

133 FERC ¶ 61,131  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinohoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
John R. Norris, and Cheryl A. LaFleur.

ArcLight Energy Marketing, LLC

Docket Nos. ER07-1106-007  
ER07-1106-010

Denver City Energy Associates, L.P.

Docket No. ER97-4084-012

Lea Power Partners, LLC

Docket No. ER07-751-003

ORDER ACCEPTING UPDATED MARKET POWER ANALYSIS  
AND NOTICE OF CHANGE IN STATUS

(Issued November 10, 2010)

1. In this order, the Commission accepts an updated market power analysis for the Southwest Power Pool (SPP) region filed by ArcLight Energy Marketing, LLC (ArcLight) on February 26, 2010, as amended on July 16, 2010. Additionally, the Commission accepts a notice of change in status filed by ArcLight, Denver City Energy Associates, L.P. (Denver City), and Lea Power Partners, LLC (Lea Power) (collectively, Sellers) on July 2, 2010. As discussed below, the Commission concludes that Sellers continue to satisfy the Commission's standards for market-based rate authority.<sup>1</sup>

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<sup>1</sup> *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010).

## **I. Background**

2. ArcLight is authorized to sell energy, capacity, and ancillary services at market-based rates.<sup>2</sup> ArcLight states that it does not own or control any electric generation, transmission, or distribution facilities in the United States.

3. ArcLight represents that it is a wholly-owned subsidiary of ArcLight Energy Markets, LLC, which is a wholly-owned subsidiary of ArcLight Liquid Energy Opportunities Fund, L.P. (ArcLight Liquid Energy).<sup>3</sup> ArcLight adds that it is a wholly-owned direct subsidiary of ArcLight Capital Partners, LLC (ArcLight Capital).<sup>4</sup> ArcLight Capital also manages and controls ArcLight Liquid Energy, ArcLight Energy Partners Fund I, L.P., ArcLight Energy Partners Fund II, L.P., ArcLight Energy Partners Fund III, L.P., and ArcLight Energy Partners Fund IV, L.P. (collectively, the ArcLight Funds).<sup>5</sup> The ArcLight Funds are private equity investment funds affiliated with certain existing electric generation facilities in the United States.

4. ArcLight states that, in the SPP region, it is affiliated with the owner of a 604 megawatt (MW) generation facility, a partial owner of a 489 MW generation facility, and the owner of a 227 MW generation facility.

5. ArcLight adds that it is affiliated with Terra-Gen Dixie Valley, LLC (Terra-Gen), which owns a 212-mile, 230 kV radial transmission line (Dixie Valley Line).<sup>6</sup>

### **A. Updated Market Power Analysis**

6. On February 26, 2010, ArcLight filed an updated market power analysis in compliance with the regional reporting schedule adopted in Order No. 697 and pursuant

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<sup>2</sup> *ArcLight Energy Marketing, LLC*, Docket No. ER07-1106-000 (July 25, 2007) (delegated letter order). ArcLight's market-based rate tariff reflects that ArcLight is a Category 1 seller in the Northeast, Central, and Northwest regions and a Category 2 seller in the Southeast, Southwest Power Pool, and Southwest regions.

<sup>3</sup> Sellers' July 2, 2010 Filing at 2.

<sup>4</sup> ArcLight's February 26, 2010 Filing at 2.

<sup>5</sup> Sellers' July 2, 2010 Filing at 2.

<sup>6</sup> *Id.* at 5.

to the Commission's order granting ArcLight authority to sell electric energy, capacity, and ancillary services at market-based rates.

7. Subsequently, the Director, Division of Electric Power Regulation - West, under 18 C.F.R. § 375.307, acting under delegated authority, requested additional information from ArcLight. Specifically, the Director requested information pertaining to ArcLight's representations that affiliates of the ArcLight Funds may own passive interests in electric generation facilities as a result of sale/leaseback transactions or other forms of passive ownership.

8. On July 16, 2010, ArcLight submitted a response to the June 16, 2010 request.

**B. Change in Status**

9. On July 2, 2010, Sellers filed a notice of change in status to report a change in the upstream ownership of Denver City and certain new affiliations. Denver City owns a 50 percent undivided interest in the 489 MW Mustang Station located in the SPP region. Denver City is authorized to sell electric energy and capacity at market-based rates.<sup>7</sup>

10. Denver City was indirectly owned by private equity investment funds owned or controlled by EIF Management, LLC (EIF Funds) and by UnionBanCal Equities, Inc. (UnionBanCal). Sellers report that, on April 15, 2010, the Commission authorized the sale and transfer of the upstream equity interests in Denver City to one or more of the ArcLight Funds.<sup>8</sup> This sale was part of a larger transaction in which certain ArcLight Funds acquired indirect interests in other generating projects, and passive interests in an independent transmission entity in the Northeast region (hereafter, the Transaction).<sup>9</sup>

11. Specifically, pursuant to the Transaction, on June 4, 2010, EIF Funds' and UnionBanCal's indirect interests in Denver City were transferred to Great Point Power, LLC (Great Point), which is a wholly-owned subsidiary of one or more of the ArcLight Funds. Great Point also indirectly acquired Borger Energy Associates, L.P. (Borger),

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<sup>7</sup> *GS Electric Generating Cooperative, Inc.*, 81 FERC ¶ 61,042 (1997).

<sup>8</sup> Sellers' July 2, 2010 Filing at 3, citing *Denver City Energy Associates, L.P.*, 131 FERC ¶ 61,029 (2010).

<sup>9</sup> In addition to Denver City, the Transaction involved the transfer of upstream equity interests in Borger Energy Associates, L.P., Crockett Cogeneration, and Hamakua Energy Partners, L.P., and certain passive indirect interests in Neptune Regional Transmission System, LLC.

who owns the 227 MW Blackhawk Power Station located in the SPP Region, and 67 percent of Crockett Cogeneration (Crockett), who owns a 247 MW facility (Crockett Facility) located in the market operated by the California Independent System Operator Corporation (CAISO).<sup>10</sup>

12. Sellers maintain that the Transaction does not affect the conditions the Commission relied upon when granting market-based rate authority.

## **II. Notice and Responsive Pleadings**

13. Notice of ArcLight's February 26, 2010 filing was published in the *Federal Register*,<sup>11</sup> with interventions or protests due on or before April 27, 2010. Green Borders Geothermal, LLC (Green Borders) filed a motion to intervene and protest on April 27, 2010.

14. Notice of ArcLight's July 16, 2010 filing was published in the *Federal Register*,<sup>12</sup> with interventions or protests due on or before August 6, 2010. None was filed.

15. Notice of Sellers' July 2, 2010 change in status filing was published in the *Federal Register*,<sup>13</sup> with interventions or protests due on or before July 23, 2010. None was filed.

## **III. Discussion**

### **A. Procedural Matters**

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), Green Borders' timely, unopposed motion to intervene makes it a party to this proceeding.

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<sup>10</sup> Sellers represent that all of the capacity owned or controlled by the ArcLight Funds and its affiliates in the CAISO market (including the capacity of the Crockett Facility) is fully committed under long-term agreements. Sellers' July 2, 2010 Filing at 4-5.

<sup>11</sup> 75 Fed. Reg. 11,155 (2010).

<sup>12</sup> 75 Fed. Reg. 45,612 (2010).

<sup>13</sup> 75 Fed. Reg. 40,808 (2010).

**B. Analysis****1. Market-Based Rate Authorization**

17. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, horizontal and vertical market power.<sup>14</sup> As discussed below, the Commission concludes that Sellers continue to satisfy the Commission's standards for market-based rate authority.

**a. Horizontal Market Power**

18. ArcLight states that it does not own or control any generation. However, in the Southwestern Public Service Company balancing authority area in the SPP region, ArcLight acknowledges that it is affiliated with: Lea Power, an exempt wholesale generator that owns and operates the 604 MW Hobbs Generating Station;<sup>15</sup> Denver City, that owns a 50 percent undivided interest in the 489 MW Mustang Station; and Borger, that owns the 227 MW Blackhawk Power Station. Additionally, ArcLight represents that all of the capacity owned and controlled by its affiliates in the SPP region is fully committed under long-term power purchase agreements.

19. Based on ArcLight's representations in its updated market power analysis and notice of change in status that it does not own or control any generation and that all of the capacity owned and controlled by its affiliates in the SPP region is fully committed under long-term power purchase agreements, we find that ArcLight satisfies the Commission's requirements for market-based rates regarding horizontal market power in the SPP region.

20. Additionally, based on Sellers' representations in the July 2, 2010 notice of change in status that all of the capacity owned and controlled by Sellers and their affiliates in the CAISO market is fully committed under long-term power purchase agreements, we find that Sellers satisfy the Commission's requirements for market-based rates regarding horizontal market power in the CAISO market.

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<sup>14</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 62, 399, 408, and 440.

<sup>15</sup> The Commission has authorized Lea Power to sell energy, capacity, and ancillary services at market-based rates. *Lea Power Partners, LLC*, Docket No. ER07-751-000 (June 5, 2007) (delegated letter order).

**b. Vertical Market Power**

21. In cases where a public utility, or any of its affiliates, owns, operates, or controls transmission facilities, the Commission requires that there be a Commission-approved Open Access Transmission Tariff (OATT) on file before granting a seller market-based rate authorization.<sup>16</sup>

22. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.<sup>17</sup> The Commission requires a seller to provide a description of its ownership of, control of, or affiliation with an entity that owns or controls intrastate natural gas transportation, intrastate natural gas storage or distribution facilities; sites for generation capacity development; and physical coal supply sources and ownership of or control over who may access transportation of coal supplies (collectively, inputs to electric power production).<sup>18</sup> The Commission also requires sellers to make an affirmative statement that they have not erected barriers to entry into the relevant market and will not erect barriers to entry into the relevant market.<sup>19</sup>

23. The Commission adopted a rebuttable presumption that the ownership or control of, or affiliation with any entity that owns or controls, inputs to electric power production does not allow a seller to raise entry barriers but will allow intervenors to demonstrate otherwise.<sup>20</sup>

24. In its updated market power analysis, ArcLight states that neither it nor any of its affiliates owns a 10 percent or greater voting interest in, operates, or controls facilities for transmission, other than the limited interconnection facilities required to connect individual generating facilities to the transmission grid. However, in the July 2, 2010 change in status filing, Sellers discuss the Dixie Valley Line and state that Terra-Gen filed a petition for declaratory order in Docket No. EL10-29-000 on December 24, 2009, in which Terra-Gen requested a waiver of the requirement to file an OATT on the line until such time that Terra-Gen receives a valid third-party request for transmission service on the line. Sellers maintain that the Dixie Valley Line is a limited and discrete

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<sup>16</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408.

<sup>17</sup> *Id.* P 440.

<sup>18</sup> *Id.* P 447. Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

<sup>19</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

<sup>20</sup> *Id.* P 446.

transmission facility, and that, therefore, ArcLight Funds' affiliation with the Dixie Valley Line does not raise vertical market power concerns.<sup>21</sup>

25. In the SPP region, ArcLight states that its affiliates control two sites for which the aggregate maximum potential number of megawatts that are reasonably commercially feasible is 500 MW. ArcLight and its affiliates also state that they own or control five sites for new generation capacity development in the CAISO market where the aggregate maximum potential number of megawatts that are reasonably commercially feasible total 1,345 MW. ArcLight further states that neither it nor any of its affiliates owns or controls inputs to electric power production.<sup>22</sup>

26. Sellers affirmatively state that they and their affiliates have not erected barriers to entry into the relevant markets and will not erect barriers to entry into the relevant markets.<sup>23</sup>

27. Green Borders protests ArcLight's updated market power analysis regarding the Dixie Valley Line controlled by ArcLight's affiliate, Terra-Gen. Green Borders requests that the Commission impose a condition on ArcLight's market-based rate authority that requires ArcLight to file an OATT in connection with the Dixie Valley Line.

**i. Dixie Valley Line**

28. In its protest, Green Borders explains that it needs to interconnect with the CAISO-controlled transmission system via the Dixie Valley Line because it is the only economically feasible way to facilitate the delivery of energy to Southern California Edison Company.

29. Green Borders states that, on January 25, 2010, it filed a complaint against Terra-Gen in Docket No. EL10-36-000 in which it requests the Commission to issue an order that: (1) finds Terra-Gen's failure to file an OATT and a large generator interconnection agreement (Interconnection Agreement) violates Commission orders and regulations and is unjust, unreasonable, and unduly discriminatory and in violation and the Commission's requirements for open access transmission under Order No. 888;<sup>24</sup> (2) directs Terra-Gen

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<sup>21</sup> Sellers' July 2, 2010 Filing at 5.

<sup>22</sup> *Id.* at 6.

<sup>23</sup> ArcLight's February 26, 2010 Filing at 4; Sellers' July 2 Filing at 6.

<sup>24</sup> Green Borders' April 27, 2010 Protest at 5, citing in part *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public*

to file an OATT and an Interconnection Agreement; and (3) finds that Green Borders should be placed at the top of the queue for interconnection and transmission service on the Dixie Valley Line.

30. As discussed above, in their July 2, 2010 notice of change in status, Sellers point out that Terra-Gen filed a request for waiver of the requirement to file an OATT until such time that Terra-Gen receives a valid third-party request for transmission service on the Dixie Valley Line. Sellers maintain that, therefore, affiliation with the Dixie Valley Line does not raise any vertical market power concerns. Sellers state that any issues related to Terra-Gen's request and Terra-Gen's obligation to file an OATT will be resolved in the proceedings involving Terra-Gen's petition for declaratory order and Green Borders' complaint.

**ii. Commission Determination Regarding the Dixie Valley Line and Vertical Market Power**

31. On September 16, 2010, the Commission issued an order granting in part and denying in part the petition for declaratory order in Docket No. EL10-29-000 and the complaint in Docket No. EL10-36-000.<sup>25</sup> In the September 16 Order, the Commission denied Terra-Gen waiver of the requirements of Order Nos. 888 and 890 and directed Terra-Gen to file an OATT, thereby granting the Green Borders' complaint in part.

32. In reaching its determination, the Commission explained that it has granted requests for waiver of the requirements of Order Nos. 888 and 890 to public utilities that can show they own, operate, or control only limited and discrete transmission facilities

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*Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002); *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

<sup>25</sup> *Terra-Gen Dixie Valley, LLC*, 132 FERC ¶ 61,215 (2010) (September 16 Order).

(i.e., facilities that do not form an integrated transmission grid), unless and until such time as the public utility receives a request for transmission service.<sup>26</sup> Should the public utility receive such a request, the Commission has determined that the public utility must file with the Commission a *pro forma* tariff within 60 days of the date of the request, and must comply with any additional requirements that are effective on the date of the request.<sup>27</sup>

33. In the September 16 Order, the Commission explained that a request for service would be sufficient to trigger the obligation to file an OATT if it satisfies the requirements of *pro forma* OATT section 17.2 for firm point-to-point service.<sup>28</sup> The Commission found that Green Borders' request for interconnection and transmission service was a request for firm point-to-point service and was sufficient to satisfy the criteria of section 17.2 of the *pro forma* OATT.<sup>29</sup> Accordingly, the Commission denied Terra-Gen's request for waiver of Order Nos. 888 and 890 and required Terra-Gen to file an OATT.

34. Therefore, based on the Commission's determination in the September 16 Order requiring ArcLight's affiliate Terra-Gen to file an OATT, we find that Green Borders' request in this proceeding that the Commission impose a condition on ArcLight's market-based rate authority to require ArcLight to file an OATT has been addressed in the September 16 Order.

35. In conclusion, based on ArcLight's representations and subject to Terra-Gen complying with the Commission's direction in the September 16 Order requiring Terra-Gen to file an OATT,<sup>30</sup> we find that ArcLight's updated market power analysis and

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<sup>26</sup> September 16 Order, 132 FERC ¶ 61,215 at P 47, citing *Milford Wind Corridor*, 129 FERC ¶ 61,149 at P 25 (2009) (*Milford*); *Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232, at 61,941 (1996).

<sup>27</sup> *Milford*, 129 FERC ¶ 61,149, at P 25; *Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232, at 61,941 (1996).

<sup>28</sup> September 16 Order, 132 FERC ¶ 61,215 at P 48, citing *Sagebrush, a California Partnership*, 132 FERC ¶ 61,234 (2010).

<sup>29</sup> September 16 Order, 132 FERC ¶ 61,215 at P 48.

<sup>30</sup> We note that on October 7, 2010, in Docket No. EL10-29-000, Terra-Gen filed a request for an extension of time to file an OATT. On October 8, 2010, the request for extension of time was granted to no later than November 15, 2010.

Sellers' notice of change in status satisfy the Commission's requirements for market-based rates regarding vertical market power.

## 2. Reporting Requirements

36. Consistent with the procedures the Commission adopted in Order No. 2001, an entity with market-based rates must file electronically with the Commission an Electric Quarterly Report (EQR) containing: (1) a summary of the contractual terms and conditions in every effective service agreement for market-based power sales; and (2) transaction information for effective short-term (less than one year) and long-term (one year or longer) market-based power sales during the most recent calendar quarter.<sup>31</sup> Public utilities must file EQRs no later than 30 days after the end of the reporting quarter.<sup>32</sup>

37. Sellers must 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.<sup>33</sup> This includes the timely submission of land acquisition reports.<sup>34</sup>

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<sup>31</sup> *Revised Public Utility Filing Requirements*, Order No. 2001, FERC Stats. & Regs. ¶ 31,127, *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reh'g denied*, Order No. 2001-B, 100 FERC ¶ 61,342, *order directing filing*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002), *order directing filing*, Order No. 2001-D, 102 FERC ¶ 61,334 (2003). Attachments B and C of Order No. 2001 describe the required data sets for contractual and transaction information. Public utilities must submit Electric Quarterly Reports to the Commission using the EQR Submission System Software, which may be downloaded from the Commission's website at <http://www.ferc.gov/docs-filing/eqr.asp>.

<sup>32</sup> The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2010). Failure to file an EQR (without an appropriate request for extension), or failure to report an agreement in an EQR, may result in forfeiture of market-based rate authority, requiring filing of a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

<sup>33</sup> *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); 18 C.F.R. § 35.42 (2010).

<sup>34</sup> *See* Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 at P 18 (requiring market-based rate sellers to report the acquisition of control of sites for new generation capacity

(continued...)

38. Additionally, Sellers must file updated market power analyses for their respective regions where they are designated as Category 2 sellers, in compliance with the regional reporting schedule adopted in Order No. 697.<sup>35</sup> The Commission also reserves the right to require such an analysis at any intervening time.

The Commission orders:

(A) ArcLight's updated market power analysis is hereby accepted for filing, as discussed in the body of this order.

(B) Sellers' notice of change in status is hereby accepted for filing, as discussed in the body of this order.

(C) Sellers are hereby directed to file updated market power analyses according to the regional reporting schedule adopted in Order No. 697, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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development on a quarterly basis instead of within 30 days of the acquisition); Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 at P 21-24; 18 C.F.R. § 35.42(d) (2010); *Notice of New Docket Prefix "LA" for Land Acquisition Reports and Guidelines for Filing Under Order No. 697-C*, Docket No. RM04-7-006, 75 Fed. Reg. 22,125 (2010).

<sup>35</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 882.