

143 FERC ¶ 62,174
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Covanta Energy Corporation
Camden County Energy Recovery Associates, L.P.

Docket No. EC13-102-000

ORDER AUTHORIZING DISPOSITION OF
JURISDICTIONAL FACILITIES

(Issued June 6, 2013)

On May 2, 2013, Covanta Energy Corporation (Covanta Energy) and Camden County Energy Recovery Associates, L.P. (Camden) (collectively, Applicants) filed a joint application under section 203(a)(1) of the Federal Power Act (FPA)¹ requesting Commission authorization for the disposition of jurisdictional facilities. Applicants request Commission authorization to permit two wholly owned direct or indirect subsidiaries of Covanta Energy (Covanta Purchasers) to acquire 100 percent of the ownership interests in Camden, which is owned by Camden County Energy Recovery Corporation (Camden Corporation) and Foster Wheeler, Inc. (Foster Wheeler) (Proposed Transaction). The jurisdictional facilities consist of interconnection facilities, market-based rate tariffs and related contracts, books and records.

Covanta Energy is a wholly owned subsidiary of Covanta Holding Corporation (Covanta Holding), which is a Delaware holding company engaged in the energy and insurance businesses through its subsidiaries. Covanta Holding's indirect energy subsidiaries are engaged in the business of developing, constructing, owning and/or operating projects for the conversion of waste to energy and independent power production both domestically and abroad and providing related infrastructure services. Relevant to this application, within the PJM Interconnection, L.L.C. (PJM) balance authority area (BAA), Covanta Energy's affiliates that own and/or operate generation facilities consist of: (1) Covanta Alexandria/Arlington, Inc. (Covanta Alexandria) owns and operates an approximately 21 megawatt (MW) waste-to-energy qualifying small power production facility in Alexandria, Virginia; Covanta Alexandria sells the entire output of its facility to Dominion Virginia Power pursuant to a long-term contract; (2) Covanta Delaware Valley, L.P. (Covanta Delaware Valley) leases and operates an approximately 79.5 MW waste-to-energy qualifying small power production facility located in the City of Chester, Pennsylvania; Covanta Delaware Valley is an Exempt Wholesale Generator (EWG) with market-based rate authority; Covanta Delaware

¹ 16 U.S.C. § 824b (2006).

Valley's electric output is sold under long-term contract to Atlantic City Electric Company; (3) Covanta Essex Company (Covanta Essex) owns and operates an approximately 68 MW waste-to-energy qualifying small power production facility located in Newark, New Jersey; Covanta Essex is a EWG with market-based rate authority; Covanta Essex has an option to sell its power to Public Service Electric & Gas Company under a long-term contract; however, Covanta Essex currently sells its power directly into the PJM market; (4) Covanta Fairfax, Inc. (Covanta Fairfax) owns and operates an approximately 79 MW waste-to-energy qualifying small power production facility in Fairfax, Virginia; Covanta Fairfax is a EWG which sells the entire output of its facility to Dominion Virginia Power pursuant a long-term contract; (5) Covanta Plymouth Renewable Limited Partnership (Covanta Plymouth) owns and operates an approximately 32 MW waste-to-energy qualifying small power production facility located in Plymouth Meeting, Pennsylvania; Covanta Plymouth is authorized to sell power at market-based rates; Covanta Plymouth sells the output of its facility to PECO Energy Company pursuant to a long-term agreement; (6) Covanta Union, Inc. (Covanta Union) leases and operates an approximately 45 MW waste-to-energy qualifying small power production facility located in Rahway, New Jersey; Covanta Union is authorized to sell power at market-based rates; Covanta Union sells into the PJM market; (7) Covanta Warren Energy Resource Co., L.P. (Covanta Warren) owns and operates an approximately 11 MW waste-to-energy qualifying small power production facility in Oxford Township, New Jersey; Covanta Warren sells the entire output of the facility to Jersey Central Power and Light under a long-term contract; and (8) Pacific Energy Operating Group, L.P. leases a 3 MW qualifying small power production facility in Gude, Maryland that is operated by Covanta Power Pacific, Inc, and is owned by 8309 Tujung Avenue Corp., a wholly owned subsidiary of Covanta Holding.

In addition, Covanta Energy has interests in the following entities that operate generation facilities on behalf of municipalities or agencies: (1) Covanta Harrisburg, Inc.; (2) Covanta Lancaster, Inc.; (3) Covanta Montgomery, Inc.; and (4) Covanta York Renewable Energy LLC.

Camden owns and operates a 32 MW small power production facility (Facility), in Camden County, New Jersey within the PJM East submarket and the PJM BAA. The Facility is interconnected with transmission facilities owned and controlled by Public Service Electric and Gas Company (PSEG). The primary fuel source for the Facility is biomass in the form of municipal solid waste, which is combusted on reciprocating stoker grates. Camden is owned by Covanta Corporation and Foster Wheeler, which are indirect, wholly owned subsidiaries of Foster Wheeler AG, a Swiss holding company whose shares are publicly traded on the NASDAQ stock market. Through its subsidiaries, Foster Wheeler AG is primarily engaged in global engineering and construction contracting and power equipment supply businesses. Covanta Corporation holds a 1 percent general partnership interest and Foster Wheeler holds a 99 percent limited partnership interest in Camden. Camden states that it does not have any interests

in transmission facilities other than those limited and discrete transmission facilities necessary to connect the Facility to the transmission grid.

The transaction will be effectuated in accordance with the Equity Purchase Agreement by and between Covanta Energy, Covanta Corporation, and Foster Wheeler (Agreement), which provides that Covanta Energy (or the Covanta Purchasers) will acquire Covanta Corporation's 1 percent general partnership interest in Camden and Foster Wheeler's 99 percent limited partnership interest in Camden. The net result of the Proposed Transaction is the transfer from Covanta Corporation and Foster Wheeler to Covanta Energy of ownership and control of Camden and the Facility.

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 does not raise horizontal market power concerns in the PJM Market or the PJM East submarket, where the facility is located. Applicants state the total uncommitted capacity in the PJM market ranges from 63,212 MW to 76,608 MW, and in the PJM East submarket ranges from 15,147 MW to 19,578 MW. Applicants assert that the uncommitted capacity of Covanta Energy's affiliates is 275 MW in both the PJM Market and the PJM East submarket, representing a very small share of uncommitted capacity both in PJM, ranging from 0.36 percent to 0.44 percent, and the PJM East submarket, ranging from 1.40 percent to 1.82 percent. Applicants state that the capacity of the Facility, located in the PJM East submarket, is 32 MW and that Camden does not own or control any additional generation capacity. According to Applicants, Camden's 32 MW represents a PJM market share ranging from 0.04 percent to 0.05 percent, and a PJM East submarket share ranging from 0.16 percent to 0.21 percent, which represents a *de minimis* portion of the uncommitted capacity in both markets.

With respect to vertical market power, Applicants state that neither Covanta Energy nor Camden nor any of their respective affiliates owns or controls, directly or indirectly, any transmission or natural gas interstate pipeline assets in any relevant market, or any inputs to generation facilities in any relevant market (except those discrete interconnection facilities associated with their facilities that are necessary to effect the sale of electric energy).

With regard to the effect on rates, Applicants state that the Proposed Transaction will not affect any of the long-term contracts under which Applicant's subsidiaries or affiliates currently sell power. Applicants state that following the closing on the Proposed Transaction, power currently sold under long-term contracts will continue to be sold pursuant to those agreements. Further, all wholesale sales of energy and/or capacity in interstate commerce made by Covanta Energy's affiliates that are not made under such long-term contract are made at negotiated market-based rates pursuant to market-based

rate authority. In addition, Applicants state that because the Proposed Transaction does not involve any transmission facilities, it will have no effect on transmission rates.

With respect to the effect on regulation, Applicants state that the Proposed Transaction will not remove any facilities from the Commission's jurisdiction, diminish the Commission's regulatory authority, create a regulatory gap, or shift regulatory authority between the Commission and any state commission. Applicants state that their jurisdictional status will not change as a result of the Proposed Transaction. Additionally, Applicants state that the Proposed Transaction will not affect state regulation. Applicants assert that after the Proposed Transaction is consummated, Applicants and their subsidiaries will continue to be regulated by the various states in which they operate in the same way as before the Proposed Transaction is consummated.

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 May 2, 2013, with comments, protests, or interventions due on or before May 23, 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.

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 transaction is based on such examination ability.

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.² The foregoing authorization may result in a change in status. Accordingly, Applicants are advised that it 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;

² *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).

- (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 Transaction; and
- (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

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