

144 FERC ¶ 62,013  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

CPV Shore, LLC

Docket No. EC13-111-000

ORDER AUTHORIZING DISPOSITION OF  
JURISDICTIONAL FACILITIES

(Issued July 3, 2013)

On May 31, 2013, CPV Shore, LLC (CPV Shore or Applicant) submitted an application pursuant to section 203 (a)(1)(A) of the Federal Power Act (FPA)<sup>1</sup> requesting authorization for the disposition of jurisdictional facilities resulting from the acquisition of 50 percent of the indirect equity interests in CPV Shore by a special-purpose entity (Purchaser),<sup>2</sup> a wholly owned direct or indirect subsidiary of the ArcLight Energy Partners Fund V, L.P. (Fund V) (Transaction). The jurisdictional facilities associated with the Transaction consist of Applicant's market-based rate tariff and related books and records.

Purchaser will be a newly formed special-purpose direct or indirect subsidiary of Fund V. Fund V is managed by ArcLight Capital Partners, LLC, which also manages and controls the 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 these, according to Applicant, is 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, (AEM), with Commission's authorization to sell energy, capacity and ancillary services at market-based rates. AEM is a marketer of electric power and natural gas, which does not own or control any electric facilities in the United States.

Applicant states that the ArcLight Funds are affiliated in the PJM Interconnection, L.L.C. (PJM) market with Panther Creek Power Operating, LLC (Panther Creek). Panther Creek, with market-based rate authority, is the lessee and operator of a 94 megawatt (MW) (nameplate) qualifying facility (QF). The Panther Creek facility is interconnected to the transmission system owned by the Metropolitan Edison Company and operated by PJM. Applicant states that the ArcLight Funds are also affiliated in the PJM market with Scrubgrass Generating Company, L.P. (Scrubgrass). Scrubgrass, with market-based rate authority, owns and operates an approximately 94.7 MW (nameplate)

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<sup>1</sup> 16 U.S.C. § 824b (2006).

<sup>2</sup> Applicant states that Purchaser is not a holding company within the meaning of FPA section 203(a)(2); thus, Purchaser does not require approval under FPA section 203(a)(2).

small power production facility, which is interconnected to the transmission system owned by Pennsylvania Electric Company (Penelec) and is located within the PJM footprint. Scrubgrass sells its facility's energy and capacity to Penelec under a long-term power purchase agreement. In addition, the ArcLight Funds are affiliated in the PJM market with Westwood Generation, LLC (Westwood). Westwood, with market-based rate authority, is an exempt wholesale generator (EWG), which owns a 36 MW (nameplate) generation facility.

Applicant states that none of the ArcLight Funds or any of their affiliates own or control any inputs to electric power production, such as natural gas intrastate pipelines, distribution facilities, or storage facilities, in the PJM market. Applicant further states that affiliates of the ArcLight Funds own or control sites for new generation capacity development outside the PJM market.

Competitive Power Ventures Holdings, LLC (CPV), through its subsidiaries, develops, owns, and manages natural gas-fired and renewable generation facilities throughout the United States. Applicant states that Warburg Pincus Private Equity IX, L.P. and Warburg Pincus Equity Partners Liquidating Trust (collectively Warburg) have a collective ownership interest of 95.2 percent of the voting shares in CPV. Applicant further states that individuals hold all of the remaining outstanding ownership interests in CPV.

CPV Shore, a Delaware limited liability company, is an EWG with market-based rate authority. CPV Shore, an indirect wholly owned subsidiary of CPV, is developing and will own and operate a 725 MW (nameplate) combined-cycle electric generating facility (CPV Shore Facility) that will be interconnected to transmission facilities owned by Jersey Central Power & Light Company within the PJM footprint.

Applicant states that CPV has only one affiliate in the PJM market, CPV Maryland, LLC (CPV Maryland). CPV holds a 50 percent indirect ownership interest in CPV Maryland. CPV Maryland is a Delaware limited liability company with market-based rate authority. Applicant further states that CPV Maryland is developing and will own and operate a 725 MW (nameplate) combined-cycle electric generating facility (CPV Maryland Facility) to be located in Charles County, Maryland. The CPV Maryland Facility will be interconnected to transmission facilities owned by Potomac Electric Power Company within the PJM footprint.

Applicant states that, pursuant to the Transaction, membership interests in CPV Shore will be indirectly acquired by Purchaser through an acquisition of 50 percent of the Class A membership interests in an intermediate special-purpose holding company (CPV Shore Holdings). CPV Shore Holdings holds the membership interests in CPV Shore and is engaged in no other business. In addition, Applicant states that CPV will retain all of the remaining Class A membership interests together with all of the management rights in CPV Shore. As a result, Purchaser will indirectly hold 50 percent of the interests in CPV Shore, and CPV Shore will become an indirect partially owned subsidiary of Fund V.

CPV will remain the sole managing entity of CPV Shore with CPV retaining the day-to-day rights to manage CPV Shore.

Applicant states that the Transaction is consistent with the public interest and will have no adverse effect on competition, rates, or regulation, nor will it result in any harmful cross-subsidization.

With respect to competition, all of CPV Shore's electric generating capacity is committed to be sold into the PJM wholesale markets. According to the application, Applicant and its affiliates will own or control 1,450 MW of generation capacity in the PJM market, upon completion of both the CPV Shore Facility and the CPV Maryland Facility. In addition, Applicant states that Purchaser and its affiliates currently own or control 225 MW in the PJM market. Applicant further states that following the Transaction, Applicant will be affiliated with a total combined capacity of 1,675 MW (i.e., 1,450 MW plus 225 MW), which represents only 0.9 percent of the total installed capacity in the PJM market of 181,896 MW. Thus, according to Applicant, the Transaction will not raise any horizontal market power concerns in the relevant market.

According to the Application, neither CPV Shore nor the ArcLight Funds, nor any of their affiliates, own a 10 percent or greater voting interest in or control any electric transmission facilities in the United States, except for the Alta Lines, which are six shared generator lead lines, and the DV Line, which is a 212-mile 230 kV radial generator lead line. The Alta Lines and the DV Line are located within the footprint of the California Independent System Operator Corporation. In addition, Applicant states that affiliates of the ArcLight Funds own or control inputs to electric power production in various markets; however, none of these inputs is located in the PJM market. Thus, according to Applicant, the Transaction will not raise any vertical market power concerns in the relevant market.

Applicant states that the Transaction will not affect the rates CPV Shore charges to its customers because CPV Shore sells power pursuant to its market-based rate tariff. Applicant further states that it does not have any transmission rates or transmission customers whose rates could be affected by the Transaction. Thus, according to Applicant, the Transaction will have no adverse effect on wholesale ratepayers or transmission customers.

Applicant states that the Transaction will not affect the manner or extent to which the Commission, any state, or any other federal agency may regulate CPV Shore. Additionally, Applicant states that the status of CPV Shore as an EWG with market-based rate authority and the extent to which it is subject to the Commission's jurisdiction or a state regulatory agency will not change as a result of the Transaction. Thus, according to Applicant, the Transaction will not impair the effectiveness of federal or state regulation.

Applicant states that the Transaction will not cause cross-subsidization of a non-

utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company. Applicant asserts that because the Transaction does not involve a franchised public utility with captive customers, there is no potential for harm to customers and does not raise any issue with respect to inappropriate cross-subsidization. In addition, Applicant provides assurance and verifies that based on known or reasonably foreseeable information, the Transaction will not result in, at the time of the Transaction or in the future: (1) any transfers of facilities between a traditional 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 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 pledges or encumbrances of assets of a traditional 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 utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, other than non-power goods and services agreements subject to review under sections 205 and 206 of the FPA.

The filing was noticed on May 31, 2013, with comments, protests, or interventions due on or before June 21, 2013. None was 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 provisions of Rule 214.

When a controlling interest in a public utility is acquired by another company, whether a domestic company or a foreign company, the Commission's ability to adequately protect public utility customers against inappropriate cross-subsidization may be impaired absent access to the parent company's books and records. Section 301(c) of the FPA gives the Commission authority to examine the books and records of any person who controls, directly or indirectly, a jurisdictional public utility insofar as the books and records relate to transactions with or the business of such public utility. The approval of the Transaction is based on such examination ability.

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, NERC or the relevant regional entity may audit compliance with reliability and cybersecurity standards.

Order No. 652 requires that sellers with market-based rate authorization 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>3</sup> The foregoing authorization may result in a change in status. Accordingly, Applicant is advised that it must comply with the requirements of Order No. 652. In addition, Applicant shall make appropriate filings under section 205 of the FPA, to implement the Transaction.

After consideration, it is concluded that the Transaction is consistent with the public interest and is hereby authorized, subject to the following conditions:

- (1) The 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 cost, or any other matter whatsoever now pending or which may become 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 the upstream ownership of Applicant's affiliated qualifying facilities, if any, an appropriate filing for recertification pursuant to 18 C.F.R. § 292.207 (2012) shall be made;
- (6) Applicant shall make the appropriate filings under section 205 of the FPA, as necessary, to implement the Transaction;
- (7) 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 Transaction; and

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<sup>3</sup> *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).

- (8) Applicant shall notify the Commission within 10 days of the date that the disposition of jurisdictional facilities under the Transaction 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 (2012). 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 (2012).

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

Document Content(s)

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