

UNITED STATES OF AMERICA 117 FERC ¶ 62,257
FEDERAL ENERGY REGULATORY COMMISSION

Dynegy Inc. and its jurisdictional holding company and public utility subsidiaries	EC07-9-000
LS Power Development, LLC and its jurisdictional holding company and public utility subsidiaries	
Chevron U.S.A. Inc	
Bluegrass Generation Company, L.L.C.	ER02-506-007
Calcasieu Power, LLC	ER00-1049-007
Dynegy Danskammer, L.L.C.	ER01-140-006
Dynegy Midwest Generation, Inc.	ER00-1895-007
Dynegy Power Marketing, Inc.	ER99-4160-010
Dynegy Roseton, L.L.C.	ER01-141-006
Heard County Power, L.L.C.	ER01-943-006
Renaissance Power, L.L.C.	ER01-3109-007
Riverside Generating Company, L.L.C.	ER01-1044-007
Rockingham Power L.L.C.	ER99-1567-006
Rocky Road Power, LLC	ER99-2157-007
Rolling Hills Generating, L.L.C.	ER02-553-006
Sithe/Independence Power Partners, L.P.	ER03-42-011
Sithe Energy Marketing, L.P.	ER02-2202-010
Bridgeport Energy LLC	ER98-2783-010
Casco Bay Energy Company, LLC	ER99-3822-009
Griffith Energy LLC	ER00-3696-006
LSP Arlington Valley, LLC	ER02-443-008
LSP-Kendall Energy, LLC	ER99-2602-006
LSP Mohave, LLC	ER01-1619-009
LSP Morro Bay, LLC	ER98-2681-012
LSP Moss Landing, LLC	ER98-2680-012
LSP Oakland, LLC	ER98-2682-012
LSP South Bay, LLC	ER99-1785-011
Ontelaunee Power Operating Company, LLC	ER05-1266-004
LS Power Marketing, LLC	ER96-1947-020

ORDER AUTHORIZING MERGER AND
ACQUISITION OF GENERATING FACILITIES
AND ACCEPTING NOTICE OF CHANGE IN STATUS

(Issued December 21, 2006)

On October 26, 2006, Dynegy Inc. (Dynegy) and its jurisdictional holding company and public utility subsidiaries (Dynegy Applicants), LS Power Development, LLC (LSP Development) and its jurisdictional holding company and public utility subsidiaries (LSP Applicants) and Chevron U.S.A. Inc. (Chevron USA), (Dynegy Applicants together with LSP Applicants and Chevron USA, Applicants) filed an application pursuant to section 203 of the Federal Power Act (FPA)¹ requesting Commission authorization for the disposition and acquisition of jurisdictional facilities resulting from a transaction by which the interests in specific jurisdictional facilities of the Applicants will be held through a new entity (Merger Transaction). In addition, if the Merger Transaction is not consummated, Applicants request Commission authorization for Dynegy (including Chevron USA), through a newly-formed, wholly-owned subsidiary of Dynegy, to acquire, and certain LSP Applicants to dispose of, 100 percent of the interest of LSP Kendall Holding, LLC, which owns LSP-Kendall Energy, LLC (LSP Kendall), which in turn owns a generating facility operating in Illinois (Kendall Transaction,)(together, the transactions).

Dynegy, through various subsidiaries provides electricity to customers throughout the United States. Through its energy business, the company owns or operates a diverse portfolio of energy assets, including power plants totaling approximately 12,000 megawatts (MWs) of net generating capacity. Dynegy has exited a significant portion of its physical and financial gas marketing and trading business.

Dynegy Marketing and Trade (Dynegy Marketing) is an indirect, wholly-owned subsidiary of Dynegy. Dynegy Marketing formerly was engaged in the marketing and trading of natural gas and coal, but now is engaged in acquiring and supplying fuel to Dynegy-owned generation. Other than a few legacy natural gas marketing and trading arrangements, Dynegy has discontinued its marketing and trading business.

Dynegy Power Marketing, Inc. (DYPM) is a wholly-owned subsidiary of Dynegy Holdings Company, LLC, which, in turn, is wholly-owned by Dynegy Upper Holdings, L.L.C., which is a wholly-owned subsidiary of Dynegy Holdings, Inc. (DHI). DYPM purchases power from LSP-Kendall pursuant to a 540 MW long-term power purchase agreement in effect through April, 2012. The Commission has granted DYPM market-based rate authority.

¹ 16 U.S.C. § 824b (2000), as amended by the Energy Policy Act of 2005, Pub. L. No. 109-58, §1289, 119 Stat. 594 (2005).

LSP Development is a limited liability company wholly owned by members of the Segal family and associated entities. The companies for which LSP Development is the general partner and their downstream affiliated are referred to herein as the LS Power Group. LSP Development is the principal operating company of the LS Power Group. LS Development, in its capacity as the general partner of LS Power Associates, L.P. (LS Associates), develops independent power projects and, through indirect subsidiaries, owns and operates independent power projects with approximately 8,000 MWs of net generating capacity in various markets throughout the United States.

LS Associates is a Delaware limited partnership owned by (i) LSP Development, which holds a 0.95 percent general partnership interest; (ii) LS Power Holdings, LLC, which is owned by current and former employees of LSP Development, their family members and associated entities, and which holds a 94.05 percent limited partnership interest; (iii) Doren Holdings, LLC (Doren Holdings), which is owned by members of the Liebelson family and associated entities and which holds a 2.5 percent limited partnership interest; and (iv) Joseph Cogen Trust (Cogen Trust), which holds a 2.5 percent limited partnership interest.

LS Power Partners, L.P. (LSP Partners) is a Delaware limited partnership owned by (i) LSP Development as general partner; (ii) LS Associates as limited partner; and (iii) various other passive limited partners comprised of (a) LSP Development employees and associated entities; (b) Doren Holdings; and (c) Cogen Trust.

LS Power Generation, LLC (LSP Generation) is owned by two private equity funds, LS Power Equity Partners, L.P. (LSP Equity Partners) and LS Power Equity Partners PIE I, L.P. (LSP Equity PIE), and by a co-investment partnership, LSP Gen Investors, LP (LSP Investors). LSP Equity PIE holds its ownership interest in LSP Generation indirectly through one or more wholly-owned special purpose tax entities. LSP Equity Partners and LSP Equity PIE are both owned by LSP Partners, as general partner, and by various passive limited partner investors (the Passive LPs). LSP Investors is owned by LSP Partners, as general partner, and by one of the Passive LPs. As the general partner of LSP Equity Partners, LSP Equity PIE, and LSP Investors, LSP Partners – not the Passive LPs – has ultimate control over the day-to-day activities of LSP Equity Partners, LSP Equity PIE, and LSP Investors.

LSP Kendall is an indirect, wholly-owned subsidiary of LSP Development. LSP Kendall is an exempt wholesale generator that owns and operates an approximately 1,120 MW electric generating facility in Kendall, Illinois, within the PJM Interconnection, LLC market.

LSP Power Marketing, LLC (LSP Marketing) is an indirect, wholly-owned subsidiary of LSP Development. LSP Marketing is a limited liability company that was formed to engage in the wholesale marketing and brokering of electric capacity and

energy and related products and services. LSP Marketing is currently inactive.

Chevron USA holds an approximate 19 percent voting interest in Dynegy. Chevron USA is an indirect, wholly-owned subsidiary of Chevron Corporation. Chevron USA is an indirect, wholly-owned subsidiary of Chevron Corporation. Chevron USA and its subsidiaries manage and operate most of Chevron Corporation's United States businesses. Chevron USA or its affiliate Chevron Global Energy Inc. (Chevron Global) owns interests in qualifying facilities (QFs) in California, Nevada, Washington, Mississippi, Louisiana, and Hawaii. Chevron USA's ownership interest in these QFs represents approximately 880 MWs, all the output of which is sold under long-term contracts to entities unaffiliated with Applicants or consumed internally. Chevron USA owns the following fuel transportation and storage facilities: Venice Gathering System, an offshore pipeline delivering into Louisiana; Sabine Pipe Line Company, which owns and operates a natural gas transmission pipeline between Louisiana and Texas, and pipelines in offshore Louisiana; Chandeleur Pipe Line Company, which owns and operates an interstate natural gas transmission system from offshore Louisiana and offshore Mississippi to Mississippi; Bridgeline Holdings, L.P., which owns and operates natural gas storage and an intrastate natural gas pipeline system in Louisiana; Keystone Gas Storage LLC, which owns a natural gas storage facility in Texas; and Chevron Pipe Line Company, which transports crude oil, refined petroleum products, liquefied petroleum gas, natural gas and chemicals.

Applicants state that the Merger Transaction will be implemented in accordance with the Plan of Merger, Contribution and Sale Agreement dated September 14, 2006, by and among Dynegy, Dynegy Acquisition, Inc. (New Dynegy), a newly formed corporation and wholly-owned subsidiary of New Dynegy (Merger Sub), LSP Investors, LSP Partners, LSP Equity PIE, LSP Equity Partners, and LS Associates (the LS parties referred to collectively as the LS Entities). On the closing date of the Merger Transaction, the LS Entities will contribute their respective interests in certain holding companies that hold the interests, directly or indirectly, in the LSP subsidiaries, except LSP Marketing, to New Dynegy. Furthermore, on the closing date of the Merger Transaction, (i) LSP Equity PIE will sell 100 percent of the outstanding common stock of LSP-Kendall Blocker, Inc. to New Dynegy, and (iii) LS Associates will sell 100 percent of the interests in LSP Services Kendall, LLC to New Dynegy. Merger Sub will merge with and into Dynegy, as a result of which Dynegy and its wholly-owned subsidiary, DHI, will become wholly-owned subsidiaries of New Dynegy. Following closing, New Dynegy will be renamed "Dynegy Inc."

Prior to closing of the Merger Transaction, LS Associates will form a limited liability company (Development LLC) and contribute its interest in certain development projects to Development LLC. On the closing date of the Merger Transaction, LS Associates will contribute 50 percent of its membership interests in Development LLC to New Dynegy. Immediately after closing of the Merger Transaction, LS Associates intends to contribute to Development LLC its interests in certain other development

projects, and New Dynegy intends to contribute to Development LLC its interests in certain development projects.

Immediately after the closing of the Merger: (1) approximately 40 percent of the total combined voting power of New Dynegy will be held by the LS Entities; (2) approximately 11 percent of the total combined voting power of New Dynegy will be held by Chevron USA; and (3) approximately 49 percent of the total combined voting power of New Dynegy will be held by existing shareholders of Dynegy (other than Chevron USA). These existing shareholders of Dynegy will hold shares of Class A common stock in New Dynegy following consummation of the Merger Transaction.

If the Merger Transaction is not consummated, Dynegy, through a newly-formed wholly-owned subsidiary, Kendall Power LLC, will acquire 100 percent of the LS Entities' interests in LSP Kendall Holding, LLC – that is, it will execute the Kendall Transaction. The Kendall Transaction will be effectuated pursuant to the Limited Liability Company Membership Interests and Stock Purchase Agreement dated September 14, 2006, among LS Associates, LSP Equity Partners, LSP Partners, LSP Equity PIE, and Kendall Power LLC.

Applicants state that the proposed transactions are consistent with the public interest. They state that the transactions will not adversely affect competition, rates, or regulation, nor will they result in any cross-subsidization or the pledge or encumbrance of utility assets to any associate company. They state that neither the Merger nor Kendall Transaction will have an adverse effect on competition because for all relevant wholesale electricity markets, the changes in the Herfindahl-Hirschman Index fall safely within the Commissions safe harbor thresholds and in almost all instances have at most a *de minimis* impact on competition.² They further state that the transactions do not implicate any of

² The Herfindahl-Hirschman Index (HHI) is a widely accepted measure of market concentration, calculated by squaring the market share of each firm competing in the market and summing the results. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases. Markets in which the HHI is less than 1,000 points are considered unconcentrated; markets in which the HHI is greater than or equal to 1,000 but less than 1,800 points are considered moderately concentrated; and markets where the HHI is greater than or equal to 1,800 points are considered highly concentrated. The Commission has adopted the Federal Trade Commission/Department of Justice Horizontal Merger Guidelines, which state that in a horizontal merger, an increase of more than 50 HHI in a highly concentrated market or an increase of 100 HHI in a moderately concentrated market fails its screen and warrants further review. U.S. Department of Justice and Federal Trade Commission, *Horizontal Merger Guidelines*, 57 Fed. Reg. 41,552 (1992), *revised*, 4 Trade Reg. Rep (CCH) ¶ 13,104 (April 8, 1997).

the vertical concerns that the Commission typically considers and that the transactions do not create or enhance vertical market power.

Applicants state that the transactions will not have an adverse impact on rates. They claim that the transactions will not have any adverse effect on rates because sales of electric energy, capacity, and ancillary services made by the Dynegy and LSP subsidiaries will continue to be made pursuant to market-based rates authorized by the Commission and wholesale power contracts on file with the Commission. Further, they state that neither transaction will affect rates charged by those Dynegy and LSP subsidiaries that have cost-based reactive power rate schedules on file with the Commission, because any attempt to revise these rates would require a filing with the Commission pursuant to section 205 of the FPA. They state that wholesale rates under the Dynegy QF and Chevron QF contracts will not be adversely affected by the transactions because the Applicants have no ability to amend the rate terms to reflect transaction-related costs. Finally, Applicants state that they have no transmission customers.

Applicants state that the transactions will not have an adverse effect on regulation. They state that after either transaction, the Applicants will continue to be subject to the jurisdiction of the Commission and applicable state commissions to the same degree as before either transaction.

Applicants state that the proposed transactions will not result, at the time of the proposed transactions or in the future, in cross-subsidization or the pledge or encumbrance of utility assets to any associate company. Applicants state that the transactions will not result in: (1) transfers of facilities between a traditional utility associate company with wholesale or retail customers served under cost-based regulation and an associate company; (2) new issuances of securities by a traditional utility associate company with wholesale or retail customers served under cost-based regulation for the benefit of an associate company; (3) new pledges or encumbrances of assets of a traditional utility associate company with wholesale or retail customers served under cost-based regulation for the benefit of an associate company; or (4) new affiliate contracts between a non-utility associate company and a traditional utility associate company with wholesale or retail customers served under cost-based regulation, other than non-power goods and services agreements subject to review under sections 205 and 206 of the FPA. The Applicants note that the transactions involve the transfer of ownership and control of assets from a company with no captive customers to another such company. Therefore, they argue, there is no opportunity for cross-subsidization.

This filing was noticed on November 1, 2006, with comments, protests or interventions due on or before November 15, 2006. East Texas Electric Cooperative, Inc. and South Mississippi Electric Power Association filed timely motions to intervene. 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.

After consideration, it is concluded that the proposed transactions are consistent with the public interest and are authorized, subject to the following conditions:

- (1) The proposed transactions are 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 transactions result in changes in the status or the 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 transactions; and
- (7) Applicants shall notify the Commission within 10 days of the date that the disposition of jurisdictional facilities has been consummated.

On November 2, 2006, Dynegy Applicants and the LSP Applicants filed a notice of change in status to reflect the instant transactions. Applicants state that this acquisition does not affect the conditions the Commission relied upon when granting the Dynegy Applicants' and the LSP Applicants' market-based rate authority. Based on the representation in that filing, the notice of change in status is accepted for filing.

The filing was noticed on November 7, 2006, with comments, protests or interventions due on or before November 24, 2006. None was filed.

This action does not constitute approval of any service, rate, charge, classification, or any rule, regulation, or practice affecting such rate or service provided for in the filed documents; nor shall such action be deemed as recognition of any claimed contractual right or obligation affecting or relating to such service or rate; and such acceptance is

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without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against any of the Applicants.

This action is taken pursuant to the authority delegated to the Director, Division of Tariffs and Market Development – 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.

Questions regarding the above order should be directed to:

Federal Energy Regulatory Commission
Attn: David Hunger
Phone: (202) 502-8148
Office of Energy Markets and Reliability
888 First Street, N.E., EM-5.4
Washington, D.C. 20426

Steve P. Rodgers
Director
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