

139 FERC ¶ 62,022  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

PPL Generation LLC  
AES Ironwood, L.L.C.

Docket No. EC12-76-000

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

(Issued April 6, 2012)

On February 27, 2012, as supplemented on March 14, 2012, PPL Generation LLC (PPL Generation, or Buyer) and AES Ironwood, L.L.C. (Ironwood) (collectively Applicants), along with AES Ironwood, Inc. (AES Ironwood, or Seller) filed an application pursuant to sections 203(a)(1) and 203(a)(2) of the Federal Power Act (FPA)<sup>1</sup> requesting Commission authorization for a disposition of jurisdictional facilities resulting from the transfer to a to-be newly formed subsidiary of PPL Generation (PPL Newco) of all of the issued and outstanding membership interests in Ironwood (Proposed Transaction). The jurisdictional facilities involved in the Proposed Transaction consist of interconnection facilities, books, records, market-based rate tariff and wholesale electric contracts.

Applicants state that PPL Generation is a Delaware limited liability company and a wholly-owned subsidiary of PPL Energy Supply, LLC (PPL Energy Supply). Applicants add that PPL Energy Supply is a power marketer authorized by the Commission to sell electricity, capacity, and ancillary services at market-based rates in the Northeast Region and is a wholly-owned subsidiary of PPL Corporation (PPL), a public utility holding company. Applicants state that through PPL Energy Supply, PPL Generation, and other subsidiaries, PPL owns or controls approximately 19,000 megawatts (MW) of generating capacity in the United States.

Applicants state that PPL Newco will be a newly-formed direct, wholly-owned subsidiary of PPL Generation that will be the direct parent of Ironwood once the transaction is consummated. Applicants add that PPL Newco also will be the parent of AES Prescott, L.L.C. (Prescott), which will be renamed after consummation of the Proposed Transaction. Applicants also state that Prescott operates a 705 MW combined generating facility (Ironwood Facility) located Pennsylvania and interconnected with Metropolitan Edison Company, d/b/a GPU Energy (Met Ed) in the PJM Interconnection L.L.C. (PJM) balancing authority area.

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<sup>1</sup> 16 U.S.C. § 824b (2006).

Applicants state that Prescott operates the Ironwood Facility pursuant to a long-term operating agreement with Ironwood. Applicants add that pursuant to this tolling agreement, PPL EnergyPlus, LLC (PPL EnergyPlus) is entitled to the output of the Ironwood Facility. Applicants continue that pursuant to this tolling agreement, and as acknowledged by the Commission,<sup>2</sup> the output of the Ironwood Facility currently is under the control of PPL EnergyPlus.

Applicants state that PPL EnergyPlus is a Pennsylvania limited liability company and a power marketer authorized to sell electric energy, capacity and ancillary services at market-based rates. Applicants continue that PPL EnergyPlus is a wholly owned subsidiary of PPL Energy Supply, and an affiliate of PPL Generation. Applicants add that other than the Ironwood tolling agreement, PPL EnergyPlus does not own or control facilities for the generation, transmission, or distribution of electric energy. Applicants state that PPL EnergyPlus sells power at wholesale pursuant to contracts subject to the Commission's jurisdiction.

Applicants state that PPL Electric Utilities Corporation (PPL Electric) has been granted market-based rate authority by the Commission. It further states that it owns transmission and distribution facilities located within the PJM balancing authority area. Applicants continue that PPL Electric is a wholly owned subsidiary of PPL and an affiliate of PPL Generation. PPL Electric does not have captive customers. PJM directs the operation of PPL Electric's transmission facilities, and transmission service over these facilities is provided pursuant to the PJM Open Access Transmission Tariff (OATT). PPL Electric provides energy and capacity to retail customers within its service territory in central eastern Pennsylvania as a provider of last resort in accordance with Pennsylvania's Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. § 2801, *et seq.*

Applicants state that Ironwood is a wholly owned subsidiary of AES Ironwood, which is itself a wholly owned subsidiary of The AES Corporation (AES), a public utility holding company that owns and operates both traditional utility and competitive generating business segments in the United States and overseas. Applicants continue that AES indirectly owns more than 16,700 MW of U.S. electric generation through competitive generation subsidiaries and two traditional vertically integrated utilities. Ironwood is an exempt wholesale generator with market-based rate authority.

Applicants state that Ironwood owns the Ironwood Facility, as described above. Applicants add that, as previously indicated, the entirety of the output of the Ironwood Facility is dedicated to PPL EnergyPlus through the Ironwood tolling agreement.

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<sup>2</sup> *PPL EnergyPlus, LLC and BE Ironwood, LLC*, 123 FERC ¶ 62,170.

Applicants state that the 20-year tolling agreement began on the commercial operation date of the Ironwood Facility, December 30, 2001, and is scheduled to terminate on December 30, 2021. Applicants state that PPL EnergyPlus also maintains, and will continue to maintain, a rate schedule for the provision of reactive power from the Ironwood Facility.

Applicants state that pursuant to the Proposed Transaction, Buyer, through PPL Newco, will acquire from Seller all of the outstanding membership interests in Ironwood, thus obtaining ownership of the Ironwood Facility. Applicants continue that Buyer will become the indirect owner of the Ironwood Facility, which, as previously explained, already is under the control of its affiliate, PPL EnergyPlus. Applicants add that Buyer also will become the indirect owner of Prescott. Buyer will form a new wholly owned subsidiary, PPL Newco, which will be the direct owner of Ironwood and Prescott upon consummation of the Proposed Transaction.

Applicants state that the Proposed Transaction is consistent with the public interest and will have no adverse effect on competition, rates, or regulation, nor will it result in any cross-subsidization or the pledge or encumbrance of utility assets to any associated company. Applicants state that the Proposed Transaction will have no adverse impact on horizontal competition because Buyer's affiliate already controls the output of the Ironwood Facility. Applicants state that accordingly, there will be no change in market concentration levels associated with the Proposed Transaction.

Applicants state that Buyer is affiliated with a transmission owner in PJM, PPL Electric. Applicants state that the Proposed Transaction does not raise any vertical market power concerns because PJM will continue to direct the operations of PPL Electric's transmission facilities and provide transmission service pursuant to the PJM OATT. Applicants state that subsidiaries of PPL Generation control various sites in the PJM region that may be used for new generation capacity development and for which site control has been demonstrated in the interconnection process. Applicants state that the control of these sites is not of sufficient magnitude to allow Buyer or its affiliates to create barriers to entry by competing suppliers or to increase their costs. Applicants add that there are no other inputs to electric power production owned by the Buyer or its affiliates that could be used to restrict downstream competitors' access to upstream supply markets or to increase potential competitors' costs.

Applicants state that the Proposed Transaction will have no adverse effect on wholesale ratepayers or transmission customers. Applicants state that Ironwood will sell its output under its Commission-granted, market-based-rate authority, rather than at cost-based rates. Applicants state that the existing tolling arrangement by which PPL EnergyPlus is entitled to the output of the Ironwood Facility will remain in place. Applicants add that the Proposed Transaction does not involve transmission rates 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 Ironwood. Applicants state that Ironwood will continue to be subject to the jurisdiction of the Commission in its capacity as a public utility. Accordingly, Applicants state that the Proposed Transaction will not impair the effectiveness of state or federal regulation.

Applicants state that 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. Applicants assert that the transaction falls within one of the “safe harbors” adopted by the Commission,<sup>3</sup> specifically that none of the Applicants are a franchised public utility with captive customers.

In addition, Applicants state that based on facts and circumstances known, the Proposed Transaction will not result in, at the time of the 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 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 company that has captive customers or that own or provide transmission service over jurisdictional transmission facilities, other than non-power goods and services agreements subject to review under Sections 205 and 206 of the Federal Power Act.

The filing was noticed on February 27, 2012, with comments, protests or interventions due on or before March 19, 2012. 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 (18 C.F.R. § 385.214). Any opposed or untimely filed motion to intervene is governed by the provision of Rule 214.

Information and/or systems connected to the bulk power system involved in this transaction may be subject to reliability and cybersecurity standards approved by the Commission pursuant to FPA section 215. Compliance with these standards is

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<sup>3</sup> *FPA Section 203 Supplemental Policy statement*, 72 Fed. Reg. 42,277 (August 2, 2007), FERC Stats & Regs. ¶ 31,235 (2007), order on clarification and reconsideration 21 FERC ¶ 61,157 (2008).

mandatory and enforceable regardless of the physical location of the affiliates or investors, information databases, 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, NERC 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. The foregoing authorization may result in a change in status. In addition, Applicant shall make appropriate filings under section 205 of the FPA, to implement the Transaction.

After consideration, it is concluded that the Proposed Transaction is consistent with the public interest and is hereby 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 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 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 shall be made;
- (6) Applicants shall make appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transaction; and
- (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

Document Content(s)

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