

155 FERC ¶ 62,226

**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

Covanta Union, LLC

Docket No. EC16-106-000

**ORDER AUTHORIZING LEASE
OF JURISDICTIONAL FACILITIES**

(Issued June 20, 2016)

On April 22, 2016, Covanta Union, LLC (Covanta Union) filed an application pursuant to section 203(a)(1)(D) of the Federal Power Act (FPA)¹ requesting Commission authorization to extend an existing lease with the Union County Utilities Authority of a 45-megawatt (MW) waste-to-energy qualifying small power production facility located in Rahway, New Jersey (Facility) (Proposed Transaction or Lease Extension). Covanta Union states that the jurisdictional facility involved in the Proposed Transaction is the Facility.

Covanta Union is an indirect subsidiary of Covanta Energy LLC (Covanta Energy), which is a subsidiary of Covanta Holding Corporation (Covanta Holding), a public utility holding company that is engaged in the energy and insurance businesses through its subsidiaries. Covanta Energy directly and indirectly owns, operates or has interests in 45 energy facilities in the United States. Covanta Union is a single purpose entity that operates the Facility. Covanta Union sells the output of the Facility into the PJM Interconnection, L.L.C. (PJM) market pursuant to its market-based rate authority. Covanta Union states that it also has affiliates that own or lease and operate generation facilities within the PJM market.

Covanta Union states that the term of the current lease agreement was extended to December 15, 2031 under an agreement approved by the Commission on November 8, 2011. Under the Lease Extension, Covanta Union and the Union County Utilities Authority would extend the term of the lease for an additional 22 years, ending on December 15, 2053. According to Covanta Union, the Lease Extension would make no other substantive changes to the existing lease agreement.

Covanta Union states that the Proposed Transaction is consistent with the public interest because it will not adversely impact competition, rates, or regulation and will not result in cross-subsidization or the pledge or encumbrance of utility assets for the benefit

¹ 16 U.S.C. § 824b (2012).

of an associate company.

With respect to competition, Covanta Union states that the Lease Extension will maintain the status quo and will continue an arrangement that is already in place. Covanta Union states that even if the Lease Extension were reviewed as a change that would result in it operating the Facility for the first time, its shares of generating capacity in the PJM market and the PJM East submarket would be *de minimis*. Covanta Union states that its affiliates own and/or operate a total of 267.5 MWs of generation capacity in the PJM East submarket before and after consummation of the Proposed Transaction. Of this generation, 75 MW of the output is fully committed under a long-term contract with Atlantic City Electric Company. Covanta Union states that at most, following the Lease Extension, its affiliates will control approximately 192.5 MWs of uncommitted generation in PJM East, which is approximately 0.55 percent of the 35,000 MW of capacity in the PJM East submarket, a *de minimis* amount. Therefore, Covanta Union concludes that the Proposed Transaction would not raise any horizontal market power issues.

Covanta Union states that the Proposed Transaction does not give rise to any vertical market power concerns, because it does not own or control any jurisdictional transmission facilities and have no power to erect barriers to entry to new generation in the PJM East submarket. In addition, Covanta Union and Covanta Energy do not provide fuel inputs to generation in the PJM East submarket. Therefore, Covanta Union concludes that the Proposed Transaction does not raise any vertical market power issues.

Covanta Union states that the Proposed Transaction will have no effect on rates it charges for wholesale power sales, because it already operates the Facility, which will be used in the same manner after the Proposed Transaction is consummated. Covanta Union states that upon authorization of the Proposed Transaction, it will continue to sell electric energy, capacity and ancillary services pursuant to its market-based rate tariff. With respect to retail rates, Covanta Union states that it does not sell power at retail.

Covanta Union states that the Proposed Transaction will maintain the status quo and will have no effect on the manner or extent to which the Commission, any state agency, or any other federal agency regulates Covanta Union. Covanta Union states that it is not subject to the jurisdiction of any state public utility regulatory. Additionally, Covanta Union states that all wholesale power sales will continue to be subject to Commission regulation under its market-based rate tariff.

Covanta Union states that the Proposed Transaction does not pose a risk of cross-subsidization and asserts that neither it nor any of its affiliates is affiliated with any traditional public utility having captive customers in the United States. Furthermore, Covanta Union represents that, based on the facts and circumstances known to them or that are reasonably foreseeable, the Proposed Transaction will not result in, at the time of

the 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 have 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.

Information and/or systems connected to the bulk system involved in these transactions 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.

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.² To

² *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).

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 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 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 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 any 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

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