

154 FERC ¶ 62,028  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Talen Ironwood, LLC  
Talen Energy Marketing, LLC  
TransCanada Facility USA, Inc.  
TransCanada Power Marketing, Ltd.

Docket No. EC16-30-000

ORDER AUTHORIZING ACQUISITION AND DISPOSITION OF JURISDICTIONAL  
FACILITIES

(Issued January 15, 2016)

On November 6, 2015, Talen Ironwood, LLC (Talen Ironwood), Talen Energy Marketing, LLC (Talen Energy Marketing), TransCanada Facility USA, Inc. (TransCanada Facility or Buyer) and TransCanada Power Marketing, Ltd. (TransCanada Marketing) (collectively, Applicants), filed an application under section 203(a)(1) of the Federal Power Act (FPA)<sup>1</sup> requesting Commission authorization for the acquisition and disposition of jurisdictional facilities related to a proposed transaction in which Buyer will indirectly acquire all of the membership interests of Talen Ironwood from Talen Generation, LLC (Talen Generation) and Talen Energy Marketing will transfer a rate schedule (Reactive Power Rate Schedule)<sup>2</sup> from Talen Ironwood's generating facility (Ironwood Facility) to TransCanada Marketing as Buyer's designee (Proposed Transaction). The jurisdictional facilities involved in the Proposed Transaction include Talen Ironwood's market-based rate tariff and related books and records, generator interconnection facilities associated with the Ironwood Facility, and the Reactive Power Rate Schedule.

According to Applicants, Talen Ironwood is an Exempt Wholesale Generator, authorized by the Commission to sell energy, capacity, and certain ancillary services at market-based rates. Talen Ironwood owns and operates the Ironwood Facility, an approximately 660 megawatt (MW), generation facility and associated interconnecting transmission facilities near Lebanon, Pennsylvania. Applicants state that the Ironwood

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<sup>1</sup> 16 U.S.C. § 824b (2012).

<sup>2</sup> Applicants note that Talen Energy Marketing provided the advance notice required by PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (OATT) Schedule 2 of its intent to transfer the Reactive Power Rate Schedule to Buyer or its designee: Docket No. ER08-1462-000, filed October 30, 2015.

Facility is interconnected with the transmission grid controlled by PJM and is located within the 5004/5005 sub-market of the PJM market.

According to Applicants, Talen Energy Marketing is a power marketer authorized by the Commission to sell energy, capacity, and certain ancillary services at market-based rates. Applicants state that Talen Energy Marketing markets the output of certain generating facilities owned by certain of its affiliates, including the Ironwood Facility. Pursuant to the Reactive Power Rate Schedule, Talen Energy Marketing receives cost-based compensation for reactive supply and voltage control service provided pursuant to Schedule 2 of the PJM OATT from the Ironwood Facility.

According to Applicants, both Talen Ironwood and Talen Energy Marketing are indirect, wholly owned subsidiaries of Talen Energy Corporation (Talen Energy), a publicly traded company. Talen Energy wholly owns Talen Energy Holdings, Inc., which, in-turn, wholly owns Talen Energy Supply, LLC (Talen Energy Supply). Talen Energy Supply wholly owns Talen Energy Marketing and Talen Generation. Talen Generation wholly owns Talen Ironwood Holdings, LLC, which, in-turn, wholly owns Talen Ironwood.

Applicants state that Talen Energy was formed when the competitive power generation business of PPL Corporation was spun off and immediately combined with the competitive generation business owned by affiliates of Riverstone Holdings, LLC (Riverstone). Applicants state that, according to Talen Energy, the only investors or investor groups that currently own 10 percent or more of Talen Energy's outstanding voting shares are certain affiliates of Riverstone. Through Talen Energy, Talen Ironwood is affiliated with a number of other entities that own or control generation facilities in the PJM market.

According to Applicants, TransCanada Facility is a Delaware corporation which is licensed to conduct business as a foreign limited liability company in every jurisdiction in which such qualification or licensing is required. TransCanada Facility is a wholly owned subsidiary of TransCanada Energy USA, Inc., which is a wholly owned subsidiary of TransCanada PipeLines Limited, a Canadian public company, which is a wholly owned subsidiary of TransCanada Corporation (TransCanada). TransCanada Facility holds interests in four subsidiaries, according to Applicants. It holds a 100 percent ownership interest in TC Ravenswood, LLC (TC Ravenswood), which is authorized to sell energy, capacity and ancillary services at wholesale pursuant to its market based rate authority. Applicants state that TC Ravenswood is a member of the New York Independent System Operator, Inc. (NYISO). TC Ravenswood operates the approximately 2,500 MW Ravenswood electric generating facility (Ravenswood Facility) located in New York City. TC Ravenswood owns and leases generation capacity and operates and sells energy, capacity and ancillary services from the Ravenswood Facility at wholesale, pursuant to its market-based rate authority in bilateral transactions as well

as in the NYISO's wholesale electricity market. TransCanada holds a 100 percent ownership interest in TC Ravenswood Services Corp, which provides fuel and related services to TC Ravenswood. TransCanada also holds a 95 percent ownership interest in Unit 40 Sublessor, LLC, which holds the lease for Unit 40 at the Ravenswood Facility. Finally, TransCanada holds a 100 percent ownership interest in Coolidge Power LLC, which owns and operates an approximately 575 MW generation facility in Coolidge, Arizona, where all generation output is committed under a long-term power purchase agreement.

According to Applicants, TransCanada Marketing, a Delaware corporation, is a wholly owned subsidiary of TransCanada PipeLine USA Ltd., which is a wholly owned subsidiary of TransCanada PipeLines Limited. TransCanada Marketing transacts both on a bilateral basis and in the markets operated by ISO New England Inc., NYISO and PJM. TransCanada Marketing is also the 100 percent entitlement holder for its affiliate companies that own various generating assets located in New England.

TransCanada is an energy company that does business in Canada and the United States and is publicly traded on the Toronto and New York stock exchanges. According to Applicants, no shareholder, together with its affiliates, owns 10 percent or more of the publicly-traded stock of TransCanada.

Applicants state that, through its principal subsidiaries, TransCanada transports natural gas through interstate pipelines in Canada and parts of the United States. Through its subsidiaries, TransCanada also owns interests in entities that own or control generation capacity in the United States or operate as power marketers in the United States. None of these entities own or control generation capacity in PJM.

According to Applicants, neither TransCanada nor any of its affiliates own, operate, or control electric transmission facilities in the United States, except for the limited equipment necessary to interconnect individual generating facilities to the transmission grid. Applicants state that, except for the affiliates that own intrastate natural gas pipeline or storage facilities in Michigan, neither TransCanada nor any of its affiliates own or control any inputs to electricity products in the United States. According to Applicants, TransCanada is not affiliated with any public utility with a franchised electric service territory in the United States. According to Applicants, upon closing of the Proposed Transaction, TransCanada will indirectly hold 100 percent of the controlling voting security interests in Talen Ironwood Holdings.

Applicants state that they will implement the Proposed Transaction pursuant to the Purchase and Sale Agreement dated October 7, 2015. Under the Purchase and Sale Agreement, Buyer will acquire 100 percent of the membership interests of Talen Ironwood Holdings and will therefore indirectly acquire 100 percent of the membership interests of Talen Ironwood. Following closing of the Proposed Transaction, Buyer will

have an indirect 100 percent ownership interest in all jurisdictional facilities currently owned by Talen Ironwood. Additionally, Talen Energy Marketing will transfer the Reactive Power Rate Schedule to TransCanada Marketing. The existing power purchase agreement with Talen Energy Marketing will be terminated and all output of the Ironwood Facility will be sold under a power purchase agreement to TransCanada Marketing. Applicants state that TransCanada Marketing will sell the power bi-laterally and/or in PJM markets under TransCanada Marketing's market-based rate authority.

Applicants state that the Proposed Transaction will not have an adverse effect on competition, rates, or regulation and will not result in cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company.

Applicants state that there are no concerns with regard to horizontal market power. Applicants state that the only generation facility either Talen Ironwood or Talen Ironwood Holdings owns or controls is the Ironwood Facility, which is located in the 5004/5005 submarket of PJM. The 5004/5005 submarket is considered the relevant market for the consideration of the Proposed Transaction. Applicants state that neither Buyer nor its affiliates currently own or operate generating facilities in, or have firm transmission rights into, the 5004/5005 sub-market or the broader PJM market. Applicants maintain that, because the combining entities do not currently conduct business in the same geographic markets, the Proposed Transaction presents no horizontal market power concerns.

Applicants state that the Proposed Transaction will have no effect on vertical market power because neither Talen Ironwood nor Talen Ironwood Holdings owns or controls electric transmission facilities, other than facilities used to interconnect the Ironwood Facility with the PJM-controlled transmission grid, or any other upstream inputs to electricity products. Further, none of Buyer or its affiliates own or control other inputs to electric power production that would allow them to erect barriers to entry in the PJM market. Therefore, according to Applicants, the Proposed Transaction raises no vertical market power concerns.

Applicants state that the Proposed Transaction will not have an adverse effect with respect to rates. According to Applicants, all wholesale sales from Talen Ironwood will be made at market-based rates. Also, according to Applicants, TransCanada Marketing will continue to provide reactive supply and voltage control service from the Ironwood Facility, pursuant to Schedule 2 of the PJM OATT, based on the revenue requirement set forth in the Reactive Power Rate Schedule, in the same manner as it currently is provided by Talen Energy Marketing. Applicants state that neither the Reactive Power Rate Schedule nor Schedule 2 of the PJM OATT contain any mechanism that would allow for the automatic passthrough of costs related to the Proposed Transaction to captive

ratepayers.

Applicants state that neither TransCanada Marketing nor any other affiliate of the Buyer currently provide reactive power supply voltage support or ancillary services in PJM at cost-based rates. Applicants state that TransCanada Marketing is authorized to provide certain ancillary services at market-based rates for sale into the PJM market and where the PJM OATT permits, the self-supply of services to purchasers for a bilateral sale. Applicants state that TransCanada Marketing's provision of ancillary services are unaffected by the Proposed Transaction. According to Applicants, neither Talen Ironwood nor Buyer or any of its affiliates provide unbundled transmission service. Therefore, according to Applicants, the Proposed Transaction will have no effect on rates.

Applicants state that the Proposed Transaction will not have an adverse effect on regulation at the federal or state level. The Proposed Transaction will not impair the ability of the Commission to regulate jurisdictional services and the Commission will continue to exercise the same jurisdiction over sales of electricity by Talen Ironwood after the Proposed Transaction is closed that it exercises currently. No facilities will be removed from the Commission's jurisdiction. The Proposed Transaction will have no effect on state regulation and is not subject to approval by any state commission. There will be no regulatory gaps as a result of the Proposed Transaction. Therefore, according to Applicants, the Proposed Transaction will not have any adverse effect on regulation.

Applicants state that the Proposed Transaction raises no cross-subsidization issues. The Proposed Transaction does not involve a franchised public utility with captive customers and therefore falls within one of the "safe harbors" set forth in the Commission's Supplemental Policy Statement. Nevertheless, Applicants state that, based on facts and circumstances known to Applicants or that are reasonably foreseeable, the Proposed Transaction will not, at the time of the closing of the Proposed Transaction or in the future, result in 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 transfers 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 issuances 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 contracts 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 services agreements subject to review under Sections

205 and 206 of the Federal Power Act.

This filing was noticed on November 9, 2015, with comments, protest or interventions due on or before November 27, 2015. None were received.

Information and/or systems connected to the bulk power system involved in this Proposed Transaction may be subject to reliability and cyber security standards approved by the Commission pursuant to FPA section 215 of the FPA.<sup>3</sup> Compliance with these standards is mandatory and enforceable regardless of the physical location of the affiliates or investors, information databases, 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 cyber security standards. The Commission, North American Electric Reliability Corporation or the relevant regional entity may audit compliance with reliability and cyber security 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 this Proposed Transaction is based on such examination ability.

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.<sup>4</sup> 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 Order No. 652.

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<sup>3</sup> 16 U.S.C. § 824o (2012).

<sup>4</sup> *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).

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) Applicants 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;
- (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 cost, or any other matter whatsoever now pending or which may become 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 the upstream ownership of Applicants' affiliated qualifying facilities, an appropriate filing for recertification pursuant to 18 C.F.R. § 292.207 (2015) shall be made;
- (6) The Commission retains authority under sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate;
- (7) Applicants shall make appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transaction; and
- (8) Applicants shall notify the Commission within 10 days of the date that the Proposed Transaction 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 (2015). 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 (2015).

Steve P. Rodgers, Director  
Division of Electric Power  
Regulation – West

Document Content(s)

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