

111 FERC ¶ 61,239  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suedeen G. Kelly.

South Point Energy Center, LLC	Docket Nos.	ER01-2887-003
Gilroy Energy Center, LLC		ER01-2688-005
MEP Pleasant Hill, LLC		ER99-2858-005
		ER99-2858-003
		ER99-2858-002
Acadia Power Partners LLC		ER02-1406-005
		ER02-1406-004
		ER02-1406-001
Cleco Power LLC		ER99-3855-003
		ER99-3855-002
Cleco Marketing & Trading LLC		ER99-2300-005
		ER99-2300-004
Cleco Evangeline LLC		ER99-2928-002
		ER99-2928-001
Perryville Energy Partners, L.L.C.		ER01-1397-003
		ER01-1397-002
Acadia Power Partners LLC, Cleco Power LLC, Cleco Evangeline LLC, Perryville Energy Partners, L.L.C.		EL05-113-000

ORDER ACCEPTING UPDATED MARKET POWER ANALYSIS, AND  
INSTITUTING SECTION 206 PROCEEDING AND  
ESTABLISHING REFUND EFFECTIVE DATE

(Issued May 25, 2005)

1. In this order, the Commission accepts an updated market power analysis filed by South Point Energy Center, LLC (South Point), Gilroy Energy Center, LLC (Gilroy) and MEP Pleasant Hill, LLC (MEPPH) (collectively, Calpine Companies).<sup>1</sup> The Commission concludes that South Point, Gilroy, and MEPPH satisfy the Commission's standards for market-based rate authority. Accordingly, South Point, Gilroy, and MEPPH's next updated market power analysis is due three years from the date of issuance of this order.
2. The Commission also acts on an updated market power analysis filed by the Cleco Corporation, on behalf of its public utility affiliates Cleco Power LLC (Cleco Power), Cleco Evangeline LLC (Evangeline), Perryville Energy Partners, L.L.C. (Perryville), and Acadia Power Partners LLC (Acadia) (collectively, Cleco Companies).<sup>2</sup> The Commission will institute a proceeding pursuant to section 206 of the Federal Power Act<sup>3</sup> (FPA) to determine whether the Cleco Companies may continue to charge market-based rates and establishes a refund effective date pursuant to the provisions of section 206. The instant section 206 proceeding, as well as any resulting mitigation or refunds, is limited to the Cleco Power control area because the filing indicates that this is the geographic market for which the Cleco Companies fail the wholesale market share screen.
3. Further, the Commission accepts a notice of change in status reflecting several changes within Cleco Corporation. Lastly, the market behavior rules filed by MEPPH are accepted for filing and the Cleco Companies are directed to revise their market-based rate tariffs to include the market behavior rules. This order benefits customers by

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<sup>1</sup> Acadia Power Partners, LLC (Acadia) is jointly owned by Calpine Acadia Holdings LLC (an indirect wholly-owned subsidiary of Calpine Corporation) and Acadia Power Holdings LLC (an affiliate of Cleco Power LLC.) Since only Cleco Power, LLC's (Cleco Power) market power screen includes Acadia, we exclude Acadia from the definition of Calpine Companies in this order.

<sup>2</sup> Cleco Marketing & Trading LLC (CMT) is also a public utility affiliate of Cleco Corporation and was included in the 2002 filing; however, CMT is excluded from the current analysis because CMT's market-based rate authority was revoked. *See Cleco Corp.*, 104 FERC ¶ 61,125 (2003) (Affiliate Order). CMT does not own, operate or control any electric generation facilities and makes no sales for resale of electric power.

<sup>3</sup> 16 U.S.C. § 824e (2000).

reviewing the conditions under which market-based rate authority is granted, thus ensuring that the prices charged for jurisdictional sales are just and reasonable.

### **Description of the Calpine Companies**

4. Calpine Corporation (Calpine) is a Delaware corporation engaged, through subsidiaries, in the development, financing, acquisition, ownership and operation of independent power production facilities. Calpine also engages in the wholesale marketing and sale of electricity in the United States and abroad.
5. South Point and MEPPH are each indirect, wholly-owned subsidiaries of Calpine. Gilroy is indirectly owned by Calpine and three financial institutions that are unaffiliated with Calpine. Acadia is jointly owned by Calpine Acadia Holdings LLC and Acadia Power Holdings LLC (an affiliate of Cleco Power).
6. The Calpine Companies state that they and their affiliates will own 5,225 MW of capacity in the California Independent System Operator, Inc. (CAISO) market in 2005. The Calpine Companies state that this capacity includes two new facilities: the Metcalf Facility, which has 602 MW of capacity, and the Pastoria Facility, which has 769 MW of capacity. The Calpine Companies state that a portion of the output of these facilities is under long-term contract.
7. The Calpine Companies state that Calpine owns an additional 2,344 MW of capacity located in other Western Electricity Coordinating Council (WECC) markets. The Calpine Companies also state that 250 MW from the South Point Energy Center (located in Arizona, in the Western Area Lower Colorado control area (WALC)) in WECC is under a long-term contract.
8. South Point leases and operates the aforementioned South Point Energy Center, a 530 MW generating facility. MEPPH leases and operates an approximately 585 MW generating facility located in Missouri, in the Missouri Public Service control area (MPS) (Aries Facility), and Acadia owns and operates a 1160 MW generating facility located in Louisiana, in the Cleco Power control area (the Acadia Facility). The Calpine Companies state that construction of the South Point Energy Center, Aries Facility, and Acadia Facility began after July 9, 1996, and that therefore these facilities meet the section 35.27(a) exemption, which provides that applicants shall not be required to

demonstrate any lack of market power in generation with respect to sales from capacity constructed after July 9, 1996.<sup>4</sup>

9. As discussed below, Calpine Companies submitted the results of the two generation market power screens in the CAISO market. The Calpine Companies also provided updated information on the other three parts of the Commission's four-part analysis. The Calpine Companies state they continue to be unable to exercise transmission market power, erect barriers to entry, or engage in affiliate abuse or reciprocal dealing.

### **Description of Cleco Companies**

10. Cleco Power is a wholly-owned subsidiary of Cleco Corporation. Cleco Power contains the generation, transmission and distribution electric utility operations serving retail customers in Louisiana and wholesale customers in Louisiana and Mississippi. Cleco Power owns 1,369.9 MW of generation, including the Rodemacher, Teche, Franklin and Dolet Hills units, all located in the Cleco Power control area. Cleco Power also controls 780 MW of generation through long-term purchase agreements. Evangeline, a wholly-owned subsidiary of Cleco Midstream, owns and operates the 775 MW Evangeline plant also located in the Cleco Power control area. Perryville owns and operates a 718 MW gas-fired power plant located near Perryville, Louisiana (Perryville Facility), outside Cleco Power's control area, and within the control area of Entergy Services, Inc.

11. As discussed below, the Cleco Companies submitted the results of the two generation market power screens in the Cleco Power control area and each directly interconnected first-tier control area. The Cleco Companies also provided updated information on the other three parts of the Commission's four-part analysis. The Cleco Companies states that they continue to be unable to exercise transmission market power, erect barriers to entry, or engage in affiliate abuse or reciprocal dealing.

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<sup>4</sup> We note that the Commission intends to address as part of the generic rulemaking proceeding in Docket RM04-7-000 whether to retain or modify section 35.27 of its regulations.

**Background**

12. On May 24, 2002, as amended on August 30, 2002, MEPPH filed an updated market power analysis pursuant to the Commission's orders granting it authority to sell capacity and energy at market-based rates.<sup>5</sup>

13. On June 17, 2002, Cleco Corporation, on behalf of Cleco Companies (including Acadia), filed a notification of change in status, and an updated market power analysis pursuant to the Commission's orders granting them authority to sell capacity and energy at market-based rates. The notice of change in status reflects the following transactions: Cleco Utility Group Inc. merged into Cleco Power,<sup>6</sup> Evangeline purchased Cleco Power's Coughlin generating units 6 and 7, together with the interconnecting transmission facilities necessary to effect sales of electric energy at wholesale,<sup>7</sup> Perryville Holdings acquired Mirant's 50 percent ownership interest in Perryville,<sup>8</sup> and other changes to non-public utility subsidiaries within the Cleco System.

14. On December 3, 2004, and December 22, 2004, respectively, Calpine Companies (including Acadia)<sup>9</sup> and Cleco Companies submitted for filing updated market power analyses in compliance with the Commission's order issued on May 13, 2004.<sup>10</sup> The

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<sup>5</sup> MEPPH filed jointly with MEP Investments, LLC, MEP Pleasant Hill Operating, LLC, Pleasant Hill Marketing, LLC and Aquila Merchant Services, Inc. (collectively, MEP). The Commission, among other things, authorized the transfer of MEP Investment LLC's interest in MEPPH to Capline in *MEP Pleasant Hill Operating, LLC*, 105 FERC ¶ 62,208 (2003). Subsequently, MEP Investments, LLC, MEP Pleasant Hill Operating, LLC, Pleasant Hill Marketing, LLC and Aquila Merchant Services, Inc., filed a separate triennial market power analysis. These entities are thus no longer parties to the instant proceeding.

<sup>6</sup> See *Cleco Utility Group Inc.*, 93 FERC ¶ 62,151 (2000).

<sup>7</sup> See *Cleco Utility Group Inc.*, 90 FERC ¶ 62,055 (2000).

<sup>8</sup> See *Perryville Energy Partners, L.L.C.*, 99 FERC ¶ 62,061 (2002).

<sup>9</sup> Acadia is jointly owned by Calpine Corporation and Acadia Power Holdings LLC, an affiliate of Cleco Midstream Resources, LLC.

<sup>10</sup> *Acadia Power Partners, LLC*, 107 FERC ¶ 61,168 (2004) (May 13 Order).

May 13 Order addressed the procedures for implementing the generation market power analysis announced on April 14, 2004 and clarified on July 8, 2004.<sup>11</sup>

15. The Calpine Companies (including Acadia) state that the Calpine Companies and Acadia pass the indicative screens in the CAISO market, and that their facilities in WALC and MPS control areas meet the section 35.27(a) exemption.

16. The Cleco Companies state that they pass the pivotal supplier screen in the Cleco Power control area and in each directly interconnected control area. The Cleco Companies further state that they pass the wholesale market share screen in each directly interconnected control area but fail the wholesale market share screen in the Cleco Power control area for three of the four seasons.<sup>12</sup> The Cleco Companies state that, despite the screen failures, the Cleco Companies do not have market power because the screens do not provide full credit for their native load obligations.

17. In the April 14 Order, as clarified by the July 8 Order, the Commission adopted two indicative screens for assessing generation market power: a pivotal supplier screen and a wholesale market share screen. The Commission stated that passage of both screens establishes a rebuttable presumption that the applicant does not possess generation market power, while failure of either screen creates a rebuttable presumption that the applicant has generation market power. The Commission further stated that applicants and intervenors may, however, rebut the presumption established by the results of the initial screens by submitting a Delivered Price Test. Alternatively, an applicant may accept the presumption of market power or forego the generation market power analysis altogether and go directly to mitigation.<sup>13</sup>

18. As the Commission stated in the April 14 Order, where an applicant is found to have failed either generation market power screen, such failure provides the basis for

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<sup>11</sup> *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004) (July 8 Order).

<sup>12</sup> The Cleco Companies' analysis shows market shares as high as 23 percent.

<sup>13</sup> In addition, as the Commission stated in the April 14 Order, the applicant or intervenors may present evidence such as historical sales data to support whether the applicant does or does not possess market power. *See* April 14 Order, 107 FERC ¶ 61,018 at P 37.

instituting a proceeding under section 206 of the FPA<sup>14</sup> and establishes a rebuttable presumption of market power in the section 206 proceeding. Accordingly, as discussed below, the Commission institutes a proceeding pursuant to section 206 of the FPA to determine whether the Cleco Companies may continue to charge market-based rates and establishes a refund effective date pursuant to the provisions of section 206.

19. In addition, the Cleco Companies state that they pass the pivotal supplier and wholesale market share screens in each of the directly interconnected first-tier control areas examined -- Entergy, Central and Southwest (CSWS), the City of Lafayette Power Authority (Lafayette) and the Louisiana Energy and Power Authority (LEPA) control areas. However, as discussed below, the Commission is unable to conclude that the Cleco Companies satisfy the Commission's generation market power standard for market-based rate authority in Lafayette and LEPA control areas. Accordingly, in this order, the Commission directs the Cleco Companies and Acadia to make a compliance filing within 30 days of the date of this order to revise their generation market power analyses for the Lafayette and LEPA control areas.

20. This order, including the refund effective date, will protect customers from excessive rates and charges that may result from the exercise of market power.

#### **Notice of Filings and Responsive Pleadings**

21. Notice of MEPPH's May 24, 2002 filing was published in the *Federal Register*, 67 Fed. Reg. 39,707 (2002), with interventions or protests due on or before June 14, 2002. None was filed.

22. Notice of the Cleco Corporation's June 17, 2002 filing was published in the *Federal Register*, 67 Fed. Reg. 43,303 (2002), with interventions or protests due on or before July 8, 2002. None was filed.

23. Notice of MEPPH's August 30, 2002 filing was published in the *Federal Register*, 67 Fed. Reg. 58,417 (2002), with interventions or protests due on or before September 16, 2002. None was filed.

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<sup>14</sup> 16 U.S.C. § 824e (2000).

24. Notice of the Calpine Companies' December 3, 2004 filing (which listed Acadia as a filer) was published in the *Federal Register*, 69 Fed. Reg. 75,530 (2004), with interventions or protests due on or before December 27, 2004. None was filed.

25. Notice of the Cleco Companies' December 22, 2004 filing was published in the *Federal Register*, 70 Fed. Reg. 1,429 (2005), with interventions or protests due on or before January 12, 2005. The Lafayette Utilities System of Lafayette, Louisiana filed a motion to intervene. The Louisiana Public Service Commission filed a notice of intervention.

## **Discussion**

### **Procedural Matters**

26. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the notices of intervention and unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

### **Market-Based Rate Authorization**

27. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, market power in generation and transmission and cannot erect other barriers to entry. The Commission also considers whether there is evidence of affiliate abuse or reciprocal dealing.<sup>15</sup>

28. The Commission concludes that South Point, Gilroy, and MEPPH satisfy the Commission's generation market power standard for the grant of market-based rate authority. As previously discussed, the Commission also institutes a proceeding pursuant to section 206 of the FPA to determine whether Cleco Power, Evangeline, Perryville, and Acadia in the Cleco Power control area may continue to charge market-based rates and establishes a refund effective date pursuant to the provisions of section 206.

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<sup>15</sup> See, e.g., *Progress Power Marketing, Inc.*, 76 FERC ¶ 61,155, at 61,919 (1996); *Northwest Power Marketing Co., L.L.C.*, 75 FERC ¶ 61,281, at 61,899 (1996); *accord Heartland Energy Servs., Inc.*, 68 FERC ¶ 61,223, at 62,062-63 (1994).

### **Generation Market Power**

29. In the April 14 Order, the Commission adopted two indicative screens for assessing generation market power: the pivotal supplier screen and the wholesale market share screen.<sup>16</sup> Also, section 35.27(a) of the Commission's regulations provides that applicants shall not be required to demonstrate any lack of market power in generation with respect to sales from capacity constructed after July 9, 1996.<sup>17</sup> If an applicant sites generation in an area where it or its affiliates own or control other generation assets, the applicant must study whether its new capacity, when added to existing capacity, raises generation market power concerns.<sup>18</sup>

30. As outlined above, the Calpine Companies' (including Acadia) filing indicates that the Calpine Companies pass the indicative screens in the CAISO market, and that their facilities in the WALC and MPS control areas meet the section 35.27(a) exemption. South Point, Gilroy, and MEPPH state that no other Calpine-affiliated generation is located in WALC and MPS control areas. Based on these representations, the Commission finds that South Point, Gilroy, and MEPPH satisfy the Commission's generation market power standard for the grant of market-based rate authority.

31. The Acadia facility is jointly owned by Calpine Corporation and Cleco Power and is located in Cleco's home control area.<sup>19</sup> Calpine Companies state that their portion of the Acadia facility is presumed to not have market power pursuant to section 35.27 of the Commission's regulations. In addition, the Calpine Companies state that 100 percent of Acadia's output is sold to Calpine Energy Services, L.P., pursuant to a long-term contract. Acadia's other owner, Cleco Power, has provided a generation market power analysis pursuant to our April 14 and July 8 Orders.

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<sup>16</sup> April 14 Order, 107 FERC ¶ 61,018 (2004).

<sup>17</sup> *See* 18 C.F.R. § 35.27(a) (2004).

<sup>18</sup> *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 at P 69, *order on reh'g*, 108 FERC ¶ 61,026 (2004).

<sup>19</sup> Due to the joint ownership of Acadia, the Commission will consider Acadia in both the Calpine and Cleco analyses.

32. In the Cleco Companies' December 22, 2004 filing, the Cleco Companies state that the Cleco Companies' share of uncommitted capacity in the Cleco Power control area exceeds 20 percent for three of the four seasons (winter, spring and fall) during the relevant time period. Consequently, the Cleco Companies fail the wholesale market share screen in these seasons in the Cleco Power control area.

33. As outlined in the April 14 Order, the Cleco Companies' failure of the wholesale market share screen provides the basis for the Commission to institute the instant section 206 proceeding, which is limited to the Cleco Power control area, to determine whether the Cleco Companies may continue to charge market-based rates and establishes a rebuttable presumption of market power. This order establishes a refund effective date in order to put in place the necessary procedural framework to promptly impose an effective remedy, in case the Commission determines that such a remedy is required. Our decision to establish a refund effective date does not constitute a determination that refunds will be ordered.

34. The Commission's decision to institute the instant section 206 proceeding does not constitute a definitive finding by the Commission that the Cleco Companies have market power in the Cleco Power control area. As discussed in the April 14 and July 8 Orders, the screens are conservatively designed to identify the subset of applicants who require closer scrutiny. Accordingly, the Cleco Companies will have 60 days from the date of issuance of this order finding a screen failure to: (1) file a Delivered Price Test analysis; (2) file a mitigation proposal tailored to its particular circumstances that would eliminate the ability to exercise market power; or (3) inform the Commission that it will adopt the April 14 Order's default cost-based rates or propose other cost-based rates and submit cost support for such rates.<sup>20</sup> In addition, as the Commission stated in the April 14 Order, the applicant or intervenors may present evidence such as historical sales data to support whether the Cleco Companies do or do not possess market power.<sup>21</sup>

35. In cases where, as here, the Commission institutes a section 206 proceeding on its own motion, section 206(b) requires that the Commission establish a refund effective date that is no earlier than 60 days after publication of notice of the initiation of the Commission's proceeding in the *Federal Register*, and no later than five months subsequent to the expiration of the 60-day period. In order to give maximum protection

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<sup>20</sup> See April 14 Order, 107 FERC ¶ 61,018 at P 201, 207-09.

<sup>21</sup> *Id.* at P 37.

to customers, and consistent with Commission precedent,<sup>22</sup> the Commission will establish a refund effective date at the earliest date allowed. This date will be 60 days from the date on which notice of the initiation of the proceeding in Docket No. EL05-113-000 is published in the *Federal Register*. In addition, section 206 requires that, if no final decision has been rendered by that date, the Commission must provide its estimate as to when it reasonably expects to make such a decision. Given the times for filing identified in this order, and the nature and complexity of the matters to be resolved, the Commission estimates that it will be able to reach a final decision by October 31, 2005.

36. The filing indicates that the Cleco Companies pass the pivotal supplier screen and the wholesale market share screen in each of the directly interconnected first-tier control areas examined. The Commission finds that the Cleco Companies satisfy the Commission's generation market power standard for the grant of market-based rate authority in the Entergy and CSWS control areas. However, the Commission is unable to find here that the Cleco Companies satisfy the Commission's generation market power standard for market-based rate authority in the Lafayette and LEPA control areas without a compliance filing, as discussed below.

37. Regarding import capability for their first-tier control areas, the Cleco Companies state that they utilized the results of simultaneous transmission import capability studies submitted to the Commission by Entergy for the Entergy and CSWS control areas.<sup>23</sup> However, the Cleco Companies did not file a simultaneous transmission import capability study for the Lafayette and LEPA control areas, and state that they relied on an import capability number prepared by Cleco Power personnel with no supporting workpapers. The Commission requires further information in order to make a determination regarding the Lafayette and LEPA control areas.<sup>24</sup> Therefore, the Cleco Companies are directed to file a simultaneous transmission import capability study, including data and work papers supporting the study, consistent with the requirements set forth in Appendix E of the April 14 Order, for the Lafayette and LEPA control areas, within 30 days of the date of

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<sup>22</sup> See, e.g., *Canal Elec. Co.*, 46 FERC ¶ 61,153, *reh'g denied*, 47 FERC ¶ 61,275 (1989).

<sup>23</sup> See *Entergy Services*, 109 FERC ¶ 61,282 (2004).

<sup>24</sup> The Cleco Companies did not include a simultaneous transmission import capability study pursuant to the methodology discussed in the April 14 Order for the Cleco Power control area.

this order. To the extent that the Cleco Companies find that the simultaneous transmission import capability amounts are different than that filed here, we direct the Cleco Companies to revise its generation market power screens to reflect the correct import capability.

38. The Commission finds that the Cleco Companies satisfy the generation market power standard with respect to two of the Cleco Companies' first-tier control areas, Entergy and CSWS control area, and conditionally satisfies the generation market power standard with respect to the Cleco Companies' other two first-tier control areas, the Lafayette and LEPA control areas, pending Commission acceptance of the compliance filings directed herein.

### **Transmission Market Power**

39. When a transmission-owning public utility seeks market-based rate authority, the Commission has required the public utility to have an open access transmission tariff (OATT) on file before granting such authorization. The Calpine Companies state that neither Calpine Companies, nor any of their affiliates, own transmission facilities other than generation interconnection facilities. The Calpine Companies further state that although the Acadia Facility is interconnected with the Cleco Power transmission facilities, such transmission facilities are subject to Cleco Power's OATT.<sup>25</sup> Further, no intervenors have raised transmission market power concerns. Based on the Calpine Companies' representations, the Commission finds that the Calpine Companies satisfy the Commission's transmission market power standard for the grant of market-based rate authority.

40. The Cleco Companies state that Cleco Power has an OATT on file with the Commission.<sup>26</sup> Further, no intervenor has raised transmission market power concerns. The Commission finds that the Cleco Companies satisfy the Commission's transmission market power standard for the grant of market-based rate authority.

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<sup>25</sup> See *Cleco Power LLC*, Docket No. ER05-473-000 (April 21, 2005) (unpublished letter order).

<sup>26</sup> *Id.*

### **Other Barriers to Entry**

41. The Calpine Companies state that they do not have dominant control over sites or other scarce inputs into generation, and that a substantial amount of new generation capacity has been developed or is under development in the region. The Calpine Companies also state that an affiliate, CPN Pipeline Company, has an intrastate natural gas pipeline in California; however, the Calpine Companies assert that ownership of this asset raises no market power concerns given the abundance of competing intrastate and interstate pipelines throughout the state. In addition, the Calpine Companies state that they cannot erect barriers to entry that would prevent competitors from participating in the relevant geographic markets. No intervenors have raised concerns regarding barriers to entry. Based on the Calpine Companies' representations, the Commission is satisfied that Calpine Companies cannot erect barriers to entry.

42. The Cleco Companies state that neither they nor their affiliates exercise control over sites for generating plants that could restrict entry by other suppliers or other barriers to entry, as evidenced by ongoing merchant plant development in the region. No intervenors have raised concerns regarding barriers to entry. Based on the Cleco Companies' representations, the Commission is satisfied that the Cleco Companies cannot erect barriers to entry.

43. However, should the Calpine Companies or Cleco Companies deny delay or require unreasonable terms, conditions, or rates for natural gas service to a potential electric competitor in bulk power markets, then that electric competitor may file a complaint with the Commission that could result in the suspension of Calpine Companies' or Cleco Companies' authority to sell power at market-based rates.<sup>27</sup>

### **Affiliate Abuse**

44. The Calpine Companies state that South Point, Gilroy, MEPPH, and their affiliates do not have a franchised service area, however Acadia is affiliated with Cleco Power, which has a franchised service area. The Calpine Companies state that Acadia and Cleco Power have code of conducts on file with the Commission. Based on this representation, we find that the Calpine Companies satisfy our concerns with regard to affiliate abuse.

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<sup>27</sup> See, e.g., Louisville Gas & Elec. Co., 62 FERC ¶ 61,016 (1993).

45. The Cleco Companies state that there is no potential for affiliate abuse and reciprocal dealing by the Cleco Companies, since they are subject to and performing under the Commission's Affiliate Order,<sup>28</sup> which among other things, provides comprehensive protections against affiliate abuse and reciprocal dealing by means of implementing codes of conduct, formal compliance plan steps, self-auditing procedures, and reporting requirements. In addition, no intervenor has raised concerns regarding affiliate abuse. Based on these representations, the Commission finds that the Cleco Companies satisfy the Commission's concerns with regard to affiliate abuse.

### **Market Behavior Rules**

46. In the Market Behavior Rules Order, the Commission directed market-based rate sellers to include as an amendment to their market-based rate tariff the market behavior rules at such time as they seek continued authorization to sell at market-based rates.<sup>29</sup> The Calpine Companies submitted revised tariff sheets for MEPPH to amend its tariff to include the market behavior rules set forth in Appendix A to the Market Behavior Rules Order.<sup>30</sup> The Commission will accept the revised tariff sheets for filing.<sup>31</sup> The Cleco Companies have not amended their tariffs to include the market behavior rules. The Cleco Companies, therefore, are required to amend their tariffs to include the Market Behavior Rules set forth in Appendix A to the Market Behavior Rules Order, within 30 days from the date of this order.

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<sup>28</sup> *See supra* note 3.

<sup>29</sup> *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218 (2003) at Ordering Paragraph (A), *order on reh'g*, 107 FERC ¶ 61,175 (2004) (Market Behavior Rules Order).

<sup>30</sup> The other Calpine Companies in this case previously filed market behavior rules, which were accepted in *Acadia Power Partners, LLC*, Docket No. ER02-1406-002 (March 29, 2004) (unpublished letter order).

<sup>31</sup> MEP Pleasant Hill, LLC, FERC Electric Tariff, Original Volume No.1, Original Sheet Nos.5-6.

### **Reporting Requirements**

47. 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 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 greater) market-based power sales during the most recent calendar quarter.<sup>32</sup> Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.<sup>33</sup>

48. The Calpine Companies and the Cleco Companies 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>34</sup> Order No. 652 requires that the change in status reporting requirement be incorporated in the market-based rate tariff of each entity authorized to make sales at market-based rates. Accordingly, the Calpine Companies and the Cleco Companies are directed, within 30 days of the date of issuance of this order, to revise their market-based rate tariffs to incorporate the following provision:

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<sup>32</sup> *Revised Public Utility Filing Requirements*, Order No. 2001, 67 Fed. Reg. 31,043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127 (2002). Required data sets for contractual and transaction information are described in Attachments B and C of Order No. 2001. The Electric Quarterly Report must be submitted 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>33</sup> The exact dates for these reports are prescribed in 18 C.F.R. § 35.10b (2004). Failure to file an Electric Quarterly Report (without an appropriate request for extension), or failure to report an agreement in an Electric Quarterly Report 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>34</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 (2005).

[insert market-based rate seller name] 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. A change in status includes, but is not limited to, each of the following: (i) ownership or control of generation or transmission facilities or inputs to electric power production other than fuel supplies, or (ii) affiliation with any entity not disclosed in the application for market-based rate authority that owns or controls generation or transmission facilities or inputs to electric power production, or affiliation with any entity that has a franchised service area. Any change in status must be filed no later than 30 days after the change in status occurs.

The Commission orders:

(A) The Cleco Companies are directed, within 30 days of the date of issuance of this order, to file data and work papers to support their generation market power analysis for two of their first-tier control areas, the Lafayette and LEPA control areas, as discussed in the body of this order.

(B) The Cleco Companies are directed, within 30 days of the date of issuance of this order, to file a simultaneous transmission import capability study for two of their first-tier control areas, Lafayette and LEPA control areas, revising its generation market power analysis as necessary and appropriate, as discussed in the body of this order.

(C) The Cleco Companies' updated market power analysis for all relevant markets not subject to the section 206 proceeding instituted herein is hereby conditionally accepted for filing, pending Commission acceptance of the compliance filings directed in Ordering Paragraphs (A) and (B), as discussed in the body of this order.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by section 402(a) of the Department of Energy Organization Act and by the FPA, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R., Chapter I), the Commission hereby institutes a proceeding in Docket No. EL05-113-000 concerning the justness and reasonableness of the Cleco Companies' market-based rates in the Cleco Power control area, as discussed in the body of this order.

(E) The Secretary shall promptly publish in the *Federal Register* a notice of the Commission's initiation of the proceeding under section 206 of the FPA in Docket No. EL05-113-000.

(F) The refund effective date established pursuant to section 206(b) of the FPA will be 60 days following publication in the *Federal Register* of the notice discussed in Ordering Paragraph (E) above.

(G) For the Cleco Power control area, the Cleco Companies are directed, within 60 days from the date of issuance of this order, to: (1) file a Delivered Price Test analysis; (2) file a mitigation proposal tailored to its particular circumstances that would eliminate the ability to exercise market power; or (3) inform the Commission that it will adopt the April 14 Order's default cost-based rates or propose other cost-based rates and submit cost support for such rates, as discussed in the body of this order.

(H) The Cleco Companies are required to amend their tariffs to include the Market Behavior Rules set forth in Appendix A to the Market Behavior Rules Order, within 30 days from the date of this order.

(I) South Point, Gilroy, MEPPH's updated market power analysis is hereby accepted for filing, as discussed in the body of this order.

(J) The revised tariff sheets submitted by the Calpine Companies to include in MEPPH's tariff the market behavior rules are hereby accepted for filing, as discussed in the body of this order.

(K) An updated market power analysis for South Point, Gilroy and MEPPH is due within three years of the date of this order.

(L) The Calpine Companies and the Cleco Companies are directed, within 30 days of the date of issuance of this order, to revise their market-based rate tariffs to incorporate the change in status reporting requirement adopted in Order No. 652.

By the Commission.

( S E A L )

Linda Mitry,  
Deputy Secretary.