

UNITED STATES OF AMERICA 151 FERC ¶ 62,146
FEDERAL ENERGY REGULATORY COMMISSION

Duquesne Keystone, LLC
Duquesne Conemaugh, LLC
Chief Keystone Power, LLC
Chief Conemaugh Power, LLC

Docket No. EC15-133-000

ORDER AUTHORIZING DISPOSITION OF
JURISDICTIONAL FACILITIES

(Issued June 1, 2015)

On May 1, 2015, Duquesne Keystone, LLC (Duquesne Keystone), Duquesne Conemaugh, LLC (Duquesne Conemaugh, and together with Duquesne Keystone, Sellers), Chief Keystone Power, LLC (Chief Keystone), and Chief Conemaugh Power, LLC (Chief Conemaugh, and together with Chief Keystone, Buyers) (collectively, Applicants) filed an application pursuant to sections 203(a)(1)(A), (B), and (D) of the Federal Power Act (FPA)¹ requesting authorization for a transaction in which undivided ownership interests in the Keystone Electric Generating Station (Keystone Station) and Conemaugh Electric Generating Station (Conemaugh Station) (together, Facilities) will be transferred from Sellers to Buyers (Proposed Transaction). The jurisdictional facilities affected by the Proposed Transaction consist of various books and records, Sellers' undivided interests in the interconnection equipment associated with the Facilities, Sellers' interests in the interconnection agreements for the Facilities, and Sellers' interests in the joint rate schedules for Reactive Service for the Facilities.

Applicants state that Keystone Station is a 1,711 MW coal-fired electric generating facility located in Shelocta, Pennsylvania. The Keystone Station is interconnected to the transmission system owned by Pennsylvania Electric Company (Penelec) and operated by PJM Interconnection, L.L.C. (PJM). According to Applicants, the owners of the Keystone Station are tenants-in-common, and each owner has the right to control its proportionate share of the capacity of the facility. Applicants state that Duquesne Keystone holds a 2.47 percent undivided ownership interest as a tenant-in-common in the Keystone Station and thus has rights to approximately 42 MW of energy and capacity from the Keystone Station.

Applicants maintain that Conemaugh Station is a 1,711 MW coal-fired electric generating facility located in New Florence, Pennsylvania. The Conemaugh Station is

¹ 16 U.S.C. § 824b (2012).

also interconnected to the transmission system owned by Penelec and operated by PJM. Applicants assert that the owners of the Conemaugh Station are tenants-in-common, and each owner has the right to control its proportionate share of the capacity of the facility. Applicants state that Duquesne Conemaugh currently holds a 3.83 percent undivided ownership interest as a tenant-in-common in the Conemaugh Station and therefore has rights to approximately 66 MW of energy and capacity from the Conemaugh Station.

Applicants state that Duquesne Keystone and Duquesne Conemaugh are wholly-owned indirect subsidiaries of Duquesne Light Holdings, Inc., which is wholly-owned by DQE Holdings LLC. Each of the Sellers also holds undivided interests in interconnection equipment necessary to connect the respective Facilities to the grid. Applicants maintain that Duquesne Keystone and Duquesne Conemaugh sell energy and capacity from their shares of the Facilities at wholesale pursuant to their respective market-based rate tariffs.² Additionally, Applicants state that Duquesne Keystone and Duquesne Conemaugh are sellers under joint rate schedules for reactive supply and voltage control from generation sources service (Reactive Service) on file with the Commission. Sellers receive a *pro rata* share of the Reactive Service revenue requirement for their respective Facilities, pursuant to their respective Reactive Service rate schedules.

Applicants maintain that Chief Keystone currently holds a 41.98 percent undivided ownership interest as a tenant-in-common in the Keystone Station, giving it rights to approximately 718 MW of energy and capacity from the Keystone Station. Applicants further state that Chief Conemaugh currently holds a 31.28 percent undivided ownership interest as a tenant-in-common in the Conemaugh Station, giving it rights to approximately 535 MW of energy and capacity from the Conemaugh Station. Applicants assert that Buyers are exempt wholesale generators and have Commission-authorization to sell energy, capacity, and ancillary services at market-based rates.

According to Applicants, Buyers are wholly-owned subsidiaries of Chief Power Finance, LLC, which in turn is a wholly-owned direct subsidiary of Chief Power Holdings, LLC. Chief Power Holdings, LLC is a wholly-owned direct subsidiary of Chief Power JV, LLC (Chief Power JV), which is 96.4 percent owned by ArcLight Energy Partners Fund V, L.P. (ArcLight Fund V) through its direct, wholly-owned subsidiary AL Chief Power, LLC.

Applicants state that ArcLight Fund V is a private equity fund managed by ArcLight Capital Partners, LLC (ArcLight Capital). ArcLight Capital also manages and controls ArcLight Energy Partners Fund I, L.P., ArcLight Energy Partners Fund II, L.P.,

² *Duquesne Keystone LLC*, Docket Nos. ER06-398-000 and ER06-399-000, at 3-5, issued March 2, 2006 (unpublished letter order).

ArcLight Energy Partners Fund III, L.P., ArcLight Energy Partners Fund IV, L.P., ArcLight Energy Partners Fund VI, L.P., and ArcLight Liquid Energy Opportunities Fund, L.P. (collectively with ArcLight Fund V, the ArcLight Funds), each of which is also a private equity investment fund with a focus on the independent power sector. Applicants assert that the ArcLight Funds are affiliated with ArcLight Energy Marketing, LLC (AEM). AEM is a marketer of electric power and natural gas that has Commission-authorization to sell energy, capacity, and ancillary services at market-based rates. Applicants represent that AEM does not own or control any electric generation facilities in any market.

Applicants state that, in addition to Chief Keystone and Chief Conemaugh, the ArcLight Funds are affiliated with the following entities that own or control generation capacity in the Facilities' relevant geographic market, the PJM balancing authority area (BAA):

- CPV Shore, LLC, which is developing and will own and operate a 725 MW combined-cycle electric generating facility located in New Jersey;
- Panther Creek Power Operating, LLC, which leases and operates a 94 MW qualifying small power production facility (QF) located in Nesquehoning, Pennsylvania; and
- Westwood Generation, LLC, the owner of a 36 MW generating facility located in Tremont, Pennsylvania.

Furthermore, Applicants state that the ArcLight Funds are affiliated with certain radial generator leadlines located outside of PJM that are used solely to interconnect individual generating facilities to the grid. Applicants assert that one such affiliate, Alta Development Windpower, LLC (AWD), has sought and obtained a waiver from the requirement to file an open access transmission tariff (OATT) for its dedicated generator lead lines (AWD lines) until such time that there is a valid third party request for transmission service on those lines. ArcLight Funds are also affiliated with (i) a 212-mile, 230 kV radial generator lead line (DV Line), which currently is used solely to interconnect a 60 MW QF to the transmission grid operated by the California Independent System Operator Corporation (CAISO), and (ii) a 46-mile, 230 kV radial transmission line (Sagebrush Line) owned by Sagebrush, a California partnership, which is used to interconnect certain electric generating facilities to the CAISO grid. Applicants state that third-party service on each of the DV Line and the Sagebrush Line is governed by an OATT on file with the Commission. Aside from these facilities, Applicants assert that none of the ArcLight Funds or any of their affiliates owns a 10 percent or greater voting interest in or controls any other electric transmission facilities in the United States, except for the limited equipment necessary to interconnect individual generating facilities to the transmission grid.

Applicants state that affiliates of the ArcLight Funds own or control sites for new generation capacity development in various markets, including the PJM BAA, but none of the ArcLight Funds or any of their affiliates owns or controls any other inputs to electricity products or electric power production. Additionally, Applicants state that the ArcLight Funds are not affiliated with any public utility with a franchised electric service territory.

Under the Proposed Transaction, Applicants maintain that Duquesne Keystone will transfer its 2.47 percent undivided ownership interest in the Keystone Station to Chief Keystone and Duquesne Conemaugh will transfer its 3.83 percent undivided ownership interest in the Conemaugh Station to Chief Conemaugh. As a result of the Proposed Transaction, Applicants assert that Chief Keystone will own a 44.45 percent undivided ownership interest as a tenant-in-common in the Keystone Station and related interconnection equipment and thus have rights to approximately 760 MW of energy and capacity from the Keystone Station. Likewise, Chief Conemaugh will own a 35.11 percent undivided ownership interest as a tenant-in-common in the Conemaugh Station and related interconnection equipment and therefore have rights to approximately 601 MW of energy and capacity from the Conemaugh Station. Additionally, Applicants note that, in connection with the Proposed Transaction, Buyers will also succeed to Sellers' interests in the joint rate schedules for Reactive Service for the Facilities.

Applicants state that the Proposed Transaction is consistent with the public interest because it will not have an adverse effect 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.

With respect to horizontal market power, Applicants state that the Proposed Transaction raises no concerns. Applicants state that Buyers are currently affiliated with 2,108 MW of generation capacity in the PJM BAA. With the additional 108 MW that Buyers will acquire as a result of the Proposed Transaction, Applicants assert that Buyers will be affiliated with approximately 2,216 MW, representing 1.2 percent of the 183,724 MW of installed generation capacity in the PJM BAA. Applicants assert that this post-transaction market share is *de minimis* and 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 PJM BAA.

With regard to vertical market power, Applicants state that the Proposed Transaction raises no concerns. Applicants state that the Proposed Transaction does not involve any transmission facilities (except for limited interconnection equipment necessary to connect the Facilities to the grid) or any essential inputs to electricity products or electric power production. Applicants further state that none of Buyers or any of their affiliates owns a 10 percent or greater voting interest in, controls, or operates

any electric transmission facilities in the United States, except for the AWD Line, DV Line, Sagebrush Line, and other limited equipment necessary to interconnect individual generating facilities to the transmission grid. With respect to the AWD Lines, Applicants assert that they are limited and discrete transmission facilities that are not integrated transmission facilities. Applicants maintain that the DV Line and Sagebrush Line are subject to OATTs on file with the Commission; therefore Applicants conclude these radial generator lead lines do not raise any vertical market power concerns. Last, Applicants state that Buyers' affiliation with certain inputs to electric power production does not raise competitive concerns, because the Commission has adopted a rebuttable presumption that ownership or control of such inputs does not allow wan entity to erect barriers to market entry.

According to Applicants, the Proposed Transaction will have no adverse effect on rates. Applicants state that the output from Sellers' share of the Facilities will continue to be sold at market-based rates under Buyers' ownership. Furthermore, Applicants assert that the joint rate schedules for Reactive Service from the Facilities set forth a fixed rate revenue requirement which will not change as a consequence of the Proposed Transaction. Applicants also explain that the Proposed Transaction does not involve transmission rates or transmission customers. For these reasons, Applicants conclude that the Proposed Transaction will have no adverse effect on wholesale ratepayers or transmission customers.

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. Applicants state that the extent to which they and their affiliates are subject to the jurisdiction of the Commission (or any other regulatory agency or office) will not change as a result of the Proposed Transaction.

Applicants state that the Proposed Transaction falls within one of the "safe harbors" established by the Commission, because none of the parties to the Proposed Transaction is a traditional public utility that has captive ratepayers in the United States or that owns or provides transmission service over jurisdictional transmission facilities in the United States.

Additionally, 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: (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.

The filing was noticed on May 4, 2015, with comments, protests, or interventions due on or before May 22, 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.³

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.

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.⁴ 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 any necessary filings under section 205 of the FPA 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:

³ 18 C.F.R. § 385.214 (2014).

⁴ *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).

- (1) The Proposed Transaction is authorized upon the terms and conditions and for the purposes set forth in this order;
- (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 costs, 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 Proposed Transaction results in changes in the status or upstream ownership of Applicants' qualifying facilities, an appropriate filing for recertification pursuant to 18 C.F.R. § 292.207 shall be made;
- (6) Applicants shall make 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. 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