

137 FERC ¶ 61,149  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
and Cheryl A. LaFleur.

BE Louisiana, LLC	Docket Nos. ER07-1358-015 ER07-1358-018 EL10-73-000 EL10-73-001
Cedar Brakes I, L.L.C.	ER00-2885-029 ER00-2885-032
Cedar Brakes II, L.L.C.	ER01-2765-028 ER01-2765-031
J.P. Morgan Commodities Canada Corporation	ER09-1141-008 ER09-1141-011
J.P. Morgan Ventures Energy Corporation	ER05-1232-025 ER05-1232-029
Utility Contract Funding, L.L.C.	ER02-2102-028 ER02-2102-031

ORDER ON MARKET-BASED RATES, TERMINATING SECTION 206  
PROCEEDING, AND DISMISSING REQUEST FOR REHEARING AND  
CLARIFICATION

(Issued November 21, 2011)

1. On August 11, 2010, the Commission issued an order addressing a notice of change in status filed by BE Louisiana, LLC (BE Louisiana), Cedar Brakes I, L.L.C., Cedar Brakes II, L.L.C., J.P. Morgan Commodities Canada Corporation, J.P. Morgan Ventures Energy Corporation, and Utility Contract Funding, L.L.C. (collectively, the J.P. Morgan Sellers).<sup>1</sup> In that order, the Commission instituted a proceeding under section 206 of the Federal Power Act (FPA)<sup>2</sup> to investigate horizontal market power issues in the Cleco Corporation, Inc. (Cleco) balancing authority area. In this order, the Commission finds that the J.P. Morgan Sellers have rebutted the presumption of market power in the Cleco balancing authority area and satisfy the Commission's horizontal market power

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<sup>1</sup> *BE Louisiana, LLC*, 132 FERC ¶ 61,118 (2010) (August 11 Order).

<sup>2</sup> 16 U.S.C. § 824e (2006).

standard for the grant of market-based rate authority. Accordingly, this order terminates the section 206 proceeding instituted in Docket No. EL10-73-000. Also, the Commission dismisses the J.P. Morgan Sellers' request for rehearing of the August 11 Order.

## **I. Background**

2. BE Louisiana is located in the Cleco balancing authority area within the Southwest Power Pool, Inc. (SPP) region. BE Louisiana controls 758 megawatts (MW) of generating capacity at the Evangeline generating facility pursuant to a tolling agreement with Cleco Evangeline, LLC. The J.P. Morgan Sellers state that they do not own or control any other generation within the Cleco balancing authority area or in any first-tier balancing authority area.

3. On March 4, 2010, the J.P. Morgan Sellers filed a notice of change in status pursuant to the requirements in Order No. 652<sup>3</sup> and the requirement promulgated in section 35.42 of the Commission's regulations<sup>4</sup> adopted in Order No. 697.<sup>5</sup> In the notice of change in status, the J.P. Morgan Sellers notified the Commission of the December 31, 2009 expiration of a long-term sales agreement between BE Louisiana and Cleco Power LLC (Cleco Power) under which BE Louisiana sold Cleco Power 450 MW from the Evangeline generating facility. The J.P. Morgan Sellers' updated market power analysis accounting for this additional generation indicated that they passed the pivotal supplier indicative screen, but failed the wholesale market share indicative screen in two seasons in the Cleco balancing authority area. Accordingly, the J.P. Morgan Sellers submitted an amendment in April 2010 containing a delivered price test (DPT) analysis and provided additional arguments concerning their ability to exercise market power in an attempt to rebut the presumption of horizontal market power arising from their failure of the wholesale market share indicative screen in the Cleco balancing authority area.

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<sup>3</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).

<sup>4</sup> 18 C.F.R. § 35.42 (2011).

<sup>5</sup> *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, *clarified*, 121 FERC ¶ 61,260 (2007) (Clarification Order), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055 (2008), *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010).

4. In the August 11 Order, the Commission found that the J.P. Morgan Sellers had failed to rebut the presumption of horizontal market power in the Cleco balancing authority area. Accordingly, in order to institute refund protection for customers, the Commission instituted a proceeding to determine whether the J.P. Morgan Sellers' market-based rate authority in the Cleco balancing authority area remains just and reasonable. In doing so, the Commission directed the J.P. Morgan Sellers, within 60 days of the issuance of the order instituting this proceeding, to show cause as to why the Commission should not revoke their authority to sell energy and capacity at market-based rates in the Cleco balancing authority area, file a mitigation proposal tailored to the J.P. Morgan Sellers' particular circumstances that would eliminate their ability to exercise market power, or inform the Commission that the J.P. Morgan Sellers will adopt the Commission's default cost-based rates or propose other cost-based rates.<sup>6</sup>

5. On September 10, 2010, the J.P. Morgan Sellers filed a timely request for rehearing of the August 11 Order. On September 14, 2010, the J.P. Morgan Sellers filed a request that the Commission toll the date for their response to the August 11 Order until after the Commission completed its analysis of Cleco Power's revised Simultaneous Transmission Import Limit (SIL) study submitted in Docket No. ER01-1099-014, which the J.P. Morgan Sellers claimed is relevant to their response to the August 11 Order. On September 30, 2010, the J.P. Morgan Sellers were granted an extension of time to respond to the August 11 Order until 60 days after the Commission issued an order in the Cleco proceeding.<sup>7</sup> On January 14, 2011, the Commission issued an order in the Cleco proceeding, which accepted revised SIL values for the Cleco balancing authority area.<sup>8</sup>

6. On February 28, 2011, the J.P. Morgan Sellers submitted their response to the August 11 Order (Show Cause Response). In their Show Cause Response, the J.P. Morgan Sellers used these revised SIL values and provided updated pivotal supplier and wholesale market share screens for the Cleco balancing authority area. The J.P. Morgan Sellers state that, using the Commission-approved updated SIL values, the J.P. Morgan Sellers satisfy both prongs of the Commission's two-part test for market-based rate authorization in the Cleco balancing authority area and they cannot exercise horizontal or vertical market power in that market.<sup>9</sup>

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<sup>6</sup> August 11 Order, 132 FERC ¶ 61,119 at P 31.

<sup>7</sup> *BE Louisiana, LLC*, Docket No. ER07-1358-015 (Sept. 30, 2010) (delegated letter order).

<sup>8</sup> *Cleco Power LLC*, 134 FERC ¶ 61,029 (2011).

<sup>9</sup> The revised indicative screens provided by the J.P. Morgan Sellers use a study period of December 2007 to November 2008 with updated data in both indicative screens.

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

7. Notice of the J.P. Morgan Sellers' Show Cause Response was published in the *Federal Register*, 76 Fed. Reg. 14,004 (2011), with interventions or protests due on or before March 21, 2011. None was filed.

## **III. Discussion**

### **A. Response to the August 11 Order**

#### **1. The J.P. Morgan Sellers' Response**

8. The J.P. Morgan Sellers argue that the Commission should not revoke their market-based rate authority in the Cleco balancing authority area because the J.P. Morgan Sellers do not have the ability to exercise market power in the Cleco balancing authority area. In support, the J.P. Morgan Sellers submit revised indicative screens, which incorporate the revised SIL values that the Commission accepted in Docket No. ER01-1099-014. The Commission's review of the updated indicative screens indicates that the J.P. Morgan Sellers pass both the pivotal supplier indicative screen and the wholesale market share indicative screen in the Cleco balancing authority area.<sup>10</sup>

#### **2. Commission Determination**

9. After weighing all of the relevant factors, the Commission finds that the J.P. Morgan Sellers have rebutted the presumption of horizontal market power and satisfy the Commission's horizontal market power standard for the grant of market-based rate authority. The J.P. Morgan Sellers have submitted updated horizontal market power indicative screens, which demonstrate that they pass both the pivotal supplier screen and wholesale market share screen in the Cleco balancing authority area. Therefore, we find that the J.P. Morgan Sellers do not have horizontal market power in the Cleco balancing authority area.

### **B. Request for Rehearing**

#### **1. The J.P. Morgan Sellers' Request for Rehearing**

10. In their request for rehearing, the J.P. Morgan Sellers request that the Commission grant rehearing of the August 11 Order as necessary to hold the instant proceeding and the obligation to show cause within sixty days of the August 11 Order in abeyance pending the outcome of the Cleco SIL proceeding in Docket No. ER01-1099-014 to allow the J.P. Morgan Sellers to use the SIL values at issue in that proceeding. In the

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<sup>10</sup> Show Cause Response at 5-6 (indicating, as updated, market shares of 17.4 percent or less in all seasons).

alternative, the J.P. Morgan Sellers ask the Commission to vacate the August 11 Order based on the evidence that the J.P. Morgan Sellers presented to the Commission in their change in status filing, which they maintain demonstrates that the J.P. Morgan Sellers lack horizontal market power in the Cleco balancing authority area.<sup>11</sup>

## 2. Commission Determination

11. We will dismiss the J.P. Morgan Sellers' rehearing request as moot. The J.P. Morgan Sellers requested rehearing in order to extend the time that they had to respond to the August 11 Order. The J.P. Morgan Sellers subsequently filed a request to toll the due date for responding to the August 11 Order until 60 days after the Commission approved the SIL values pending before the Commission in Docket No. ER01-1099-014. The J.P. Morgan Sellers were granted the requested extension of time to respond until 60 days after the Commission issued an order in Docket No. ER01-1099-014. The J.P. Morgan Sellers have incorporated the SIL values that were accepted by the Commission in the Docket No. ER01-1099-014 proceeding<sup>12</sup> into their indicative screens and, as discussed above, we find that those revised indicative screens rebut the presumption that the J.P. Morgan Sellers have market power in the Cleco balancing authority area. Accordingly, we find that the granting of the requested extension of time coupled with our finding that the J.P. Morgan Sellers have rebutted the presumption of market power in the Cleco balancing authority area render the J.P. Morgan Sellers' request for rehearing moot and we need not address the arguments raised in the alternative therein.

### C. Tariff

12. We note that BE Louisiana's, Cedar Brakes I, L.L.C.'s, Cedar Brakes II, L.L.C.'s, and Utility Contract Funding, L.L.C.'s currently effective market-based rate tariffs do not reflect that they were granted waiver of 18 C.F.R. Part 141, with the exception of sections 141.14 and 141.15.<sup>13</sup> Therefore, we direct each of these entities to include a revised tariff to reflect these exceptions in the limitations and exemptions section the next time that it makes a market-based rate filing with the Commission.<sup>14</sup>

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<sup>11</sup> J.P. Morgan Sellers Request for Rehearing at 2, 6-16.

<sup>12</sup> *Cleco Power LLC*, 134 FERC ¶ 61,029.

<sup>13</sup> *BE Louisiana LLC*, Docket No. ER07-1358-000 (Nov. 9, 2007) (delegated letter order); *Cedar Brakes I, L.L.C.*, Docket No. ER00-2885-000 (Jul. 12, 2000) (delegated letter order); *Cedar Brakes II, L.L.C.*, Docket No. ER01-2765-000 (Sept. 13, 2001) (delegated letter order); *Cedar Brakes III, L.L.C.*, Docket No. ER01-3056-000 (Dec. 4, 2001) (delegated letter order).

<sup>14</sup> *See Domtar Maine, LLC*, 133 FERC ¶ 61,207, at P 32 (2010).

#### **D. Reporting Requirements**

13. 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 (EQR) 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 longer) market-based power sales during the most recent calendar quarter.<sup>15</sup> Public utilities must file EQRs no later than 30 days after the end of the reporting quarter.<sup>16</sup>

14. The J.P. Morgan Sellers 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>17</sup> This includes the timely submission of land acquisition reports.<sup>18</sup>

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<sup>15</sup> *Revised Public Utility Filing Requirements*, Order No. 2001, FERC Stats. & Regs. ¶ 31,127, *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reh'g denied*, Order No. 2001-B, 100 FERC ¶ 61,342, *order directing filing*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002), *order directing filing*, Order No. 2001-D, 102 FERC ¶ 61,334 (2003). Attachments B and C of Order No. 2001 describe the required data sets for contractual and transaction information. Public utilities must submit EQRs 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>16</sup> The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2011). Failure to file an EQR (without an appropriate request for extension), or failure to report an agreement in an EQR, 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>17</sup> Order No. 652, FERC Stats. & Regs. ¶ 31,175; 18 C.F.R. § 35.42 (2011).

<sup>18</sup> *See* Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 at P 18 (requiring market-based rate sellers to report the acquisition of control of sites for new generation capacity development on a quarterly basis instead of within 30 days of the acquisition); Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 at P 21-24; 18 C.F.R. § 35.42(d); *Notice of New Docket Prefix "LA" for Land Acquisition Reports and Guidelines for Filing Under Order No. 697-C*, Docket No. RM04-7-006, 75 Fed. Reg. 22,125 (2010).

15. Additionally, the J.P. Morgan Sellers must file an updated market power analysis in the SPP region, in compliance with the regional reporting schedule adopted in Order No. 697.<sup>19</sup> The Commission also reserves the right to require such an analysis at any intervening time.

**E. Docket No. EL10-73-000**

16. We will terminate Docket No. EL10-73-000. That proceeding was established to determine the justness and reasonableness of the J.P. Morgan Sellers' market-based rates given their failure of the market share indicative screen and resulting presumption of horizontal market power in the Cleco balancing authority area. Based on our finding that the J.P. Morgan Sellers have rebutted the presumption of horizontal market power and satisfy the Commission's horizontal market power standard for the grant of market-based rate authority, we find that there is no further need for the proceeding in this docket.

The Commission orders:

(A) The J.P. Morgan Sellers' notice of change in status is hereby accepted for filing, as discussed in the body of this order.

(B) The J.P. Morgan Sellers' request for rehearing is hereby dismissed, as discussed in the body of this order.

(C) BE Louisiana, Cedar Brakes I, L.L.C., Cedar Brakes II, L.L.C., and Utility Contract Funding, L.L.C. are hereby directed to submit revisions to the limitations and exemptions section of their tariffs the next time they make a market-based rate filing with the Commission, as discussed in the body of this order.

(D) The J.P. Morgan Sellers are hereby directed to file an updated market power analysis according to the regional reporting schedule adopted in Order No. 697, as discussed in the body of this order.

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<sup>19</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 882.

(E) The section 206 proceeding in Docket No. EL10-73-000 is hereby terminated, as discussed in the body of this order.

By the Commission. Commissioner Spitzer is not participating.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.