

142 FERC ¶ 62,148
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Dynegy Roseton, L.L.C.
CCI Roseton LLC

Docket No. EC13-63-000

ORDER AUTHORIZING DISPOSITION OF
JURISDICTIONAL FACILITIES

(Issued February 25, 2013)

On January 16, 2013, Dynegy Roseton, L.L.C. (Dynegy Roseton) and CCI Roseton LLC (CCI Roseton) (collectively, Applicants) filed a joint application under sections 203(a)(1) of the Federal Power Act (FPA)¹ requesting Commission authorization for a transaction in which Dynegy Roseton, which currently leases and operates the 1,160 megawatt (MW) Roseton Generating Station Units 1 and 2 located in Newburgh, Orange County, New York (Roseton Generating Station), and associated interconnection facilities, will acquire legal and beneficial ownership of Roseton Generating Station from the passive lessor, Roseton OL LLC (Roseton OL), and then sell the Roseton Generating Station and certain other property, assets, permits, and rights associated with the facility (Acquired Assets) to CCI Roseton (Proposed Transaction).² The jurisdictional facilities consist of interconnection facilities, market-based rate tariffs, and associated contracts, books and records.

Dynegy Roseton, a Delaware limited liability company, is a wholly-owned subsidiary of Hudson Power, L.L.C. (Hudson Power), which is, in turn a direct, wholly-owned subsidiary of Dynegy Northeast Generation, Inc. (Dynegy Northeast). Dynegy Northeast is a direct, wholly-owned subsidiary of Dynegy. Through various subsidiaries, including Dynegy Roseton, Dynegy produces and sells electric energy, capacity, and ancillary services in various United States markets. Dynegy Roseton is an exempt wholesale generator (EWG) with market-based rate authority that currently leases and operates the Roseton Generating Station. The Roseton Generating Station is interconnected with the transmission grid controlled by the New York Independent System Operator, Inc. (NYISO). The Roseton Generating Station, including

¹ 16 U.S.C. § 824b (2006).

² On November 7, 2011, Dynegy Holdings, LLC (Dynegy Holdings) and certain of its subsidiaries including Dynegy Roseton, commenced bankruptcy proceedings in the United States Bankruptcy Court for the Southern District of New York (Bankruptcy Court) with the filing of petitions for voluntary protection under Chapter 11 of the United States Bankruptcy Code.

interconnection facilities, is leased from Roseton OL pursuant to a lease (Roseton Lease) entered into as part of a sale/leaseback arrangement. Pursuant to the lease, Dynegy Roseton controls the operation of, and sale from, the Roseton Generating Station.

CCI Roseton, a Delaware limited liability company, is a direct, wholly-owned subsidiary of CCI Holdings, which is in turn a direct, wholly-owned subsidiary of Castleton Commodities International LLC (CCI). CCI Roseton is a special purpose vehicle that was formed specifically for the purpose of owning and operating the Roseton Generating Station and the other Acquired Assets. Pursuant to the terms of the Asset Purchase Agreement and CCI Holdings' assignment of its rights to CCI Roseton, Dynegy Roseton will transfer the Acquired Assets to CCI Roseton. Applicants state that CCI Roseton is not currently a "public utility" as of the filing date for this application, but it is concurrently submitting an application for Commission authorization to sell electric energy, capacity, and ancillary services at market-based rates³ (as well as a self-certification of EWG status), and will therefore likely be a "public utility" on or before the date the Proposed Transaction is consummated.

CCI, a Delaware limited liability company, is an independent energy company. Through its wholly-owned subsidiaries, CCI owns and operates generation facilities and other energy assets, and engages in the marketing of physical energy commodities, including electricity, natural gas and solid fuels, and financial instruments. CCI Rensselaer LLC (CCI Rensselaer) is a direct, wholly-owned subsidiary of CCI. CCI Rensselaer is an EWG that owns and operates a 77.4 MW gas-fired electric generating facility located in Rensselaer, New York. CCI Rensselaer is authorized by the Commission to sell electric energy, capacity and ancillary services at wholesale at market-based rates. Castleton Commodities Merchant Trading, L.P. (CCMT) 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. CCMT also engages in the buying and selling of natural gas and solid fuels.

Pursuant to the Transfer Agreement dated January 14, 2013, by and between Dynegy Roseton and Roseton OL, Dynegy Roseton will acquire legal and beneficial title to the Roseton Generating Facilities, including the interconnection facilities from Roseton OL. Then, pursuant to the Asset Purchase Agreement, and CCI Holdings' assignment of its rights to CCI Roseton, Dynegy Roseton will sell the Acquired Assets to CCI Roseton. Following consummation of the Proposed Transaction and the Commission's grant of market-based authorization, CCI Roseton will own and operate the Roseton Generating Station and the associated interconnection facilities.

³ On January 17, 2013, CCI Roseton separately filed with the Commission in Docket No. ER13-773-000, an application under section 205 of the FPA for market-based rate authority. That filing will be acted on by separate order.

Applicants state that the Proposed Transaction is consistent with the public interest and will have no adverse effect on competition, rates, or regulation, nor will it result in any cross-subsidization or the pledge or encumbrance of utility assets to any associated company. With respect to horizontal market power concerns, Applicants state that the Proposed Transaction will result in a transfer of control over the Roseton Generating Station from Dynegy Roseton, which currently controls the facilities pursuant to the Roseton Lease, to CCI Roseton. Applicants' state that because the Roseton Generating Station is located in the NYISO market, that market, which has a total installed capacity of approximately 38,000 MW, is the relevant geographic market for purposes of analyzing the competitive effect of the Proposed Transaction. Applicants assert that following consummation of the Proposed Transaction, CCI Roseton and its affiliates will own or control approximately 3.2 percent of the installed capacity in the NYISO market (i.e., the combination of the approximately 0.2 percent held by CCI Roseton and its affiliates and the approximately 3.0 percent share represented by the Roseton Generating Station). Further, Applicants state that because CCI Roseton's affiliates own substantially less generation capacity in the NYISO market than do Dynegy Roseton's affiliates, the Proposed Transaction will reduce concentration in the NYISO market, as demonstrated by the fact that, before considering imports, the change in the Herfindahl-Hirschman Index resulting from the Propose Transaction will be slightly negative. Applicants conclude that the Proposed Transaction will have a *de minimis* impact on competition in the NYISO market.

With respect to vertical market power issues, Applicants state that the Proposed Transaction does not involve any electric transmission facilities, other than facilities used to interconnect generating facilities with the transmission grid. Applicants state that the only interconnection facilities associated with the Roseton Generating Station are facilities required to interconnect their respective facilities to the NYISO transmission system, and neither CCI Roseton nor any of its affiliates owns or controls any transmission facilities in the NYISO, other than limited interconnection facilities required to interconnect their respective facilities to the NYISO transmission system. According to the application, Applicants and their affiliates do not own any inputs to electricity production that would allow them to erect barriers to entry to new generation in the NYISO market.

With regard to the effect on rates, Applicants state that all wholesale sales of electric energy, capacity, and ancillary services from the Roseton Generating Station are made pursuant to Dynegy Roseton's market-based rate authority. Similarly, after consummation of the Proposed Transaction and the Commission's grant of CCI Roseton's application for market-based rate authority, all wholesale sales of electric energy, capacity, and ancillary services from the Roseton Generating Station will be made pursuant to CCI Roseton's market-based rate authorization. In addition, Applicants state that there are no captive wholesale power customers or transmission customers whose rates would be affected by the Proposed Transaction.

With respect to the effect on regulation, Applicants state that the Proposed Transaction will not affect the Commission's jurisdiction over wholesale sales of electric energy, capacity, or ancillary services from the Roseton Generating Station. Moreover, Applicants state that the Proposed Transaction will not result in any facilities being removed from the Commission jurisdiction or from state commission jurisdiction.

Applicants assert that based on facts and circumstances known to them 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. Applicants state that the Proposed Transaction will not result in, now or in the future: (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 January 17, 2013, with comments, protests, or interventions due on or before February 6, 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.⁴ The foregoing authorization may result in a change in status. Accordingly, Applicants are advised that they must comply with the requirements of Order No. 652. In addition, Applicants shall make any necessary filings under section 205 of the FPA to implement the 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 Applicants' affiliated qualifying facilities, if any, an appropriate filing for recertification pursuant to 18 C.F.R. § 292.207 (2012) shall be made;
- (6) Applicants shall make appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transaction; and

⁴ *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).

- (7) Applicants shall notify the Commission within 10 days of the date that the disposition of jurisdictional facilities 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 (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)

EC13-63-000.DOC.....1-6