145 FERC ¶ 62,104
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Capital Power Investments, LLC
Bridgeport II Blocker A, Inc.
Bridgeport II Blocker B, Inc.
Tiverton Power LLC
Bridgeport Energy LLC
CP Energy Marketing (US) Inc.
Emera Incorporated

Docket No. EC13-151-000

ORDER AUTHORIZING DISPOSITION AND ACQUISITION OF JURISDICTIONAL FACILITIES AND SECURITIES AND ACQUISITION OF GENERATING ASSETS

(Issued November 14, 2013)

On September 19, 2013, Capital Power Investments, LLC (CP Investments), Bridgeport II Blocker A, Inc. (Blocker II A), Bridgeport II Blocker B, Inc. (Blocker II B), Tiverton Power LLC (Tiverton), Bridgeport Energy LLC (Bridgeport), CP Energy Marketing (US) Inc. (CP Energy Marketing) (collectively with Blocker II A, Blocker II B, Tiverton, and Bridgeport, CP Entities), and Emera Incorporated (Emera) (collectively, Applicants) filed an application pursuant to sections 203(a)(1) and 203(a)(2) of the Federal Power Act (FPA)[1] requesting Commission authorization for the disposition of jurisdictional facilities connected with the sale of 100 percent of the equity interests in Tiverton and Bridgeport and the transfer of a certain Capacity Supply Agreement from CP Energy Marketing to Emera (or a wholly-owned subsidiary thereof) (collectively, the Transaction) The jurisdictional facilities involved in the Transaction are the limited facilities used to connect individual generating facilities to the transmission grid, the market-based rate tariffs of Bridgeport and Tiverton, and the Capacity Supply Agreement.

Applicants state that CP Investments, a Delaware limited liability company, owns 100 percent of the equity interests in Tiverton, which in turn owns and operates a 279 megawatt (MW) generating facility located in Tiverton, Rhode Island (Tiverton Facility), in the ISO New England Inc. (ISO-NE) market. Applicants add that Tiverton is an exempt wholesale generator (EWG) with market-based rate authority.

[1] 16 U.S.C. § 824b (2006).

Applicants state that CP Investments directly owns approximately 61 percent of the equity interests in Bridgeport and indirectly owns the other approximate 39 percent of the equity interests in Bridgeport through Blocker II A and Blocker II B, each of which is wholly owned by CP Investments, and a special purpose entity formed to hold certain equity interests in Bridgeport. Applicants add that Blocker II A and Blocker II B hold approximately 28 percent and 11 percent, respectively, of the equity interests in Bridgeport.

Applicants state that Bridgeport is an EWG that owns and operates an approximately 534 MW electric generating facility in Bridgeport, Connecticut (Bridgeport Facility, and collectively with the Tiverton Facility, the Facilities), in the Southwest Connecticut (SWCT) region of the ISO-NE market. Bridgeport is authorized to sell energy, capacity, and certain ancillary services at market-based rates.

Applicants state that CP Investments is a direct, wholly owned subsidiary of Capital Power (US Holdings) Inc., which in turn is an indirect wholly owned subsidiary of Capital Power L.P., an Ontario, Canada, limited partnership. Capital Power L.P. is owned by (i) Capital Power Corporation, a public Canadian corporation, which indirectly owns all of the general partnership interests (representing an approximate 23 percent interest in Capital Power L.P.) and approximately 62 percent of the limited partnership interests of Capital Power L.P. (representing an approximate 48 percent interest in Capital Power L.P.), and (ii) EPCOR Power Development Corporation, an Alberta corporation, which directly owns approximately 38 percent of the limited partnership interests, representing an approximate 29 percent interest in Capital Power L.P. Applicants state that not less than 71 percent of the common shares of Capital Power Corporation are publicly held.

Applicants state that CP Energy Marketing, a wholly owned subsidiary of Capital Power (US Holdings) Inc. is a Delaware corporation and a power marketer that is authorized by the Commission to make wholesale sales of electric energy, capacity and certain ancillary services at market-based rates. Applicants add that CP Energy Marketing is a party to the Capacity Supply Agreement, which will be assigned to Emera (or a wholly-owned subsidiary thereof) as part of the Transaction.

Applicants state that CP Investments owns 100 percent of the equity interests in Rumford Power Inc. (Rumford). Rumford is an EWG that is authorized by the Commission to make wholesale sales of electric energy, capacity and certain ancillary services at market-based rates. Applicants add that Rumford owns an approximately 269 MW electric generating facility located in Rumford, Maine, which is interconnected to the transmission system controlled by ISO-NE.

Applicants state that neither CP Investments nor any of its affiliates (i) has interests in interstate or intrastate pipelines, (ii) owns or controls any transmission

facilities in the United States, other than the limited interconnection facilities required to connect individual generating facilities to the transmission grid, or (iii) is a public utility that has a franchised electric service territory in the United States.

Applicants state that Emera is a publicly-traded utility holding company headquartered in Halifax, Nova Scotia, Canada. Applicants add that Emera holds interests in companies that, among other things, engage in the electric utility, electric generation, natural gas trading and pipeline business in Canada, the United States, and the Caribbean.

Applicants state that, as is relevant to the Transaction, Emera holds direct or indirect interests in certain entities conducting business in New England, as follows:

- All voting and substantially all non-voting interests in Bangor Hydro Electric Company (Bangor Hydro), a public utility that owns electric transmission and distribution assets, as well as 14 MW of generation assets, in Central Maine (in ISO-NE);
- All voting interests in Maine Public Service Company (Maine Public), a public utility that owns electric transmission and distribution assets in Northern Maine (which is outside of ISO-NE);
- All interests in Emera Energy Services Inc., a public utility involved in the trading of natural gas and electricity in the United States, and in Emera Energy Services Subsidiaries Nos. l through 5, LLC, market participants in the ISO-NE markets;
- An approximately 24.5 percent interest in Algonquin Power & Utilities Corp., an electrical power generation and utility infrastructure company which owns approximately 73.4 MW of generating assets in ISO-NE;
- A 50 percent interest in Bear Swamp Power Company LLC, the owner of two hydroelectric facilities in northern Massachusetts with total capability of 599 MW;
- A 21.7 percent interest in Maine Electric Power Company (Maine Power), the owner of a 345 kilovolt transmission line connecting transmission lines in New Brunswick, Canada, with those in Wiscasset, Maine; and
- A 49 percent interest in Northeast Wind Partners II, LLC, the parent of 10 wind generating facilities and related assets in New England and New York with a total capacity of approximately 418.7 MW.

Applicants state that, under the Transaction, (i) CP Investments, Blocker II A and Blocker II B will sell 100 percent of the equity interests in Tiverton and Bridgeport to Emera or one or more wholly-owned subsidiaries thereof, which will result in a change in control of Tiverton, Bridgeport, and the Facilities and (ii) CP Energy Marketing will assign its Capacity Supply Agreement to Emera, or one or more wholly owned subsidiaries thereof, pursuant to the terms and conditions of the Purchase and Sale Agreement, dated as of August 27, 2013.

Applicants state that the Transaction is consistent with the public interest because it will have no adverse impact 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.

Applicants state that the Transaction will not have an adverse effect on horizontal competition in the ISO-NE market or the Connecticut submarket, the relevant market and submarket for the Transaction, where the Facilities are located.[2] Applicants state that the change in horizontal market concentration as a result of the present Transaction when combined with Emera's acquisition of Rumford in a related transaction,[3] is well below the thresholds that the Commission considers problematic. Specifically, Applicants state that in all season/load periods studied, for both Economic Capacity and Available Economic Capacity and for all price series studied (base case, up 10 percent, down 10 percent), the post-transaction Herfindahl Hirschman Index (HHI) values are well below 1,000 points, reflecting an unconcentrated market, and the maximum change in HHI is only six points. Accordingly Applicants state that the Transaction does not raise horizontal market power concerns in the ISO-NE market.

Applicants state that their analysis of the Transaction shows that the change in horizontal market concentration in the Connecticut submarket is well below the Commission's thresholds. Applicants state that in all of the season/load periods studied, for both economic capacity and available economic capacity, the post-transaction HHIs are below 1,800 points and the changes in HHI attributable to the combined transactions are less than 25 points. Accordingly, Applicants state that the present Transaction, even considered along with the acquisition of Bridgeport and Tiverton, does not raise horizontal competitiveness concerns in the Connecticut submarket.

Applicants state that the Transaction raises no vertical market power concerns because ISO-NE provides open access to Bangor Hydro's and Maine Power's transmission facilities under the ISO-NE tariff. Likewise, Main Public provides open access to its transmission lines over its tariff. Applicants continue that the Transaction does not include the sale of electric or natural gas transmission or distribution facilities, other than limited transmission facilities used to interconnect the Facilities to the grid or raise any barriers to entry into the ISO-NE market or any other Northeast markets.

Applicants state that the Transaction will have no adverse effect on rates because

---

[2] Applicants state that the Bridgeport Facility is located in the SWCT submarket, but the generation that Emera owns within Connecticut is not located in SWCT. Therefore, Applicants find that Connecticut is the smallest relevant submarket in which the CP Entities and Emera own generation.

[3] See *Capital Power Investments LLC et al.*, EC13-152-000.

all sales from the Facilities are currently made at market-based rates and neither Bridgeport nor Tiverton provide electric transmission service. Further, to the extent that the Facilities sell ancillary services, they do so under the ISO-NE tariff. Nevertheless, Emera and its public utility affiliates pledge to hold harmless all of their transmission and current wholesale customers from any costs associated with the Transaction for a period of five years and to the extent that such costs exceed savings related to the Transaction. Applicants' commitment is interpreted to include all transaction-related costs, not only costs related to consummating the transaction.[4] The Commission will be able to monitor the Applicants' hold harmless provision under its authority under section 301(c) of the FPA and the books and records provision of PUHCA 2005, and the commitment is fully enforceable based on the Commission's authority under section 203 of the FPA.[5]

If Applicants seek to recover transaction-related costs through their wholesale power or transmission rates they must submit a compliance filing that details how they are satisfying the hold harmless requirement. If Applicants seek to recover transaction-related costs in an existing formula rate that allows for such recovery, then that compliance filing must be filed in the section 205 docket in which the formula rate was approved by the Commission, as well as in the instant 203 docket. In this case the filing would be a compliance filing in both the section 203 and section 205 dockets. If Applicants seek to recover transaction- related costs in a filing whereby they are proposing a *new* rate (either a new formula rate or a new stated rate), then that filing must be made in a *new* section 205 docket as well as in the instant section 203 docket. In this case the filing would be a compliance filing in the section 203 docket, but a rate application in the section 205 docket. The Commission will notice such filings for public comment. In such filings, Applicants must: (1) specifically identify the transaction-related costs they are seeking to recover, and (2) demonstrate that those costs are exceeded by the savings produced by the Transaction, in addition to any requirements associated with filings made under section 205.[6] Such a hold harmless commitment will protect customers' wholesale power and transmission rates from being adversely affected by the Transaction.

Applicants state that Transaction will not impair the ability of the Commission or any state regulatory authority to regulate Applicants or any of their affiliates. Applicants add that after the Transaction is consummated, the Commission will be able to exercise the same jurisdiction that it currently exercises over the Facilities and sales of capacity, energy and ancillary services from the Facilities. Applicants state that the Transaction

---

[4] *PPL Corporation and E.ON U.S. LLC*, 133 FERC ¶ 61,083 (2010).

[5] *PPL Corporation and E.ON U.S. LLC*, 133 FERC ¶ 61,083 (2010), *ITC Midwest LLC and Northern States Power Company*, 133 FERC ¶ 61,169 (2010), and *BHE Holdings Inc. and Main & Maritimes Corporation*, 133 FERC ¶ 61,231 (2010).

[6] *Id*.

will have no effect on state commission regulation and is not subject to approval by any state commission.

Applicants state that, based on facts and circumstances known to it or that are reasonably foreseeable, the Transaction will not result in, at the time of the Transaction or in the future, cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional facilities for the benefit of an associate company, including: (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 contracts 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 September 19, 2013, with comments, protests or interventions due on or before November 4, 2013. None were filed. 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). Any opposed or untimely filed motion to intervene is governed by the provision of Rule 214.

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.[7] 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 appropriate filings under section 205 of the FPA, to implement the Transaction.

Information and/or systems connected to the bulk system involved in this

[7] *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).

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 the 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.

After consideration, it is concluded that the Transaction is consistent with the public interest and is hereby authorized, subject to the following conditions:

(1) The Transaction is authorized upon the terms and conditions described in this Order 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 determination 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 supplemental orders as appropriate;

(5) If the 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 (2012) shall be made;

(6) Applicants shall make appropriate filings under section 205 of the FPA, as necessary, to implement the 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 Transaction; and

(8) Applicants shall notify the Commission within 10 days of the date that the 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. 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.

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

20131114-3008 FERC PDF (Unofficial) 11/14/2013

Document Content(s)