

150 FERC ¶ 62,156
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Bayonne Energy Center, LLC
Zone J Tolling Co., LLC

Docket No. EC15-73-000

ORDER AUTHORIZING DISPOSITION OF
JURISDICTIONAL FACILITIES

(Issued March 16, 2015)

On February 12, 2015, Bayonne Energy Center, LLC (BEC) and Zone J Tolling Co., LLC (Zone J Tolling) (collectively, Applicants) filed an application (Application) pursuant to section 203(a)(1)(A) of the Federal Power Act (FPA)¹ requesting authorization for a transaction that will result from the transfer of 100 percent of the indirect equity ownership interests in Applicants from PER Development Holdings, LLC (Seller), a wholly-owned subsidiary of ArcLight Energy Partners Fund, III, L.P. (ArcLight Fund III), to Ragfy Holdings LLC (Ragfy Holdings or Purchaser) (Proposed Transaction). The jurisdictional facilities involved with the Proposed Transaction consist of Applicant's market-based rate tariffs and any related agreements, various books and records, and the interconnection equipment associated with the Proposed Transaction.

BEC, is a Delaware limited liability company that owns and operates the Bayonne Energy Center (Facility). The Facility is a 512 megawatt (MW) natural gas-fired electric generating plant located in Bayonne, New Jersey. While the Facility is located within the footprint of PJM Interconnection, L.L.C. (PJM), it is not interconnected to the PJM grid. The Facility is solely interconnected to the transmission system owned by Consolidated Edison Company of New York, Inc. and operated by the New York Independent System Operator, Inc. (NYISO) via a 6.75 mile, 345 kV submarine cable (BEC Line) that is a dedicated generator lead line for the Facility.

BEC is an exempt wholesale generator (EWG) with market-based rate authority. The entire output of the Facility is currently sold pursuant to long-term tolling agreements. Applicants state that Direct Energy Business Marketing, LLC (Direct Energy), an unaffiliated third party, is the counterparty to two long-term tolling

¹ 16 U.S.C. § 824b (2012).

agreements that convey control over 320 MW from the Facility to Direct Energy. The remaining capacity of the Facility is sold pursuant to two long-term tolling agreements with Zone J Tolling.

Zone J Tolling, Co. is a Delaware limited liability company that operates as a power marketer, with market-based authorization solely within the NYISO market, including the New York City Submarket. Other than through the tolling agreements with BEC, Zone J Tolling does not own or control any generation capacity. Applicants state that BEC and Zone J Tolling are wholly-owned indirect subsidiaries of Al Bayonne Holdings, LLC (Al Bayonne), which is currently a wholly-owned direct subsidiary of the Seller. The Seller is a wholly-owned subsidiary of ArcLight Fund III. ArcLight Fund III is a private equity investment fund with a focus on the independent power sector. ArcLight Fund III is managed by ArcLight Capital Partners, LLC.

Ragfy Holdings is Delaware Limited liability company. Ragfy Holdings is an indirect wholly-owned subsidiary of MIC LLC. MIC LLC is public company listed on the New York Stock Exchange (NYSE). MIC is externally managed by a wholly-owned indirect subsidiary of Macquarie Group Limited (MGL).

MGL is a global provider of banking, financial, advisory, investment, and funds management services. According to Applicants, MGL is affiliated with entities that own or control electric generation facilities within the United States, none of which is located in Applicants relevant market, the NYISO BAA.

Applicants state that certain affiliates of MGL own or control inputs to electric power production that are located outside of the NYISO BAA. MGL is not affiliated with any inputs to electricity products or electric power production located in the NYISO BAA.

Under the Proposed Transaction, Seller will transfer 100 percent of the direct membership interests in Al Bayonne to Purchaser. As a result of the Proposed Transaction, Applicants will be wholly-owned indirect subsidiaries of the Purchaser. Neither Seller nor ArcLight Fund III will hold any ownership interests in Applicants following the Proposed Transaction.

Applicants state that the Proposed Transaction will not have an adverse effect on competition, rates, or regulation and will not result in cross-subsidization concerns. Applicants state that the Proposed Transaction will have no effect on competition. Applicants state that Purchaser is not affiliated with any electric generation capacity in Applicant's relevant market, the NYISO BAA. Therefore Applicants conclude that the Proposed Transaction will not result in any new affiliation or combination of electric generating assets that could have an impact on competition in the relevant market and does not raise any horizontal market power concerns.

With respect to vertical market power, Applicants state that the Proposed Transaction does not involve any transmission facilities, except for the BEC Line and limited interconnection facilities necessary to connect the Facility to the transmission grid. According to Applicants, the Commission has determined that the BEC Line is a limited and discrete transmission facility. BEC has committed to file an Open Access Transmission Tariff (OATT) within 60 days of receiving a request for transmission service. In addition, Applicants state that the Proposed Transaction does not involve any inputs to electricity products or electric power productions. Applicants state that neither Purchaser nor any of its affiliates owns or control inputs to electricity products or electric power production located in the NYISO BAA. Applicants state that, while Purchaser is affiliated with entities that own or control certain inputs to electric power production in markets remote from the NYISO BAA, the affiliations do not raise any competitive concerns that would allow an entity to erect barriers to market entry. Therefore Applicants conclude that the Proposed Transaction does not raise any vertical market power concerns.

With respect to rates, Applicants state that the Proposed Transaction does not have an adverse effect on rates. Applicants state that they will continue to make wholesale power sales pursuant to their market-based rate authority. In addition, Applicants further state that the Proposed Transaction does not involve transmission rates or customers. Therefore, Applicants conclude that the Proposed Transaction will not have an adverse effect on rates charged to wholesale ratepayers or transmission customers.

With respect to regulation, Applicants state that the Proposed Transaction will not affect the manner or extent to which the Commission, any state, or any federal agency may regulate Applicants. Applicants state that the extent to which Applicants and their affiliates are subject to the jurisdiction of the Commission will not change as a result of the Proposed Transaction. Thus, according to Applicants, the Proposed Transaction will not have an adverse effect on regulation.

Applicants state that the Proposed Transaction will not result in the cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company. Applicants assert that, since the Transaction does not include a franchised public utility with captive customers, there is no potential for harm to customers for inappropriate cross-subsidization. Further, Applicants represent in Exhibit M that, based on the facts and circumstances known to them or that are reasonably foreseeable, that the 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 companies 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.

The filing was noticed on February 12, 2015, with comments, protests, or interventions due on or before March 5, 2015. 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). 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 the 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, NERC 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

² *Reporting Requirement for Changes in Status for Public Utilities with Market-*

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 are 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;
- (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 cost, 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 further orders as appropriate;
- (5) If the Proposed Transaction results in changes in the status or the upstream ownership of Applicants' affiliated qualifying facilities, if any, an appropriate filing for recertification pursuant to 18 C.F.R. 292.207 (2014) shall be made;
- (6) Applicants shall make the appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transaction;
- (7) Applicants must inform the Commission of any change in circumstances that would reflect a departure from the facts the Commission relied upon in authorizing the Proposed Transaction; and

- (8) 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 (2014). 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 (2014).

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