

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on August 1, 2016

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair
Patricia L. Acampora
Gregg C. Sayre
Diane X. Burman

CASE 16-M-0370 - Joint Petition of RED-Rochester, LLC, RED Investment, LLC, RED Parent, LLC, Ironclad Energy Partners LLC, Ironclad Energy Ventures, LLC and Stonepeak Infrastructure Fund II LP for a Declaratory Ruling Establishing the Wallkill Presumption, or Alternatively, Approval of Upstream Transfer of Ownership Interests of RED-Rochester, LLC.

DECLARATORY RULING ON REVIEW
OF ACQUISITION TRANSACTIONS

(Issued and Effective August 2, 2016)

BY THE COMMISSION:

INTRODUCTION

In a petition filed on June 17, 2016, RED-Rochester, LLC (RED-Rochester), RED Investment, LLC (RED Investment), RED Parent, LLC (RED Parent), Ironclad Energy Partners LLC (Ironclad), Ironclad Energy Ventures, LLC (IEV), and Stonepeak Infrastructure Fund II LP (Stonepeak) (collectively, Petitioners) request issuance of a declaratory ruling that the proposed upstream transfer of ownership interests in RED-Rochester need not be reviewed further under Public Service Law (PSL) §§70, 83, and 89-h (Petition). Alternatively, the

Petition request approval of the transaction pursuant to those sections of the PSL.

RED-Rochester owns and operates a power plant and other utility systems at the Eastman Business Park (Eastman Park) located in Rochester, New York. The Commission previously approved a lightened regulatory framework applicable to RED-Rochester.¹ RED-Rochester is a wholly-owned subsidiary of RED Investment, which is a wholly-owned subsidiary of RED Parent. Through the proposed transaction described in the Petition, RED Parent would sell its ownership interest in RED Investment to Ironclad.

Responses to the petition were due within the 21-day period prescribed under the Commission's Rules of Procedure, 16 NYCRR §8.2(c), which expired on July 8, 2016. Five letters in support of the proposed transaction were received from Eastman Kodak Company (Kodak), Rochester Silver Works, LLC, ON Semiconductor, LiDestri Foods, Inc., and Ortho-Clinical Diagnostics, Inc.; all of which are direct utility customers of RED-Rochester. In this ruling, the Commission determines that no further review under the PSL is warranted, and accordingly grants the relief requested in the Petition.

THE PETITION

Petitioners begin by describing Ironclad as a limited liability company and a joint venture between Stonepeak and IEV. The principals of Ironclad are John Prunkl (CEO) and Christopher Fanella (President and CFO) (collectively, the Ironclad Principals). Stonepeak, Petitioners continue, is a Delaware

¹ Case 13-M-0028, RED-Rochester, LLC and Eastman Kodak Company, Order Approving Transfer Subject to Conditions, Providing for Lightened Ratemaking Regulation, and Making Other Findings (issued May 30, 2013).

limited partnership with experience developing, constructing, owning, and operating multiple cogeneration facilities in North America. According to Petitioners, Stonepeak will own approximately 98% of Ironclad. The other 2% of Ironclad, Petitioners explain, will be held by IEV, a Delaware limited liability company established with John Prunkl as the single member. However, Petitioners indicate that Christopher Fanella is being added as a member of IEV, at which point both members will own a 50% interest in the company. The Ironclad principles, Petitioners assert, have experience developing, acquiring, financing, building, owning, operating, maintaining, upgrading and managing various utility plants throughout the United States and internationally, with specific experience providing service to industrial customers.

Turning to RED-Rochester, Petitioners describe the company as a wholly-owned subsidiary of RED Investment, which in turn, is a wholly-owned subsidiary of RED Parent. RED-Rochester, Petitioners state, owns and operates the utility systems at the Eastman Park. A key component of those systems, Petitioners continue, is a "tri-generation" power plant that simultaneously generates electricity, steam, and refrigeration for use at the Eastman Park. RED-Rochester, Petitioners explain, also owns and operates distribution facilities used to distribute the outputs of the power plant, and to generate, collect, treat and/or distribute, compressed air, demineralized water, natural gas, high-purity water, nitrogen, 9° calcium chloride brine, chilled water, industrial water, potable water, fire water and industrial wastewater treatment. RED-Rochester acquired the utility systems at the Eastman Park in 2013, Petitioners avow, when the Commission approved the transfer from

Kodak to RED-Rochester,² and subsequently granted RED-Rochester the necessary Certificates of Public Convenience and Necessity (CPCNs).³

THE Eastman Park, Petitioners state, is an industrial park located in the City of Rochester and the Town of Greece that covers an area of approximately four miles long by one mile wide. Within the Eastman Park, Petitioners elucidate, RED-Rochester provides utility services to Kodak and 12 independent business, all of which are direct utility customers of RED-Rochester.

Petitioners describe the proposed transaction as a sale of 100% of RED Parent's interest in RED Investment to Ironclad. Following the transaction, Petitioners continue, Ironclad will own 100% of RED Investment, which in turn, will own 100% of RED-Rochester, the entity operating the utility facilities at the Eastman Park.

Petitioners contend that no competitive issues are raised by the proposed transfer in the upstream ownership of RED-Rochester. The transfer of upstream ownership interests of RED-Rochester, Petitioners aver, does not raise any horizontal market power issues within the New York Control Area (NYCA) because neither Stonepeak, IEV, nor their respective affiliates own or control any generating capacity located in New York. Furthermore, Petitioners continue, neither Stonepeak, IEV, nor their respective affiliates own any generating capacity in the neighboring PJM Interconnections LLC (PJM) or ISO New England, Inc. (ISO-NE) markets. Thus, Petitioners offer that the

² Case 13-M-0028, supra, Order Approving Transfer Subject to Conditions, Providing for Lightened Ratemaking Regulation, and Making Other Findings.

³ Case 13-M-0028, supra, Order Confirming Prior Order and Granting Certificates of Public Convenience and Necessity (issued June 13, 2013).

proposed transfers of upstream ownership interests in RED-Rochester do not raise any horizontal market power issues.

Additionally, Petitioners claim that the proposed transfer of upstream ownership interests in RED-Rochester do not raise any vertical market power issues because neither Stonepeak, IEV, nor their respective affiliates has any ownership interest in any electric transmission or distribution facilities, or influence over inputs, like fuel or fuel transportation, into the production of generation supply within New York State. Additionally, Petitioners state that neither Stonepeak, IEV, nor their respective affiliates have any ownership or affiliation with retail energy or power marketers. Thus, Petitioners offer that the proposed transfers of upstream ownership interests in RED-Rochester do not raise any vertical market power issues.

Moreover, Petitioners contend that the proposed transfers of upstream ownership interests in RED-Rochester will not result in any adverse impacts on the interests of captive New York ratepayers. After the proposed transfers, Petitioners aver, Ironclad does not intend to change the day-to-day operations or staffing of the utility facilities operated by RED-Rochester. Moreover, Petitioners explain that the existing long-term contracts with customers at the Eastman Park will remain unchanged, and that any changes to the pricing and terms of the Utility Services Agreements is predicated on the consent of a super-majority of RED-Rochester customers on the Coordinating Committee.

Finally, Petitioners assert that the proposed transaction will enable RED-Rochester to complete the necessary boiler upgrades to comply with the U.S. Environmental Protection Agency's (EPA) National Emission Standards for Hazardous Air Pollutants (also referred to as Maximum Available Control

Technology (MACT) standards). Petitioners maintain that pursuant to the proposed transaction, Ironclad will provide 100% of the required funding for the MACT upgrades (approximately \$75 million), and will thus avoid the non-compliance penalties that could disrupt or shut down the utility facilities at the Eastman Park.

DISCUSSION AND CONCLUSION

Through the proposed transactions, Ironclad will acquire a 100% ownership interest in RED Investment, the upstream parent of RED-Rochester. For the purposes of this transaction, Petitioners have satisfied the presumption established in the Wallkill Order, under which transactions involving parent entities upstream from the entities owning wholesale electric generation facilities located in New York will be reviewed only if there is the potential for the exercise of market power or other harm to the interests of captive New York ratepayers.⁴ No such potential is apparent here, based on the facts stated in the Petition. Moreover, as mentioned above, several businesses located within the Eastman Park have filed letters in support of the proposed transaction. Those letters express that the transaction is an arrangement that will promote the long-term viability of the Eastman Park and compliance with environmental standards.

The proposed transaction does not pose the potential for the exercise of horizontal market power. Ironclad, Stonepeak, and IEV are new entrants into New York wholesale generation markets and are only acquiring interests in generation already held by RED Investment. Consequently, market concentration in those markets will not increase as a result of

⁴ Case 91-E-0350, Wallkill Generating Company, L.P., Order Establishing Regulatory Regime (issued April 11, 1994).

the transaction. Moreover, neither Ironclad, Stonepeak, nor IEV own any interests in generation operating in markets adjacent to New York.

Nor does the proposed transaction pose the potential for the exercise of vertical market power. Neither Ironclad, Stonepeak, nor IEV, exercise control over electric delivery facilities (other than interconnections), or substantial influence over inputs, like fuel, into the production of generation supply within New York. As a result, those avenues to the undue exercise of vertical market power are foreclosed. Additionally, Ironclad will provide a tangible benefit to the Eastman Park through the introduction of capital necessary to complete the MACT upgrades required by the EPA. Since this transaction, as described in the Petition, poses no other potential harm to the interests of captive ratepayers, we find, in conformance with the Wallkill Order, that we need not review the transaction further.⁵

After the transaction is consummated, lightened regulation of RED-Rochester will continue as described in the Commission's prior order providing for lightened regulation.⁶ Petitioners are reminded that, under lightened regulation, the owners of the RED-Rochester facilities and any entities controlling its operations remain subject to the PSL with

⁵ In accordance with 6 NYCRR §617.5(c)(31), the matters addressed herein constitute "interpret[at]ions of an existing code, rule or regulation," and are therefore a Type II action not subject to review under the State Environmental Quality Review Act.

⁶ Case 13-M-0028, supra, Order Approving Transfer Subject to Conditions, Providing for Lightened Ratemaking Regulation, and Making Other Findings.

respect to matters such as annual reporting,⁷ enforcement, investigation, safety, reliability, and system improvement, and the other requirements of PSL Articles 1 and 4, to the extent discussed in prior orders.⁸ Included among those requirements are the obligations to conduct tests for stray voltage on all publicly accessible electric facilities,⁹ to give notice of generation retirements,¹⁰ and to report personal injury accidents pursuant to 16 NYCRR Part 125.

The Commission finds and declares:

1. No further review will be conducted of the acquisition transaction described in the Petition filed in this proceeding and described in the body of this Ruling.
2. This proceeding is closed.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS
Secretary

⁷ Pursuant to the Order Adopting Annual Reporting Requirements Under Lightened Ratemaking Regulation, issued January 23, 2013 in Case 11-M-0294, the owners of lightly-regulated generation facilities are required to file Annual Reports.

⁸ See, e.g., Case 10-E-0501, CPV Valley LLC, Order Granting Certificate of Public Convenience and Necessity, Authorizing Lightened Ratemaking Regulation, and Approving Financing (issued May 9, 2014).

⁹ Case 04-M-0159, Safety of Electric Transmission and Distribution Systems, Order Instituting Safety Standards (issued January 5, 2005) and Order on Petitions for Rehearing and Waiver (issued July 21, 2005).

¹⁰ Case 05-E-0889, Generation Unit Retirement Policies, Order Adopting Notice Requirements for Generation Unit Retirements (issued December 20, 2005).