

148 FERC ¶ 62,060  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

CPV Maryland, LLC

Docket No. EC14-106-000

ORDER AUTHORIZING DISPOSITION OF  
JURISDICTIONAL FACILITIES

(Issued July 18, 2014)

On June 20, 2014, CPV Maryland, LLC (CPV Maryland or Applicant) filed an application under section 203(a)(1)(A) of the Federal Power Act requesting Commission authorization for the disposition of jurisdictional facilities in which (1) 25 percent of the equity interests in CPV Maryland will be acquired by Toyota Tsusho St. Charles, LLC (TT St. Charles) and (2) 50 percent of the equity interests in CPV Maryland will be acquired by MC St. Charles LLC, (MC. St. Charles) (Proposed Transaction). The jurisdictional facilities involved in the Proposed Transaction consist of the Applicant's market-based tariff, wholesale power sales agreements, and related books and records.

According to Applicant, TT St. Charles, a Delaware limited liability company, is a direct, wholly owned subsidiary of Toyota Tsusho Power USA, Inc. (TT-USA), and an indirect, wholly owned subsidiary of Toyota Tsusho Corporation (Toyota Tsusho). Eurus Energy America Corporation (Eurus Energy) is a wholly owned subsidiary of Eurus Energy Holdings Corporation, which is 60 percent owned by Toyota Tsusho and 40 percent owned by the Tokyo Electric Power Company, Incorporated (Tokyo Electric). Tokyo Electric is more than 50 percent owned by the Nuclear Damage Liability Facilitation Fund, which in turn is half owned by the Japanese government and half owned by Japanese nuclear operators.

Applicant maintains that Toyota Tsusho, through Eurus Energy, is affiliated with Crescent Ridge LLC (Crescent Ridge). Crescent Ridge owns and operates a 54 megawatt (MW) wind-powered electric generation facility interconnected to transmission facilities owned by Commonwealth Edison Company and operated by PJM Interconnection, L.L.C. (PJM). Crescent Ridge is a qualifying facility (QF) under the Public Utility Regulatory Policies Act of 1978 (PURPA) and is an exempt wholesale generator (EWG). Toyota Tsusho does not directly or indirectly own any energy assets in PJM, the relevant geographic market for the Proposed Transaction, where the Crescent Ridge facility is located, except for its indirect ownership in Crescent Ridge and in CPV Shore.

Applicant submits that MC St. Charles is being formed as a Delaware limited liability company and wholly owned subsidiary of Marubeni Power America, Inc. (Marubeni Power), which itself is an indirect, wholly owned subsidiary of Marubeni

Corporation (Marubeni). Marubeni, organized under Japanese law, owns ventures in chemicals, energy, power projects, industrial machinery, mineral resources, and transportation, *inter alia*. Neither Marubeni nor its affiliates currently hold equity interests in any electric generation or transmission assets located in PJM.

Applicant submits that CPV Maryland is a Delaware limited liability company that will construct, own and operate a 725 MW combined cycle, gas-fired electric generating facility and limited interconnection facilities located in Charles County, Maryland. This facility will be interconnected with transmission facilities operated by PJM. CPV Maryland is authorized to sell power at market-based rates and is an (EWG). CPV Maryland is currently 50 percent owned by CPV Maryland Holding Company, LLC (CPV Maryland Holding), which is 100 percent indirectly owned by Competitive Power Venture Holdings, LLC (Competitive Power Ventures), and 50 percent owned by Diamond St. Charles, LLC, which is wholly owned by Diamond Generating Corporation, a subsidiary of Mitsubishi Corporation. Competitive Power Ventures and TT-USA indirectly own CPV Shore, LLC (CPV Shore), a Delaware limited liability company that will also construct, own and operate a 725 MW electric generating facility interconnected to transmission facilities owned by Jersey Central Power & Light Company and operated by PJM.

Applicant states that, under the Proposed Transaction and pursuant to a purchase agreement, Diamond St. Charles will transfer its 50 percent equity interests in CPV Maryland to a newly-formed subsidiary of Competitive Power Ventures (Newco), which will simultaneously transfer that 50 percent equity interest to MC St. Charles. CPV Maryland Holding will also transfer 25 percent of its equity interest in CPV Maryland to TT St. Charles. After consummation of the purchase agreement, CPV Maryland will be owned 25 percent by TT-USA, 50 percent by MC St. Charles, and indirectly owned 25 percent by Competitive Power Ventures.

Applicant states that the Proposed Transaction is consistent with the public interest because it will have no adverse effect on competition, rates, or regulation and will not result in cross-subsidization or the pledge or encumbrance of utility assets for the benefit of an associate company.

Applicant states that the Proposed Transaction raises no concerns with respect to horizontal market power. According to the Applicant, the generation capacity in PJM owned, operated, or currently being developed by CPV Maryland and its affiliates totals 1,450 MW, equivalent to 0.78 percent of PJM's total capacity. Applicant states that the Proposed Transaction will result in a new affiliation with 55 MW of capacity owned by Crescent Ridge, equivalent to 0.03 percent of total generation capacity in PJM. Thus, the post-transaction market share will amount to 0.81percent, which the Applicant argues is *de minimis*. Therefore Applicant concludes that the Proposed Transaction will not result in adverse horizontal competitive effects.

Applicant states that the Proposed Transaction raises no vertical market power concerns, because in PJM, the only transmission assets owned or being developed by Applicant and its affiliates, or by affiliates of TT St. Charles and MC St. Charles, are limited to equipment and facilities required to connect their electric generation facilities to the transmission grid.<sup>1</sup> Additionally, Applicant submits that the Proposed Transaction does not involve transmission facilities or result in a combination of generation facilities with other upstream relevant products. Accordingly, Applicant states that the Proposed Transaction will have no adverse effect on vertical market power.

Applicant states that the Proposed Transaction will have no adverse effect on rates. First, Applicant notes that no transmission facilities are being transferred that are included in the establishment of transmission rates. Second, Applicant represents that Applicant will continue to be authorized to sell power and ancillary services to its customers pursuant its market-based rate tariff. Since Applicant has no captive wholesale customers, Applicant maintains that the Proposed Transaction will not adversely affect rates.

Applicant states that the Proposed Transaction will have no adverse effect on regulation. Specifically, Applicant states that after the Proposed Transaction is consummated, Applicant will continue to be regulated by the Commission under the FPA to the same degree as before the Proposed Transaction. Applicant further states that nothing about the Proposed Transaction will adversely affect the authority or ability of state regulators to regulate the sale of power to retail customers.

Applicant states that the Proposed Transaction will not result in the cross-subsidization of a non-utility associate company or the pledge of encumbrance of utility assets for the benefit of an associate company. Applicant asserts that the Proposed Transaction falls within one of the “safe harbors” established by the Commission, because the Proposed Transaction does not involve a franchised public utility with captive customers.

Additionally, Applicant verifies 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 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

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<sup>1</sup> Applicant notes that Marubeni owns an interest in the Sagebrush Line, connecting generation in the Tehachapi region to Southern California Edison Company. Transmission service over the Sagebrush line is available under a Commission approved Open Access Transmission Tariff.

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 June 20, 2014, with comments, protests, or interventions due on or before July 11, 2014. 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) (2013).

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.<sup>2</sup> 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 Proposed Transaction.

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<sup>2</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 this order;
- (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 Applicant's qualifying facilities, an appropriate filing for recertification pursuant to 18 C.F.R. § 292.207 (2013) shall be made;
- (6) Applicant shall make appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transaction;
- (7) Applicant must inform the Commission, within 10 business days of the change, of any change in circumstances that would reflect a departure from the facts the Commission relied upon in authorizing the Proposed Transaction; and

- (8) Applicant 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 (2013). 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 (2013).

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

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