of Castleton Commodities International LLC (“CCI”), a Delaware limited liability company. CCI Roseton was formed for the purpose of consummating a transaction (the “Transaction”) in which CCI Roseton will acquire from Dynegy Roseton, L.L.C. (“Dynegy Roseton”) the 1,160 MW (summer rating) Roseton Electric Generating Station Units 1 and 2, each of which is an oil- and natural gas-fired steam turbine generator set located in Newburgh, Orange County, New York (the “Roseton Generating Station”), associated interconnection facilities, and certain other property, assets, permits, and rights necessary to operate the Roseton Generating Station

³ CCI Roseton requests waiver of Rule 203(b)(3) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.203(b)(3) (2012), to the extent necessary to permit more than two persons to be included on the official service list on their behalf in this proceeding.

(together, the “Acquired Assets”). The Roseton Generating Station is interconnected with the transmission grid controlled by the New York Independent System Operator, Inc. (“NYISO”).

Pursuant to the terms of the Asset Purchase Agreement, dated December 19, 2012, between CCI Holdings and Dynegy Roseton, and CCI Holdings’ assignment of its rights thereunder to CCI Roseton (the “Agreement”), on January 16, 2013, CCI Roseton and Dynegy Roseton filed a joint application requesting that the Commission issue an order authorizing the Transaction under Section 203 of the FPA⁴ on or before March 4, 2013 (*i.e.*, approximately 45 days after filing).⁵ Following consummation of the Transaction, CCI Roseton will own the Roseton Generating Station and the other Acquired Assets. CCI Roseton will not begin making sales of electric energy, capacity, or ancillary services from the Roseton Generating Station until the Commission grants this application for market-based rate authority.

B. CCI and Related Entities

CCI, a Delaware limited liability company, is an independent energy company. Through its wholly owned subsidiaries, CCI owns and operates electric generation facilities and other energy assets, and engages in the marketing of physical energy commodities, including electricity, natural gas, and solid fuels, and related financial instruments.⁶

⁴ 16 U.S.C. § 824b (2006).

⁵ *See Dynegy Roseton, L.L.C., CCI Roseton LLC*, Joint Application for Approval under Section 203 of the Federal Power Act and Request for Expedited Action, Docket No. EC13-63-000 (filed Jan. 16, 2013) (“*Dynegy Roseton/CCI Roseton Section 203 Application*”).

⁶ In addition to the Commission-jurisdictional subsidiaries described below, CCI wholly owns CCI Signal Hill LLC, an EWG that owns and operates a nominal 77 MW natural gas-fired cogeneration facility located in the Electric Reliability Council of Texas portion of Texas. *See Signal Hill Wichita Falls Power, L.P.*, Notice of Effectiveness of Exempt Wholesale Generator or Foreign Utility Company Status, Docket Nos. EG06-53-000, *et al.* (Aug. 8, 2006). CCI also indirectly owns and operates certain facilities used for the gathering, storage and blending of coal in West Virginia and Kentucky.

1. CCI Rensselaer LLC

CCI Rensselaer LLC (“CCI Rensselaer”), a Delaware limited liability company, is a direct, wholly owned subsidiary of CCI. CCI Rensselaer is an EWG that owns and operates a 77.4 MW (summer rating) natural gas-fired electric generating facility located in Rensselaer, New York.⁷ The Commission has authorized CCI Rensselaer to sell electric energy, capacity and ancillary services at wholesale at market-based rates.⁸

2. Castleton Commodities Merchant Trading L.P.

Castleton Commodities Merchant Trading L.P. (“CCMT”), a Delaware limited partnership, is a direct, wholly owned subsidiary of CCI. CCMT is a power marketer authorized by the Commission to sell electric energy, capacity and ancillary services at market-based rates.⁹ CCMT also engages in the buying and selling of natural gas and solid fuels.

3. Ownership of CCI

Pursuant to a transaction authorized by the Commission on November 21, 2012,¹⁰ and consummated on December 31, 2012,¹¹ Energy Trading Innovations LLC (“ETI”), a Delaware limited liability company, directly and indirectly owns approximately 95.5 percent of the membership interests in CCI. ETI is owned by a number of unaffiliated investors, including: Dubin & Co., LLC (“D&C”),¹² which directly and indirectly owns 23.5 percent of the

⁷ *Rensselaer Plant Holdco, L.L.C.*, 110 FERC ¶ 61,029 (2005).

⁸ *See LDH Rensselaer LLC*, Docket No. ER12-1561-000 (May 29, 2012) (unreported).

⁹ *See Louis Dreyfus Energy Servs., L.P.*, Docket No. ER07-892-000 (June 29, 2007) (unreported).

¹⁰ *See LDH Rensselaer LLC, Louis Dreyfus Energy Servs., L.P.*, 141 FERC ¶ 62,123 (2012).

¹¹ *See LDH Rensselaer LLC*, Docket No. EC13-3-000 (filed Jan. 10, 2013).

¹² D&C is wholly owned by an individual, Glenn Dubin, who directly owns 99 percent of the membership interests in D&C, while the remaining one percent interest is owned by a limited partnership of which Mr. Dubin is the general partner.

membership interests in ETI; Future Energy Investments LLC (“FEI”),¹³ which indirectly owns approximately 11.5 percent of the membership interests in ETI; and a number of other investors that each own less than 10 percent of the membership interests in ETI. None of the upstream owners of ETI with power to vote owns or controls any electric generation or transmission facilities or inputs to electric power production in the United States, other than those facilities owned through their indirect interests in CCI.

III. REQUEST FOR MARKET-BASED RATE AUTHORITY

Applicant requests authorization to sell electric energy, capacity, and certain ancillary services pursuant to the attached Tariff. The Commission authorizes wholesale sales of energy and capacity at market-based rates, provided that the seller and each of its affiliates in the relevant region do not have, or have adequately mitigated, horizontal and vertical market power.¹⁴ As demonstrated below and in the market power screens provided in Attachment B, Applicant does not possess or have the ability to exercise horizontal or vertical market power in the relevant geographic market, which is the NYISO balancing authority area (“BAA”). Accordingly, Applicant meets the Commission’s requirements for granting authority to make sales of energy, capacity, and certain ancillary services at market-based rates.

¹³ FEI is equally owned by four family trusts: The Caroline Dorothy Jones 2007 Trust, The Christine Louise Jones 2007 Trust, The Dorothy Anne Jones 2007 Trust and The John Paul Jones II 2007 Trust (collectively, the “Trusts”). The Trustee, James I. Black, III, is the managing member of FEI and has full investment discretion with respect to the Trusts.

¹⁴ *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252 (“Order No. 697”), *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh’g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh’g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh’g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh’g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010), *aff’d sub nom. Montana Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011).

A. Applicant Will Not Have Horizontal Market Power

The Commission employs two indicative screens for assessing horizontal market power in connection with requests to obtain or retain the authority to sell electricity at market-based rates: the Pivotal Supplier Screen and the Wholesale Market Share Screen. The Pivotal Supplier Screen evaluates the potential of a seller and its affiliates to exercise market power based on uncommitted capacity at the time of the market's peak demand. The Wholesale Market Share Screen measures whether a seller and its affiliates have a dominant position in the market, for each of the four seasons, based on the number of megawatts owned or controlled by the seller and its affiliates as compared to uncommitted capacity of the entire market. If an entity fails to pass either of these two screens, there is a presumption of horizontal market power and further analysis is required. As demonstrated in the Solomon Affidavit, Applicant and its affiliates do not have horizontal market power in the relevant geographic market, which is the NYISO BAA.

As set forth above, CCI Roseton and its affiliates own 1,237 MW of generation in the NYISO BAA.¹⁵ None of this generation is currently committed to a third party under a long-term contract. Accordingly, all of this generation is treated as uncommitted for the purposes of this application and Ms. Solomon's analysis. Because CCI Roseton is not affiliated with any generation in markets first-tier to NYISO, no imports have been attributed to it and its affiliates.

1. Pivotal Supplier Screen

Ms. Solomon's analysis indicates that the Applicant and its affiliates have 1,237 MW of uncommitted capacity in the NYISO BAA.¹⁶ This amount is still significantly less than the total

¹⁵ Ms. Solomon's analysis uses the summer ratings for NYISO generation reported in the NYISO "Gold Book" (2012 Load & Capacity Data Report). *See* Solomon Affidavit at 2 n.1.

¹⁶ *See id.*, Exh. JRS-3.

net uncommitted supply of 2,576 MW in the NYISO BAA.¹⁷ Applicant therefore passes the Pivotal Supplier Screen.

2. Wholesale Market Share Screen

The combined market share of Applicants and its affiliates ranges between 9.0 percent and 12.3 percent of the total competing supply for each season in the study period.¹⁸ Because the market share for Applicant and its affiliates in each season is well under the 20 percent threshold, Applicant also passes the Market Share Screen.

B. Applicant Will Not Have Vertical Market Power

Applicant lacks transmission market power, as it and its affiliates do not own or control any transmission facilities other than the equipment necessary to interconnect their generation to the grid. Nor does Applicant have the ability to erect any other barriers to entry. Applicant and its affiliates do not own or control any intrastate natural gas transportation or intrastate natural gas storage or distribution facilities, any sites for generation capacity development that can be used to erect barriers to entry, any sources of physical coal supplies, or anyone who may access transportation of coal supplies.¹⁹ In the event Applicant or its affiliates acquire rights to sites for new generation development for which site control has been demonstrated in the interconnection

¹⁷ *See id.*

¹⁸ *See id.*, Exh. JRS-4.

¹⁹ *See* 18 C.F.R. § 35.37(e) (2012). Section 6.12 of the Agreement, which is included as Exhibit I-B to the Dynegy Roseton/CCI Roseton Section 203 Application, includes a covenant regarding the site for the Danskammer Generating Station, an approximately 500 MW oil-, natural gas-, and coal-fired electric generation facility located in Orange County, New York, and owned by Dynegy Roseton's affiliate, Dynegy Danskammer, L.L.C. The Danskammer Generating Station was heavily damaged and rendered inoperable in Super Storm Sandy, and Dynegy has announced its intention to retire the facility. *See* Notice of Intent to Retire Dynegy Danskammer, L.L.C. Units 1-6, New York Public Service Commission Matter No. 13-E-0012 (filed Jan. 3, 2013), *available at*: <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={31748EB9-22AA-43A5-AF61-0B73AFCCF557}>. On December 26, 2012, the United States Bankruptcy Court for the Southern District of New York approved the sale of the facility to ICS NY Holdings LLC ("ICS") for

process consistent with Section 35.42(d) of the Commission's regulations,²⁰ it will make any necessary quarterly land acquisition reports in accordance with the Commission's requirements for market-based rate sellers.

Finally, as required by Section 35.37(e)(4) of the Commission's regulations,²¹ Applicant affirmatively states that it has not, and will not, erect barriers to entry into the relevant market.

IV. ASSET APPENDIX

Section 35.37 of the Commission's regulations²² requires market-based rate sellers to include an appendix of assets in the form provided in Appendix B of Order No. 697 when submitting a market power analysis. A list of the assets owned or controlled by Applicant and its affiliates in the form provided in Appendix B of Order No. 697 is provided in Attachment C to this filing.

V. REPORTING REQUIREMENTS

Applicant will file contract and transaction data for all sales under the Tariff in its Electric Quarterly Reports pursuant to the Commission's filing requirements, as established by Order No. 2001,²³ and as may be amended from time to time. Applicant will also notify the Commission within thirty days after any change in status that would reflect a departure from the characteristics relied upon by the Commission in its evaluation of Applicant's application for

\$3.5 million. ICS has stated that it intends to retire and demolish the facility, remediate the site, and develop the site for other uses.

²⁰ 18 C.F.R. § 35.42(d) (2012).

²¹ 18 C.F.R. § 35.37(e)(4) (2012).

²² 18 C.F.R. § 35.37 (2012).

²³ *Revised Public Utility Filing Requirements*, Order No. 2001, FERC Stats. & Regs. ¶ 31,127 (2002).

market-based rate authority, in accordance with Section 35.42 of the Commission's regulations²⁴ and Order No. 652.²⁵

VI. REQUEST FOR WAIVERS AND BLANKET AUTHORIZATIONS

Applicant respectfully requests that the Commission grant it waivers and authorizations consistent with those granted to other entities with market-based rate authority. Specifically, Applicant requests the following waivers and blanket approvals:

- Waiver of Subparts B and C of Part 35 of the Commission's regulations,²⁶ regarding cost-of-service filing requirements, except sections 35.12(a), 35.13(b), 35.15, and 35.16;²⁷
- Waiver of the accounting and periodic reporting requirements in Parts 41, 101, and 141 of the Commission's regulations,²⁸ except Sections 141.14 and 141.15;²⁹
- Blanket approval under Part 34 of the Commission's regulations³⁰ for the issuances of securities and assumptions of liabilities; and
- Such other waivers and authorizations as the Commission may deem appropriate.

VII. CATEGORY 2 STATUS

Applicant and its affiliates own or control more than 500 MW of generation in the Northeast region. Accordingly, pursuant to the definition of Category 2 Sellers in Section 35.36(a)(3) of the Commission's regulations,³¹ Applicant is a Category 2 seller in the Northeast region.

²⁴ 18 C.F.R. § 35.42 (2012).

²⁵ *Reporting Requirements for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005).

²⁶ 18 C.F.R. §§ 35.12-29 (2012).

²⁷ 18 C.F.R. §§ 35.12(a), 35.13(b), 35.15, and 35.16 (2012).

²⁸ 18 C.F.R. Pts. 41, 101, 141 (2012).

²⁹ 18 C.F.R. §§ 141.14, 141.15 (2012).

³⁰ 18 C.F.R. Pt. 34 (2012).

³¹ 18 C.F.R. § 35.36(a)(3) (2012).

With respect to the Central, Northwest, Southeast, Southwest and Southwest Power Pool regions, Applicant affirms that Applicant and its affiliates own or control less than 500 MW of generation; that Applicant does not own, operate or control transmission facilities other than limited equipment necessary to connect individual generating facilities to the transmission grid (or have been granted waiver of the requirements of Order No. 888); that Applicant is not affiliated with any entity that owns, operates or controls transmission facilities in the same region as its generation assets; that Applicant is not affiliated with a franchised public utility in the same region as its generation assets; and that Applicant does not raise other vertical market power issues.³² Thus, Applicant respectfully submits that it should be designated as a Category 1 Seller within the meaning of Section 35.36(a)(2) of the Commission's regulations³³ in all regions, except the Northeast region.

VIII. NOTIFICATION OF PRICE REPORTING STATUS

Section 35.41(c) of the Commission's regulations³⁴ requires that a seller with market-based rate authority notify the Commission whether it engages in the reporting of transactions to publishers of electric or natural gas price indices. Applicant hereby notifies the Commission that it will not engage in such reporting.

³² See Order No. 697 at P 849 n.1000.

³³ 18 C.F.R. § 35.36(a)(2) (2012).

³⁴ 18 C.F.R. § 35.41(c) (2012).

IX. EFFECTIVE DATE

In order to ensure that CCI Roseton has market-based rate authority prior to consummation of the Transaction, it requests a waiver of the 60-day prior notice requirement³⁵ to permit its proposed Tariff to become effective on January 18, 2013 (*i.e.*, one day after filing).

X. CONCLUSION

WHEREFORE, for the foregoing reasons, Applicant respectfully requests that the Commission issue an order that: (i) authorizes Applicant to sell energy, capacity, and certain ancillary services at market-based rates; (ii) accepts Applicant's proposed Tariff to become effective January 18, 2013 (*i.e.*, one day after filing); and (iii) grants the waivers and blanket authorizations requested herein.

Respectfully submitted,



William R. Hollaway, Ph.D.
Brandon C. Johnson
GIBSON DUNN & CRUTCHER, LLC
1050 Connecticut Ave., NW
Washington, DC 20036-5306

Counsel for CCI Roseton LLC

Dated: January 17, 2013

³⁵ 18 C.F.R. § 35.3 (2012).