

156 FERC ¶ 62,028

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Weyerhaeuser NR Company
International Paper Company

Docket No. EC16-116-000

ORDER AUTHORIZING
ACQUISITION OF QUALIFYING FACILITIES

(Issued July 11, 2016)

On May 6, 2016, as amended on June 22, 2016, Weyerhaeuser NR Company (Weyerhaeuser) and International Paper Company (International Paper) (collectively, Applicants) filed an application (Application) pursuant to section 203(a)(1)(A) of the Federal Power Act (FPA)¹ requesting authorization for the acquisition by International Paper from Weyerhaeuser of four pulp mills and one modified fiber mill, which include five qualifying facilities (QFs) totaling 243.05 megawatts (MWs) of QF generation² (Proposed Transaction). The facilities affected by the Proposed Transaction consist of the QFs and associated interconnection equipment.

International Paper is a global paper and packaging company that owns forest products assets, including mills with on-site generation capacity as QFs and has market-based rate authorization.³

Weyerhaeuser is engaged in the business of forest products and owns forest and pulp product assets, including mills with on-site generation capacity as QFs, and it has market-based rate authorization.⁴ Applicants state that Weyerhaeuser and its corporate family do not own or control any electric transmission or natural gas intrastate pipelines or gas storage facilities. Under the terms of a Purchase Agreement, Applicants state that

¹ 16 U.S.C. § 824b (2012).

² Applicants state that other assets are included in the acquisition but are located outside the United States and that Applicants do not request authorization in the Application for these.

³ *International Paper Company*, Docket No. ER06-1364-000 (September 19, 2006) (delegated letter order).

⁴ *Weyerhaeuser NR Company*, Docket No. ER09-185-000 (December 30, 2008) (delegated letter order).

the Proposed Transaction is expected to be completed in the fourth quarter of 2016. The five QFs have a total capacity of 243.05 MWs. Of the total, 64 MWs are located within the Tennessee Valley Authority (TVA) balancing authority area (BAA), 140.95 MWs are located within the Southern Company Services (SOCO) BAA, and 38.1 MWs are located within the Carolina Power & Light Company (CPL) BAA. The sites of the five mills with associated QFs are as follows:

Columbus, Mississippi. The Columbus Facility is located in Lowndes County in Columbus, Mississippi, within the TVA BAA. The facility has a capacity of 64 MWs.

Flint River, Georgia. The Flint River facilities are located within the SOCO BAA, and include two generating units: Turbine Generator No. 1 is a qualifying topping-cycle cogeneration facility and has a capacity of 43.75 MWs; and Turbine Generator No. 2 is a condensing steam generator facility and has a capacity of 28 MWs.

Port Wentworth, Georgia. The Port Wentworth Facility is located within the SOCO BAA. The Port Wentworth Facility is a qualifying cogeneration facility and has a capacity of 69.2 MWs.

New Bern, North Carolina. The New Bern Facility is located within the CPL BAA. The New Bern Facility is a qualifying cogeneration facility and has a capacity of 38.1 MWs.

Applicants state that the Proposed Transaction is consistent with the public interest and will not adversely affect competition, rates, regulation and will not result in cross-subsidization. The Proposed Transaction will not have an adverse effect on horizontal competition in the TVA BAA, because International Paper does not own or control any generation facilities in the TVA BAA and will not result in an overlap of generation. With respect to the Columbus Facility, the generation capacity of the Columbus Facility of 64 MWs results in a market share of 0.167 percent of the 38,202 MWs of the total installed capacity within the TVA BAA, which, according to Applicants, is *de minimis*. In the SOCO BAA, the combined generation capacity will total 707.15 MW (i.e., 140.95 plus 566.2) resulting in a market share of 1.09 percent of the 64,589 MW of total installed electric generation capacity within the SOCO BAA, which is, according to Applicants, *de minimis*. Therefore, Applicants state that the Proposed Transaction does not raise any horizontal market power concerns. In the CPL BAA, according to Applicants, the Proposed Transaction will not have an adverse effect on horizontal competition, because International Paper does not own or control any generation facilities in the CPL BAA and, therefore, the Proposed Transaction will not result in an overlap of generation.

With respect to vertical market power, Applicants state that neither International

Paper nor any of its affiliates control any transmission assets, other than limited interconnection facilities necessary to interconnect their generation facilities to the grid. In addition, Applicants state that neither International Paper nor any of its affiliates impose any barriers to market entry by competing market suppliers or engage in any affiliate transactions that would raise competitive concerns because International Paper does not control any essential facilities. Therefore, Applicants state that the Proposed Transaction does not raise any vertical market power concerns.

Applicants state that the Proposed Transaction will not have any adverse effect on rates because all sales of electric energy, capacity and ancillary services made by International Paper will be made at market-based rates or avoided cost contracts pursuant to state-approved Public Utility Regulatory Policy Act (PURPA) programs. In addition, neither Applicant operates any transmission assets, so, according to Applicants, the Proposed Transaction will not affect any transmission rates. Therefore, Applicants state that the Proposed Transaction will have no adverse effect on rates.

Applicants state that the Proposed Transaction will not affect the manner or extent to which the Commission, any state, or any other Federal agency may regulate the Applicants. Applicants state that all wholesale sales will be subject to Commission regulation under International Paper's market-based rate tariff or pursuant to avoided cost contracts pursuant to state-approved PURPA programs. Therefore, Applicants state that the Proposed Transaction will have no adverse effect on federal or state regulation.

Applicants state that the Proposed Transaction will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company. Applicants further state that the Proposed Transaction qualifies for the safe harbor for transactions that do not involve a franchised public utility with captive customers. In addition, Applicants represent that, based on facts and circumstances known to Applicants or that are reasonably foreseeable, the Proposed Transaction will not result in, at the time of the Proposed Transaction 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 services agreements subject to review under sections 205 and 206 of the FPA.

The filings were noticed on May 9, 2016 and on June 23, 2016 with comments, protests or interventions due on or before May 27, 2016 and July 5, 2016, respectively. None were filed.

Information and/or systems connected to the bulk power 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 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 cybersecurity standards. The Commission, NERC or the relevant regional entity may audit compliance with reliability and cybersecurity 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 the 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.⁵ 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.

After consideration, it is concluded that the Proposed Transaction is consistent with the public interest and is hereby 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;

⁵ *Reporting Requirement 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).

- (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 costs, or any other matter whatsoever now pending or which may come 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 the 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

Docket No. EC16-116-000

- 6 -

Document Content(s)

EC16-116-000.DOC.....1-6