

138 FERC ¶ 61,006
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Cascade Investments, L.L.C.
Otter Tail Power Company

Docket Nos. EC09-78-000
EC09-78-001

ORDER DENYING REQUEST TO WITHDRAW ORDER AND TERMINATING
AUTHORIZATION TO ACQUIRE SECURITIES AND CONDITIONS

(Issued January 5, 2012)

1. On November 2, 2011, Cascade Investments, L.L.C. (Cascade) and Otter Tail Power Company (Otter Tail Power) (jointly, Applicants) filed a notice advising the Commission that the transaction authorized in this proceeding¹ under section 203 of the Federal Power Act (FPA)² has not and will not be consummated. Applicants request that the Commission withdraw the Authorizing Order because it imposes certain ongoing obligations on Cascade, including the obligation to report quarterly on its holdings of the outstanding shares of Otter Tail Corporation. We will deny Applicants' request for withdrawal of the Authorizing Order, but we will terminate the authorization to acquire securities and all conditions to such authorization.

I. Background

2. On May 7, 2009, Applicants filed a request for authorization under section 203 of the FPA for Cascade to increase its holdings in Otter Tail Corporation from 9.6 percent to nearly 20 percent. The Authorizing Order granted Cascade authorization under FPA section 203(a)(2) to acquire less than 20 percent of the outstanding common shares of Otter Tail Corporation, subject to conditions. Those conditions included, among other

¹ *Cascade Investment, L.L.C. and Otter Tail Power Co.*, 129 FERC ¶ 61,011 (2009) (Authorizing Order).

² 16 U.S.C. § 824b (2006).

things, a requirement that Cascade file a quarterly informational report listing its holdings of the outstanding shares of Otter Tail Corporation.³

II. Notice of Filing

3. Notice of Applicants' filing was published in the *Federal Register*, 76 Fed. Reg. 72,196 (2011), with interventions and protests due on or before November 22, 2011. None was filed.

III. Discussion

4. As the Commission has previously stated, the determination to vacate orders is an equitable one, requiring exceptional circumstances.⁴ The Commission expends valuable time and resources in its consideration of cases, which provide useful information to the public.⁵ Applicants have not persuaded us that exceptional circumstances are present here, and so we deny their request that the Commission withdraw the Authorizing Order.

5. We note, however, Applicants' concern that the Authorizing Order imposes ongoing obligations. We will terminate Cascade's authorization to acquire the securities of Otter Tail Power and all conditions that are the subject of this proceeding, including the quarterly reporting requirement.

The Commission orders:

(A) We hereby deny Applicants' request to withdraw the Authorizing Order, as discussed in the body of this order.

³ Authorizing Order, 129 FERC ¶ 61,011 at P 21.

⁴ See, e.g., *East Kentucky Power Cooperative, Inc.*, 121 FERC ¶ 61,255, at P 10 (2007); *Vermont Yankee Nuclear Power Corporation*, 96 FERC ¶ 61,286, at 62,086 (2001) (letter order) (denying requests to vacate Commission order authorizing sale of Vermont Yankee's nuclear power station and other jurisdictional facilities, which was not completed due to lack of approval by Vermont Public Service Board).

⁵ *KeySpan Energy Development Corp. v. New York Independent System Operator, Inc.*, 108 FERC ¶ 61,201, at P 4 (2004); *New PJM Companies*, 110 FERC ¶ 61,009, at P 14, n.12 (2005).

(B) The authorization to acquire securities and all conditions that are the subject of the proceeding are terminated as of the date of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.