

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

James River Genco, LLC
City Point Energy Center, LLC

Docket No. EC16-190-000

ORDER AUTHORIZING DISPOSITION AND ACQUISITION
OF JURISDICTIONAL FACILITIES

(Issued November 29, 2016)

On September 23, 2016, James River Genco, LLC (James River) and City Point Energy Center, LLC (City Point) (collectively, Applicants) filed an application pursuant to section 203(a)(1) of the Federal Power Act (FPA)¹ requesting authorization for disposition and acquisition of jurisdictional facilities resulting from the sale by James River and acquisition by City Point of an existing generation facility and associated interconnection facilities and related assets (Proposed Transaction). The jurisdictional facilities affected by the Proposed Transaction consist of City Point's market-based rate tariff and related books and records.

According to Applicants, James River owns and operates a 114.8 megawatt cogeneration facility located in Hopewell, Virginia (Facility) and interconnected to the transmission system owned by Dominion Virginia Power and operated by PJM Interconnection, L.L.C. (PJM). Applicants state that the Facility is a capacity resource in PJM and is located in the AP South submarket.

According to Applicants, James River is a wholly owned subsidiary of Cogentrix Virginia Financing, LLC which is wholly owned by Cogentrix Virginia Financing Holding Company, LLC (Cogentrix HC). Cogentrix HC is 50 percent owned by Cogentrix Power Asset Holdings, LLC (Cogentrix Holdings) and 50 percent owned by Quantum Virginia Power, LLC (Quantum). Cogentrix Holdings is indirectly owned by investment fund vehicles sponsored and managed by The Carlyle Group L.P., and Quantum is managed by Quantum Utility Generation, LLC.

According to Applicants, City Point was formed for the purpose of acquiring the Facility and intends to sell the electric output from the Facility at wholesale. Applicants represent that City Point is owned by an individual. Applicants further represent that neither City Point nor its owner own or control or are affiliated with any generation capacity in the PJM market or any electric transmission facilities in the United States.

¹ 16 U.S.C. § 824b (2012).

According to Applicants, pursuant to the Proposed Transaction, James River will transfer ownership and control of the Facility and related equipment, contracts, including the Facility's interconnection agreement and its PJM capacity obligation for the 2016/2017 deliver year, and books and records to City Point.

According to Applicants, the Proposed Transaction is consistent with the public interest and will not adversely affect competition, rates or regulations.

With respect to horizontal market power, Applicants assert that City Point is not affiliated with any generation capacity in the PJM market. According to Applicants, the capacity of the Facility represents less than 0.06 percent of the total installed capacity in the PJM market. Applicants therefore conclude that the Proposed Transaction will not result in any new affiliation or combination of electric generating assets that could have an impact on the competitive situation in the relevant market.

With respect to vertical market power, Applicants assert that the Proposed Transaction does not involve transmission facilities or any essential inputs to electricity products or electric power production. Applicants represent that neither City Point nor any of its affiliates owns a 10 percent or greater voting interest in or controls any electric transmission facilities in the United States, other than limited interconnection facilities. Applicants further state that neither City Point nor any of its affiliates owns or controls any essential inputs to electricity products or electric power production.

With respect to rates, Applicants represent that after consummation of the Proposed Transaction, output from the Facility will be sold at market-based rates. Applicants further state that the Proposed Transaction does not involve transmission rates, or transmission or other captive electric customers. Therefore, According to Applicants, the Proposed Transaction will not have an adverse effect on wholesale ratepayers or transmission customers.

Applicants state that the Proposed Transaction will not have an adverse effect on regulation at the federal or state level. Applicants represent that the Proposed Transaction will not affect the manner or extent to which the Commission, any state, or any other federal agency may regulate them. Applicants further state that the Proposed Transaction will not change the extent to which Applicants and their affiliates are subject to the jurisdiction of the Commission or any other regulatory agency or office. Therefore, according to Applicants, the Proposed Transaction will not have an adverse impact on regulation.

Further, according to Applicants, the Proposed Transaction will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company. According to Applicants, the Proposed Transaction falls within one of the "safe harbors" established by the Commission for

which detailed explanation and evidentiary support to demonstrate a lack of cross-subsidization is not required. Specifically, Applicant states that the Proposed Transaction falls within the “safe harbor” for transactions that do not involve a franchised public utility with captive customers.

Applicants verify 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 Proposed Transaction or in the future, any cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets 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 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.

This filing was noticed on September 26 2016, with comments, protests or interventions due on or before October 14, 2016. None were received.

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 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 (2016) shall be made;

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).

- (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 (2016). 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 (2016).

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