

145 FERC ¶ 62,027
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Basin Creek Equity Partners, L.L.C.
Capital District Energy Center Cogeneration Associates
Forked River Power LLC
Pawtucket Power Associates Limited Partnership
Pittsfield Generating Company, L.P.

Docket No. EC13-139-000

ORDER AUTHORIZING DISPOSITION
OF JURISDICTIONAL FACILITIES

(Issued October 10, 2013)

On August 26, 2013, Basin Creek Equity Partners, L.L.C. (Basin Creek), Capitol District Energy Center Cogeneration Associates (CEDCCA), Forked River Power LLC (Forked River), Pawtucket Power Associates Limited Partnership (Pawtucket Power), and Pittsfield Generating Company, L.P. (Pittsfield Generating) (collectively Applicants) filed an application pursuant to section 203(a)(1)(A) of the Federal Power Act (FPA)¹ requesting Commission authorization for the disposition of jurisdictional facilities in connection with a transaction in which Patriot Power Holdings, LLC (Patriot Power), an affiliate of Rockland Capital, LLC (Rockland Capital), will indirectly acquire all of the issued and outstanding ownership interests in CEDCCA, Forked River, Pawtucket Power and Pittsfield generation along with 94.89 percent of the issued and outstanding ownership interests in Basin Creek (Proposed Transaction). The jurisdictional facilities involved in the Proposed Transaction are Applicants' generating facilities, limited interconnection facilities, market-based rate tariffs, wholesale electric contracts and various books and records.

Maxim Power Corp. (Maxim Corp.) is an independent power producer incorporated in the province of Alberta, Canada. Maxim Corp. owns and operates 41 power plants in the United States, Canada and France, with a total of 804 megawatts (MW) of electric and 111 MW of thermal net generating capacity. Maxim Corp. wholly owns Maxim USA, a Nevada Corporation. Maxim USA owns interests in the five natural gas-fired electric generation facilities in the United States that are owned by the Applicants. Maxim Corp. and its affiliates do not own, operate or control any electric generation facilities in the United States (other than the limited interconnection facilities that are necessary to interconnect their generating facilities to the transmission grid), distribution facilities, natural gas or fuel oil for generating power, or any other inputs to

¹ 16 U.S.C. § 824b (2006).

electric power production in the United States.

Maxim USA owns a 94.89 percent interest in Basin Creek Holdco, LLC (Basin Creek Holdco). Basin Creek Holdco owns 100 percent of Basin Creek. Basin Creek owns the Basin Creek Generating Plant (Basin Creek Facility) a 55 MW natural gas-fired power plant located in Silver Bow County, Montana in the NorthWestern Energy balancing authority area (BAA). Basin Creek is an exempt wholesale generator (EWG) that has been granted market-based rate authority. The Basin Creek Facility is interconnected to the transmission system of NorthWestern Energy. All of the capacity and energy of the Basin Creek Facility is sold to NorthWestern Energy under a long-term power purchase agreement.

Maxim USA owns a 100 percent interest in Maxim Power (USA) Holding Company Inc. (Maxim USA Holding). Maxim USA Holding owns 100 percent of Maxim USA Holding Company I LLC, which in turn owns 100 percent of Maxim Power (USA) Holding Company II LLC (Maxim USA Holding II). Maxim USA Holding II owns the Forked River Generating Plant (Forked River Facility), an 87 MW gas-fired combustion turbine power plant located in Queen County, New Jersey in the PJM Interconnection, L.L.C. (PJM) BAA. Forked River is an EWG that has been granted market-based rate authority. The output of Forked River Facility is sold to FirstEnergy Solution Corp. (FirstEnergy) under a long-term power purchase agreement.

Maxim USA Holding II also owns 100 percent of Pittsfield Power Holding Company, LLC, which in turn owns 100 percent of Pittsfield Power GP LLC (Pittsfield GP) and 99 percent of Pittsfield Generating. Pittsfield GP owns the remaining 1 percent of Pittsfield generating. Pittsfield Generating owns the Pittsfield Generating Plant (Pittsfield Facility), a 181 MW combined cycle power plant located in Pittsfield, Massachusetts in the ISO New England (ISO-NE) BAA. Pittsfield Generating is an EWG that has been granted market-based rate authority. The Pittsfield Facility is interconnected to the transmission system of Western Massachusetts Electric Company. Pittsfield Generating receives forward capacity payments from ISO-NE, and sells energy from the Pittsfield Facility into ISO-NE's day-ahead and real-time energy markets.

Maxim USA owns a 100 percent interest in Pawtucket Power Holding Company, LLC (Pawtucket Holding). Pawtucket Holding owns 100 percent of Pawtucket Power Generation, L.L.C. (Pawtucket GP), and 99 percent of Pawtucket Power. Pawtucket GP owns the remaining 1 percent of Pawtucket Power. Pawtucket Power owns the Pawtucket Generating Plant (Pawtucket Power Facility), a 64 MW natural gas-fired combined cycle cogeneration power plant located in Pawtucket, Rhode Island in the ISO-NE BAA. Pawtucket Power is an EWG and was granted market-based rate authority. Pawtucket Power receives forward capacity payments from ISO-NE, and sells energy from the Pawtucket Power Facility into ISO-NE's day-ahead and real-time energy markets.

Maxim USA's wholly-owned subsidiary Pawtucket Holding also owns 100 percent of Hartford Power Company I LLC (CDECCA Holding I) and Hartford Power Company II LLC (CDECCA II). CDECCA Holding I owns a 50 percent interest and CDECCA II owns a 49 percent interest in CDECCA, a Connecticut joint venture. CDECCA owns the CDECCA Generating Plant (CDECCA Facility), a 62 MW natural gas-fired combined cycle cogeneration power plant located in Hartford, Connecticut in the ISO-NE BAA. CDECCA is a qualifying facility (QF) and was granted market-based rate authority. The CDECCA Facility is interconnected to the transmission system of Connecticut Light and Power Company. CDECCA receives forward capacity payments from ISO-NE, and sells energy from the CDECCA Facility into ISO-NE's day-ahead and real-time energy markets.

Patriot Power is a newly-formed subsidiary of RPP, a private equity fund that is managed exclusively by its General Partner, RCL. Patriot Power is neither a public utility nor a public utility holding company, but will become a public utility holding company solely for the Applicants upon consummation of the Proposed Transaction. Patriot Power is also affiliated with several Commission-jurisdictional entities in the PJM BAA, the New York Independent System Operator (NYISO) BAA, California Independent System Operator (CAISO) BAA and the Mid Continent Independent System Operator (MISO) BAA.

Applicants state that a separate investment fund exclusively managed by RCL, RPP II, intends to acquire a partial ownership interest in Patriot Power prior to or after the closing of the Proposed Transaction. After the Proposed transaction closes, Patriot Power may transfer its indirect ownership interests in certain of the applicants to a yet-to-be formed wholly-owned subsidiary of RPP. Applicants state neither RPP II nor any-as-yet-to-be formed subsidiary of RPP or RPP II that acquires an interest in an Applicant will hold any interest in Commission jurisdictional assets prior to the acquisition of an interest in an Applicant. RPP, RPP II and any of its yet-to-be-formed subsidiaries that acquire an interest in any Applicant will be under common management and control with Patriot Power.

Under the Proposed Transaction, Patriot Power will purchase, subject to the terms and conditions set forth in the Purchase and Sale Agreement (PSA) between Patriot Power and Maxim Corp., all of the issued and outstanding shares of Maxim USA, the indirect upstream owner of 94.89 percent of the issued and outstanding ownership interests in Basin Creek and 100 percent of the issued and outstanding ownership interests in each of the remaining Applicants.

Applicants state that the Proposed Transaction will not have an adverse effect on competition, rates, and regulation, and will not result in any cross-subsidization concerns. The application states that the Proposed Transaction will not have an adverse effect on competition. The application states that the Applicants do not have any horizontal market

power in their relevant markets – the NorthWestern Energy BAA for Basin Creek, the PJM BAA for Forked River, and the ISO-NE BAA for CDECCA, Pawtucket Power, and Pittsfield Generating. Within these BAAs, the Forked River Facility is, according to Applicants, located in the PJM east submarket and the CDECCA Facility is located in the ISO-NE (CT submarket).

In the PJM BAA and the PJM East Submarket, affiliates of Patriot Power currently own interests in three generating facilities in the PJM BAA: (1) the 225 MW Eagle Point Facility; (2) the 475.6 MW B.L. England Station, and (3) the 20 MW Hazel Spindle Facility. Under the Proposed Transaction, if the combined generation of these facilities were added to the 87 MW of the Forked River Facility, the combined 807.6 MW of capacity would represent less than 0.5 percent of the 181,896 MW of installed capacity in the PJM BAA and PJM East Submarket. In addition, Applicants state that the Forked River Facility is the only generating facility located in the PJM BAA that is being acquired under the Proposed Transaction and all of its capacity and energy is fully committed to an unaffiliated purchaser pursuant to a long-term contract.

Applicants state that in the NorthWestern Energy BAA there is no overlap between the generation owned or controlled by Applicants and Patriot Power's Affiliates in the NorthWestern BAA. Patriot Power and its affiliates do not own or control any generating facilities in the NorthWestern Energy BAA. In addition the energy and capacity of the Basin Creek Facility is fully committed to an unaffiliated purchaser pursuant to a long-term agreement.

In the ISO-NE BAA or the CT submarket, Applicants own or control three facilities: (1) the 62 MW CDECCA Facility; (2) the 64 MW Pawtucket Power Facility; and (3) the 181 MW Pittsfield Generating Facility. Applicants state that neither Patriot Power nor its affiliates own or control any jurisdictional generation facilities in the ISO-NE BAA or the CT submarket. Applicants state that the Proposed Transaction does not present any horizontal market power concerns in the ISO-NE BAA or the CT Submarket because it will not result in any overlap between the generation owned or controlled by Applicants and Patriot Power and its affiliates.

Therefore, Applicants conclude that the Proposed Transaction does not raise any horizontal market power concerns in any of the relevant markets.

Applicants state that the Proposed Transaction does not raise any vertical market power concerns. The application states that neither Patriot Power nor any of its affiliates owns or controls electric transmission facilities in the United States, other than the limited facilities necessary to interconnect individual generating units to the transmission grid. In addition, neither Patriot Power nor any of its affiliates owns or control any inputs to electric power production, which could be used to prevent competitors from entering the Applicants relevant markets. Therefore, Applicants assert that the Proposed Transaction will have no adverse effect on vertical market power in the relevant markets.

Applicants state that the Proposed Transaction will have no adverse effect on rates. The application states that after consummation of the Proposed Transaction, the Applicants will continue to make wholesale sales of electric energy, capacity and ancillary services at market-based rates. Applicants further state that the existing agreements under which the output of the Basin Creek Facility and the Forked River Facility are fully committed to third-party purchases will remain in place after consummation of the Proposed Transaction. The application also states that neither Applicants nor Patriot Power or its affiliates own or are affiliated with a traditional utility with captive retail or wholesale customers. Therefore, Applicants state that the Proposed Transaction will have no adverse effect on wholesale ratepayers or transmission customers.

With respect to the effect on regulation, Applicants state that the Proposed Transaction will not affect the manner or extent to which the Commission, any state, or any other federal agency may regulate Applicants and their affiliates. Applicants state that upon completion of the Proposed Transaction, they will continue to be subject to the jurisdiction of the Commission (and any other regulatory agency or office) to the same extent as before the Proposed Transaction.

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. The application states that none of Applicants' or their affiliates is a traditional public utility associate company that has captive ratepayers in the United States or that owns or provides transmission service over jurisdictional transmission facilities in the United States. Therefore, Applicants state that the Proposed Transaction is within the scope of the "safe harbor" for transaction in which "no franchised public utility with captive customers is involved in the transaction" and does not raise any issue with respect to cross-subsidization.

In addition, Applicants verify that based on facts and circumstances known to them or that are reasonably foreseeable, that the Proposed Transaction will not result in, at the time of the Proposed Transaction or in the future: (1) any transfers 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 issuances 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 companies 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.

This filing was noticed on August 27, 2013, with comments, protests or interventions were due on or before September 16, 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) (2012). Any opposed or untimely filed motion to intervene is governed by the provisions 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.² The foregoing authorization may result in a change in status. Accordingly, Applicants are advised to make a change in status filing as required by Order No. 652, if necessary. In addition, Applicants shall make appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed 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 cost, or any other matter whatsoever now pending or which may become 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 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 (2013) shall be made;

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).

- (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 under 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 (2013). 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 (2013).

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