

149 FERC ¶ 62,187
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Mesquite Power, LLC

Docket No. EC15-22-000

ORDER AUTHORIZING DISPOSITION OF
JURISDICTIONAL FACILITIES

(Issued December 11, 2014)

On November 5, 2014, Mesquite Power, LLC (Mesquite Power or Applicant) filed an application under section 203(a)(1) of the Federal Power Act (FPA)¹ requesting Commission authorization for a transaction in which Mesquite Power will transfer 100 percent of its direct membership interests in itself to Mesquite Power Holdings, LLC (Buyer), a wholly-owned indirect subsidiary of ArcLight Energy Partners Fund V, L.P. (ArcLight Fund V) (Proposed Transaction). The jurisdictional facilities affected by the Proposed Transaction include Mesquite Power's interconnection facilities and related agreements, market-based rate tariff and associated contracts, books, and records, and the SRSG Participation Agreement.

Applicant states that it owns the 625 megawatt (MW) Block 2 of the Mesquite Generating Station and certain interconnection facilities (Interconnection Facilities) located in Maricopa County, Arizona. Applicant further states that it has Commission authorization to sell energy, capacity, and ancillary services at market-based rates. According to Applicant, the Mesquite Generating Station is interconnected to the Hassayampa Switchyard, which was built as a satellite extension of the Palo Verde Switchyard, together forming a Commission-approved "Common Bus." Applicant maintains that the Interconnection Facilities are currently utilized to interconnect the Mesquite Generating Station and the generation facility of Mesquite Solar 1, LLC (Mesquite Solar), a current affiliate of Mesquite Power, to the Hassayampa Switchyard. Applicant states that these Interconnection Facilities are jointly owned by Mesquite Power, Mesquite Solar, and the Salt River Project Agricultural Improvement and Power District (SRP). Mesquite Power and SRP each own a 50 percent membership interest in Mesquite Power Operations, LLC (Mesquite Power Operations), which operates the Mesquite Generating Station and Interconnection Facilities. Applicant asserts that Buyer's acquisition of Mesquite Power will include Mesquite Power's 50 percent membership interest in Mesquite Power Operations.

¹ 16 U.S.C. § 824b (2012).

Applicant states that Mesquite Power is a wholly-owned, direct subsidiary of Sempra Generation, LLC (Sempra Generation), which in turn is a wholly-owned indirect subsidiary of Sempra Energy, a public utility holding company based in San Diego that provides, through various subsidiaries and affiliates, a variety of electric, natural gas, and energy-related products and services. Applicant states that Sempra Generation is the seller under a long-term power purchase agreement for the sale of energy at wholesale negotiated rates of up to 271 MW of firm, day-ahead power, delivered to the Common Bus beginning on January 1, 2015, to a group of unaffiliated wholesale purchasers. Applicant notes that these purchasers are 21 members of the Southwest Public Power Resources Group (SPPR Group), an association of 40 not-for-profit utilities in Arizona and southern Nevada.

Applicant states that Buyer is a wholly-owned indirect subsidiary of ArcLight Fund V, which 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., ArcLight Energy Partners Fund III, L.P., ArcLight Energy Partners Fund IV, 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.

Applicant states that the ArcLight Funds are affiliated with ArcLight Energy Marketing, LLC (ArcLight Energy Marketing). According to Applicant, ArcLight Energy Marketing is a marketer of electric power and natural gas that is authorized by the Commission to sell energy, capacity, and ancillary services at market-based rates. Applicant states that the ArcLight Funds are affiliated with entities that own or control electric generation facilities within the United States; however, none of these facilities are located in the balancing authority area of Arizona Public Service Company (APS), which, according to Applicant, is the geographic market relevant to the Proposed Transaction.

Applicant states that the ArcLight Funds are affiliated with certain radial generator lead lines located outside of the relevant markets that are used solely to interconnect individual generating facilities to the grid and are not part of the integrated transmission system. Alta Development Windpower, LLC (AWD) and Bayonne Energy Center, LLC (BEC), two affiliates of the ArcLight Funds, have obtained waiver from the requirement to file an open access transmission tariff (OATT) for their respective dedicated generator lead lines (AWD Lines and BEC Line) until there is a valid third party request for transmission service on the lines. The ArcLight Funds are also affiliated with a 212-mile, 230 kV radial generator lead line (DV Line), which is solely used to interconnect a 60 MW qualifying facility to the transmission grid operated by the California Independent System Operator Corporation (CAISO), and also with a 46-mile, 230 kV radial transmission line (Sagebrush) owned by Sagebrush, a California partnership, which is

used to interconnect certain electric generating facilities to the CAISO grid. According to Applicant, third-party service on each of the DV Line and Sagebrush Line is governed by an OATT on file with the Commission. Applicant asserts that, aside from these facilities, 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. Additionally, Applicant states that none of the ArcLight Funds or any of their affiliates owns or controls any inputs to electricity products or electric power production.

Under the Proposed Transaction, pursuant to a purchase agreement, Applicant states that Buyer will acquire 100 percent of the direct membership interests in Mesquite Power, including its Commission-jurisdictional assets. After consummation of the Proposed Transaction, Mesquite Power will become a wholly-owned subsidiary of Buyer, which is a wholly-owned subsidiary of ArcLight Fund V.

Applicant states that the Proposed Transaction is consistent with the public interest and 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, Applicant states that the Proposed Transaction raises no concerns. Applicant states that the Proposed Transaction does not affect concentration in the relevant geographic market because there are no generation or transmission overlaps between Applicant and the Buyer. Applicant maintains that, since there are no generation and transmission overlaps, the change in concentration, as measured by applying Herfindahl-Hirschman Index (HHI), is zero. Additionally, Applicant states that the SRP BAA could be viewed as an alternative relevant geographic market, given the unique nature of the Common Bus. Under this assumption, Applicant asserts that the change in the HHI would still be zero because the Buyer owns or controls no generation or transmission assets in the SRP BAA.

With regard to vertical market power, Applicant states that the Proposed Transaction raises no concerns. Applicant states that the Proposed Transaction includes the transfer of Mesquite Power's undivided interest in limited interconnection facilities used solely to interconnect generating facilities to the grid. Because the Interconnection Facilities were designed and constructed to serve as a radial generator tie-line, not as a networked transmission facility, Applicant states that the Proposed Transaction will not have any effect on the ability of transmission customers to take transmission service in the region. Furthermore, Applicant maintains that the Proposed Transaction will not cause Buyer to gain the ability or incentive to affect prices or outputs in the downstream electricity markets or to discourage entry by new generators. Last, Applicant states that the Proposed Transaction will not result in a combination of ownership of networked

transmission facilities in any region. For these reasons, Applicant asserts that the Proposed Transaction will not result in any adverse vertical competitive impacts.

Applicant states that the Proposed Transaction will not have an adverse effect on rates. Applicant states that neither Applicant nor Buyer serves transmission customers, and no transmission facilities are being transferred that are included in the establishment of transmission rates. With respect to rates for wholesale sales, Applicant states that Mesquite Power will continue to be subject to the Commission's jurisdiction, as an entity selling energy, capacity and ancillary services at market-based rates.

Applicant states that the Proposed Transaction will not have an adverse effect on state or federal regulation. According to Applicant, neither Applicant nor Buyer has retail customers or is subject to rate regulation by any state authorities. Furthermore, Applicant states that, after closing of the Proposed Transaction, Mesquite Power will continue to be regulated by the Commission as a public utility.

Applicant states that, based on facts and circumstances known to it or that are reasonably foreseeable, the Proposed Transaction will not result in, at the time of the closing or in the future, cross-subsidization of a non-utility associate company or the pledge or encumbrance of assets of a traditional public utility that has captive customers or that owns or provides transmission service over jurisdictional facilities for the benefit of an associate company. Specifically, Applicant states that the Proposed Transaction does not involve a franchised public utility with captive customers and will not result in: (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 November 5, 2014, with comments, protests, or interventions due on or before November 26, 2014. Southwest Public Power Agency, Inc. filed a motion to intervene on November 26, 2014. 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) (2014).

Information and/or systems connected to the bulk 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 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.² 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:

- (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;

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).

- (5) If the Proposed Transaction results in changes in the status or upstream ownership of Applicant's qualifying facilities, an appropriate filing for recertification pursuant to 18 C.F.R. § 292.207 (2014) shall be made;
- (6) Applicant 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;
- (7) Applicant shall make appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transaction; and
- (8) Applicant 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 (2014). 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 (2014).

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

Document Content(s)

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