

UNITED STATES OF AMERICA 144 FERC ¶ 62,112
FEDERAL ENERGY REGULATORY COMMISSION

Starwood Power-Midway, LLC

Docket No. EC13-126-000

ORDER AUTHORIZING DISPOSITION OF
JURISDICTIONAL FACILITIES

(Issued August 6, 2013)

On July 10, 2013, Starwood Power-Midway, LLC (Midway) filed an application under section 203(a)(1)(A) of the Federal Power Act (FPA)¹ requesting Commission authorization for the disposition of jurisdictional facilities resulting from the sale by Starwood-PMH, L.L.C. (Starwood-PMH) of 100 percent of the equity interests in Midway to Cogentrix Midway Holdings, LLC (Cogentrix) (Proposed Transaction). The jurisdictional facilities include interconnection facilities, Midway's market-based rate tariff and related agreements, books and records.

Midway is a wholly-owned subsidiary of Starwood-PMH. Starwood-PMH is indirectly owned by Starwood Energy Group Global, LLC (Starwood) and by individual passive limited partner investors, who have no voting rights, other than typical limited partner rights to preserve their economic interests. Midway is an exempt wholesale generator (EWG) with market-based rate authority. Midway owns an approximately 122 megawatt (MW) power plant (Midway Facility) interconnected to the transmission grid operated by the California Independent System Operator Corporation (CAISO). All the capacity from the Midway Facility is fully committed under a 15-year power purchase agreement with Pacific Gas & Electric Company (PG&E).

Cogentrix, a Delaware limited liability company, is a wholly-owned subsidiary of Cogentrix Power Holdings III, LLC, which is a wholly-owned subsidiary of Carlyle Infrastructure Partners Power II, L.P. (Carlyle IPP II). Carlyle IPP II is controlled by its general partner, Carlyle Infrastructure General Partner, LP (CIGP). Carlyle IPP II has several passive limited partners (collectively, the Carlyle Funds), all of which are investment fund vehicles sponsored and managed by The Carlyle Group, L.P. (The Carlyle Group), a global alternative investment management firm. The limited partners of the Carlyle Funds also are passive investors. The general partner of CIGP is TG Group Infrastructure, L.L.C. whose managing member is TC Group Sub, L.P. (TC Group Sub). The general partner of TC Group Sub is TC Group L.L.C. whose managing

¹ 16 U.S.C. § 824b (2006).

member is Carlyle Holdings I L.P. (Holdings I LP). The general partner of Holdings I LP is Carlyle Holdings I GP Inc., a direct subsidiary of The Carlyle Group.

According to Midway, The Carlyle Group also holds passive, non-controlling interests in two investment funds that invest in energy-related companies: Riverstone/Carlyle Global Energy and Power Fund, IV, L.P. (R/C Fund IV) and Riverstone/Carlyle Renewable and Alternative Energy Fund II, L.P. (R/C Renewable Fund II) (together, the R/C Funds). Midway states that the general structure of these funds is that day-to-day control lies with an upstream general partner that is a wholly-owned subsidiary of Riverstone Holdings, LLC (Riverstone), the sponsor of the funds, while The Carlyle Group and Riverstone each indirectly hold an upstream limited partnership interest in the funds to share the carried interest generated by the funds. According to the application, the Carlyle Group does not exert any day-to-day authority over the R/C Funds, possesses only limited voting rights that do not affect the ability of the R/C Funds to conduct business, and is not principally in the business of producing, selling or transmitting electric power. The Carlyle Group is a sponsor of other funds in which it shares control with Riverstone: the Carlyle/Riverstone Global Energy and Power Fund I and Carlyle/Riverstone Renewable Energy Partners, L.P. However, neither of these additional funds owns any interests in companies that own electric generation, transmission, or distribution assets.

Midway states that Cogentrix is affiliated with three electric generating facilities located in the CAISO balancing authority area, the relevant market for the Proposed Transaction. Midway states that Cogentrix is affiliated with Bottle Rock Power, LLC (Bottle Rock) through its affiliation with The Carlyle Group. Bottle Rock is owned indirectly by Carlyle/Riverstone Renewable Energy Infrastructure Fund I, L.P. (Renew Fund I), and The Carlyle Group holds interests in Renew Fund I. Bottle Rock is a Delaware limited liability company that owns and has operational control of the Bottle Rock Power Plant, a 55 MW geothermal facility located in Cobb, California. The Bottle Rock Power Plant is a QF and is interconnected to the Pacific Gas and Electric Company's (PG&E) transmission system. According to Midway, Bottle Rock sells the entirety of the electric power output of the Bottle Rock Power Plant to PG&E.

Midway states that Cogentrix also is affiliated with Sunray Energy, LLC (Sunray Energy), which owns two solar parabolic trough generating facilities with a combined capacity of approximately 44 MW. Midway states that the Sunray Energy facilities are QFs and the entire output of the QFs owned by Sunray Energy is committed to Southern California Edison Company under long-term power purchase agreements.

Midway also states that Cogentrix may become affiliated with additional generation within the CAISO balancing authority area upon consummation of a Proposed Transaction. Midway states that an affiliate of Cogentrix has executed a Purchase and Sale Agreement to acquire 100 percent of the equity interests in CalPeak Power, LLC

(CalPeak Power), which owns four electric generating facilities with a combined capacity of approximately 198 MW located in the CAISO balancing authority area. In addition, Midway states that neither Cogentrix nor any of its affiliates currently owns or controls any electric transmission or distribution facilities in the United States, except for limited interconnection facilities required to connect individual generating facilities to the transmission grid. Further, Midway states that Cogentrix is not affiliated with any franchise public utility.

Midway states that through its affiliation with The Carlyle Group, Cogentrix is affiliated with entities that own or control inputs to electric power production. Specifically, The Carlyle Group is a sponsor of Carlyle/Riverstone Global Energy and Power Fund II, L.P. (Fund II) and Carlyle/Riverstone Global Energy and Power Fund III, L.P. (Fund III), in which The Carlyle Group shares control with Riverstone. According to Midway, through interests in Renew Fund I, Fund II, and Fund III, The Carlyle Group is affiliated with entities that own or control coal reserves, intrastate natural gas transportation, storage, or distribution facilities, and other potential inputs to electric power production. Midway states that in the CAISO balancing authority area, Cogentrix is affiliated with Wild Goose Storage, LLC (Wild Goose) through The Carlyle Group's interests in Fund II and Fund III. Wild Goose owns or controls an intrastate gas storage facility located in Butte County, California. Through The Carlyle Group, Cogentrix is also affiliated with Genesee & Wyoming Inc. (G&W), which owns rail cars used for transporting coal for third parties and owns and operates railroads that provide open-opportunity short-line and freight transportation service throughout the United States, including California.

Pursuant to the Purchase and Sale Agreement dated July 9, 2013, Starwood-PMH will sell to Cogentrix and Cogentrix will purchase from Starwood-PMH 100 percent of the equity interests in Midway. According to the application, upon consummation of the Proposed Transaction, Starwood-PMH will no longer own any equity interests in Midway and Midway will be a wholly-owned subsidiary of Cogentrix.

Midway states that the Proposed Transaction is consistent with the public interest and will have no adverse effect on competition, rates, or regulation, and will not result in any cross-subsidization concerns. With respect to horizontal market power, Midway states that the Proposed Transaction raises no concerns. Midway states that the entire electric output of the generation facility owned by Midway is committed pursuant to a long-term power purchase agreement and will continue to be so committed after consummation of the Proposed Transaction. Midway states that in the CAISO balancing authority area, Cogentrix is currently affiliated with Sunray Energy, which owns approximately 44 MW of generating capacity, and with Bottle Rock, which owns 55 MW of generating capacity. The application states that if Cogentrix's affiliate were to acquire the CalPeak Power facilities as currently contemplated, Cogentrix would become affiliated with approximately 198 MW of additional capacity in the CAISO balancing

authority area. Midway asserts that the combined capacity of Bottle Rock, Sunray Energy, and CalPeak Power, together with the 122 MW Midway Facility comprises only 0.7 percent of the approximately 58,000 MW of installed generating capacity in the CAISO balancing authority area. In addition, Midway states that because the entire output of Sunray Energy's QFs and the Bottle Rock Power Plant is fully committed under long-term agreements with unaffiliated third parties, the new affiliation created by the Proposed Transaction does not affect Midway's horizontal market power.

With respect to vertical market power, Midway states that the Proposed Transaction raises no concerns. Midway states that the Proposed Transaction involves no transmission facilities other than limited interconnection facilities necessary to interconnect Midway's generation facility to the transmission grid. In addition, Midway states that neither Cogentrix nor any of its affiliates owns or controls transmission facilities (except for limited interconnection facilities associated with individual generating facilities). Furthermore, Midway states that with the exception of Cogentrix's affiliation with Wild Goose and G&W, neither Cogentrix nor any of its affiliates owns or controls any fuel supplies or fuel delivery systems in the CAISO balancing authority area.

With regard to rates, Midway states that the Proposed Transaction will not have an adverse effect. Midway states that it does not have any cost-based wholesale power sales customers (or retail cost-based customers). Midway states that the power purchase agreement, which commits the entire output of the generation facility owned by Midway to an unaffiliated third party, provides for market-based rate sales and this agreement will not be impacted by the Proposed Transaction. Moreover, Midway states that it does not have any transmission customers that are served on the discrete and limited facilities necessary to interconnect the Midway Facility to the transmission grid. Therefore, Midway states that the Proposed Transaction does not affect any transmission customers.

With regard to regulation, Midway states that the Proposed Transaction will not impair the ability of the Commission or any state regulatory authority to regulate Midway or any of its affiliates. The application states that the Commission will continue to have the same jurisdiction over Midway and its jurisdictional facilities after the Proposed Transaction is consummated. Additionally, the Commission will continue to exercise the same jurisdiction over Midway's affiliates. Further, Midway states that the Proposed Transaction will have no effect on state commission regulation because the Proposed Transaction is not subject to approval by any state commission.

Midway states 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 closing or in the future, cross-subsidization of a non-utility associate company or the pledge or encumbrance of assets of a traditional public utility that has captive customers or that owns or provides transmission service over jurisdictional facilities for the benefit of an associate company. Specifically, Midway states that the Proposed Transaction does

not involve a franchised public utility with captive customers and will not result in: (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 11, 2013, with comments, protests, or interventions due on or before July 31, 2013. None were received. Notices of intervention and unopposed timely filed motions to intervene are granted pursuant to the operation of Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214) (2012). Any opposed or untimely filed motion to intervene is governed by the provisions of Rule 214.

Information and/or systems connected to the bulk system involved in this transaction 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 America Electric Reliability Corporation or the relevant regional entity may audit compliance with reliability and cybersecurity standards.

Order No. 652 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 The

² *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 70 Fed. Reg. 8,253 (Feb. 18, 2005), FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005).

foregoing authorization may result in a change in status. Accordingly, Midway is advised that it must comply with the requirements of Order No. 652. In addition, it shall make any necessary filings under section 205 of the FPA to implement the Proposed Transaction.

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) 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;
- (3) 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;
- (4) The Commission retains authority under sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate;
- (5) If the Proposed Transaction results in changes in the status or upstream ownership of Midway's affiliated qualifying facilities, an appropriate filing for recertification pursuant to 18 C.F.R. § 292.207 (2012) shall be made;
- (6) Midway shall make appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transaction; and
- (7) Midway shall notify the Commission within 10 days of the date that the disposition of jurisdictional facilities has been consummated.

Docket No. EC13-126-000

- 7 -

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 (2012). 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 (2012).

Steve P. Rodgers
Director
Division of Electric Power Regulation - West

Document Content(s)

EC13-126-000.DOC.....1-7