

126 FERC ¶ 61,195  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Acting Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
and Philip D. Moeller.

Cottonwood Energy Company, LP,	Docket Nos. ER01-642-010
Dogwood Energy LLC,	ER07-312-002
Magnolia Energy LP, and	ER01-1335-012
Rebud Energy LP	ER01-1011-014

ORDER ON NOTICE OF CHANGE IN STATUS

(Issued March 4, 2009)

1. On February 12, 2008, Cottonwood Energy Company, LP, Dogwood Energy LLC, Magnolia Energy LP, and Rebud Energy LP (the Kelson Entities) filed a notice of change in status under Order No. 652,<sup>1</sup> notifying the Commission of certain changes in the characteristics relied upon to grant market-based rate authority to the Kelson Entities. In this order, the Commission accepts the notice for filing.

**I. Background**

2. The Kelson Entities' notice states that the indirect parent companies of the Kelson Entities – Harbinger Capital Partners Master Fund I, Ltd. and Harbinger Capital Special Situations Fund, L.P. (collectively, Harbinger) – acquired seven percent of the voting securities of the Mirant Corporation (Mirant) (Mirant transaction). Harbinger also acquired more than ten percent of the common stock of Calpine Corporation (Calpine) (Calpine transaction).

3. Regarding the Mirant transaction, the Kelson Entities contend that they continue to satisfy the Commission's criteria for market-based rate authorization. They represent that, because Harbinger will not have any control over Mirant or its subsidiaries, the acquisition raises no market power concerns. The Kelson Entities also explain that

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<sup>1</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).

Harbinger filed a related Schedule 13G with the Securities and Exchange Commission, in which it represented that it did not acquire the shares with any purpose or with the effect of changing or influencing the control of Mirant. The Kelson Entities further state that, even if generation attributed to Mirant were considered, there would be no change in the results of their indicative screen analyses because generation attributed to Mirant is not located in the relevant market of the Kelson Entities.

4. Regarding the Calpine transaction, the Kelson Entities contend that they continue to satisfy the Commission's criteria for market-based rate authorization. The Kelson Entities state that even if the generation attributed to Calpine and the Kelson Entities were considered together, the Kelson Entities continue to pass the Commission's indicative screens.

5. Moreover, the Kelson Entities state that Kelson Entities, Mirant, and Calpine do not own any transmission facilities other than those required to interconnect their generating facilities to the transmission grid, nor do they own or control any other barriers to entry. Therefore, the Kelson Entities argue neither the Mirant transaction nor the Calpine transaction raise any horizontal or vertical market power concerns.

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

6. Notice of the Kelson Entities' filing was published in the *Federal Register*, 73 Fed. Reg. 12,971 (2008), with interventions and protests due on or before March 11, 2008.

7. On March 4, 2008, Mirant filed a conditional protest and comments. Mirant does not dispute the Kelson Entities' conclusion that the Mirant transaction does not alter the basis on which the Commission granted market-based rate authorization to the Kelson Entities. However, Mirant argues that it is not affiliated with the Kelson Entities, because all of the voting securities of each of the Mirant Entities continues to be held by Mirant, none of the Kelson Entities has any direct or indirect voting interest in Mirant or any Mirant Entity; and there is no "common control" with respect to the Kelson Entities and the Mirant Entities by virtue of the Mirant transaction. For these reasons, Mirant requests that the Commission accept the Kelson Entities' filing but not ratify the asserted basis for the filing or concur that such a filing was required by Commission regulations.

## **III. Discussion**

8. Even if the generation attributed to Mirant and Calpine were considered together with the generation attributed to the Kelson Entities, the Kelson Entities would still pass the indicative screens.<sup>2</sup> Neither the Calpine transaction nor the Mirant transaction affects

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<sup>2</sup> Our finding is based on the facts at the time of the filing of the notice of change in status. Given our finding, we need not decide whether Mirant was under common

the conditions the Commission relied upon when granting Kelson Entities market-based rate authority. Therefore, based on Applicants' representations, we accept the Kelson Entities' notice of change in status.

The Commission orders:

The Kelson Entities' notice of change in status is accepted.

By the Commission. Commissioner Kelliher is not participating.

( SEAL )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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control with Kelson Entities at the time of filing, and thus an affiliate of Kelson Entities.