

131 FERC ¶ 61,261  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

June 22, 2010

In Reply Refer To:  
Calpine Energy Services, L.P.  
Conectiv Energy Supply, Inc.  
Docket No. RP10-743-000

Calpine Corporation  
1401 H Street, NW, Suite 510  
Washington, DC 20005

Attention: Sarah G. Novosel, Senior Vice President  
Government Affairs and Managing Counsel

Reference: Temporary Waiver Request

Ladies and Gentlemen:

1. On May 14, 2010, Calpine Energy Services, L.P., (Calpine) and Conectiv Energy Supply, Inc., (Conectiv) (collectively, the Petitioners) filed a request for temporary waiver of the Commission's section 284.8 capacity release regulations, and other Commission policies and requirements, to facilitate the prearranged permanent release of certain long-term firm natural gas transportation and storage agreements from Conectiv to Calpine (Petition). The Petitioners state this release of capacity would be part of a recently announced transaction by which Calpine would acquire substantially all of Conectiv's wholesale power generation business. The Petitioners request the waiver become effective June 15, 2010, and continue for 90 days past the closing date of the transaction.<sup>1</sup> For the reasons discussed below, we grant the requested waiver.

2. The Petitioners state that pursuant to the subject transaction, Calpine will acquire from Conectiv 3,800 MW of power generating facilities in operation, and an additional 550-MW generating facility currently under construction. As part of that acquisition, the Petitioners state that Calpine will acquire from Conectiv a portfolio of 15 transportation agreements with an aggregate capacity of about 550,000 Dth per day, and five storage

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<sup>1</sup> Petitioners state that they intend the closing date to be on or before June 30, 2010.

agreements with an aggregate capacity of about four billion cubic feet.<sup>2</sup> According to the Petitioners, the transportation agreements are all firm long-term agreements involving service under negotiated rates, maximum rates, and discounted rates. They add that the storage agreements are all firm long-term agreements involving service under market-based rates. The Petitioners state that as part of the transaction, the transportation and storage service agreement portfolio will pass from Conectiv to Conective II (a subsidiary of Conectiv), and then ultimately from Conectiv II to Calpine. The Petitioners state that the transfer of these agreements is an essential element for realizing the benefits of the overall transaction and for ensuring that the natural-gas fired Conectiv generators continue to have uninterrupted access to natural gas fuel supplies.

3. In order to permit the transaction, the Petitioners state that they seek temporary waiver of the Commission's capacity release rules set forth in section 284.8 of the Commission's regulations, as well as the Commission's shipper-must-have-title policy, the prohibition on buy-sell arrangements, the prohibition on tying, the posting and bidding requirements for capacity release transactions, and the restrictions on capacity releases above or below the maximum rate. The Petitioners assert the waiver would only be temporary and would only be used for the limited purpose of consummating the referenced transaction. The Petitioners argue that the administrative challenges presented by the acquisition and integration of substantially all of Conectiv's wholesale power generation business into Calpine are significant and the transaction will require time to complete, which is why they request that the waiver become effective on June 15, 2010, and continue until 90 days past the transaction closing date.

4. The Petitioners state that the Commission has previously granted temporary waivers of the capacity release regulations to permit parties to consummate complex transactions, similar to the waiver they request here.<sup>3</sup> They contend that the Commission has specifically stated in certain of these orders that its policy is to permit broad waiver of

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<sup>2</sup> In a data response filed on May 27, 2010, the Petitioners state that these contracts involve the following interstate pipelines: Columbia Gas Transmission Corporation; Egan Hub Storage, LLC; Gulf Crossing Pipeline Company, LLC; Midcontinent Express Pipeline, LLC; Panhandle Eastern Pipe Line Company, LP; Pine Prairie Energy Center, LLC; Texas Eastern Transmission, LLC; Transcontinental Gas Pipe Line Corporation, LLC; and Trunkline Gas Company.

<sup>3</sup> They include *Macquarie Cook Energy, LLC*; *Constellation Energy Commodities Group, Inc.*, 126 FERC ¶ 61,160(2009); *Sempra Energy Trading Corp.*, 121 FERC ¶ 61,005 (2007); and *Sequent Energy Management, L.P.*; *Integrys Energy Services, Inc.*, 129 FERC ¶ 61,188 (2009).

its capacity release requirements so that the parties can consummate the transfer of an entire business unit.<sup>4</sup>

5. Public notice of the filing was issued on May 17, 2010. Interventions and protests were due on or before May 26, 2010. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2009)), all timely filed motions to intervene and any motion to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. No protests or adverse comments were filed.

6. The Commission has reviewed Petitioners' request for a temporary waiver and finds that the request is adequately supported and consistent with previous waivers that the Commission has granted under similar circumstances. Accordingly, for good cause shown, the Commission grants the Petitioners' request for a temporary waiver of the specified capacity release regulations, policies, and tariff provisions to allow the permanent release of certain firm transportation and storage service agreements from Conectiv to Calpine. Specifically, the Commission grants temporary waiver of section 284.8 of its regulations requiring that long-term releases not exceed the maximum recourse rate,<sup>5</sup> as well as sections 284.8(d) and (e) regarding notice and bidding of capacity releases. The Commission also grants waiver of the shipper-must-have-title requirement, and the prohibitions on buy-sell arrangements and tying of capacity releases to extraneous conditions, so that Petitioners can complete their transaction in an orderly and efficient manner.

7. The prearranged permanent capacity release transactions at issue are necessary to facilitate the sale of Conectiv's wholesale power business on an integrated basis to Calpine, consistent with Conectiv's desire to exit completely from the wholesale power generation business. In cases involving transfers of assets other than firm transportation capacity and gas supply contracts, including the sale of entire business units, the Commission has granted waiver of the capacity release regulations and tariffs, including posting and bidding, so that the parties could consummate the transfer of an entire business unit. As the Commission has explained:

The capacity release mechanism is not suited to these types of complex, integrated deals that do not permit the disaggregation of assets. Order No. 636 adopted the capacity release program in order to permit shippers to "reallocate unneeded firm capacity" to those who need it and promote efficient load management by the pipeline and its customers. The Commission did not contemplate that the capacity release posting and

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<sup>4</sup> See Petition at 6 and n. 13.

<sup>5</sup> See 18 C.F.R. § 284.8(b)(2) (2009).

bidding requirements would necessarily apply in cases of the merger or sale of entire business units as part of a corporate restructuring.<sup>6</sup>

8. This case involves the sale of over 3,800 MW of electric generation facilities currently in operation and an additional 550 MW generation facility under construction, the vast majority of which are capable of running on natural gas. The Petitioners state that the transportation and storage contracts included in the transaction are essential for ensuring that the gas-fired generators continue to have uninterrupted access to natural gas fuel supplies. Thus, the transaction at issue here is the type of complex, integrated deal involving assets other than pipeline transportation capacity for which the Commission has waived its capacity release regulations, including posting and bidding.

By direction of the Commission.

Kimberly D. Bose,  
Secretary.

cc: All Parties

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<sup>6</sup> *Request for Clarification of Policy regarding Waivers of Applicable Requirements to Facilitate Integrated Transfers of Marketing Businesses*, 127 FERC ¶ 61,106, at P 8 (2009), and cases cited.