

111 FERC ¶ 61,403
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Calpine Construction Finance Company, L.P.

Docket No. ER05-912-000

ORDER ACCEPTING AND SUSPENDING FILING AND ESTABLISHING
HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued June 16, 2005)

1. In this order, we accept for filing Calpine Construction Company L.P.'s (Calpine) proposed Rate Schedule No. 4 for Reactive Power and Voltage Control Service from Sutter Energy Center (Generating Facility) to the Western Area Power Administration (Western)¹ and suspend it for a nominal period, to become effective June 1, 2005, as requested, subject to refund. We also establish hearing and settlement judge procedures. This action benefits customers because it provides the parties with a forum in which to resolve their disputes over Calpine's proposed rates for reactive power and voltage control service.

Background

2. On April 29, 2005, Calpine submitted for filing a rate schedule specifying its rate for supplying reactive power service from the Generating Facility to Western. Calpine requests any necessary waivers of the Commission's regulations to permit its rate schedule to become effective on June 1, 2005.

3. Calpine states that this is a cost-based rate that represents the Generating Facility's revenue requirement for reactive power and voltage control service. Calpine states that it calculated the fixed capability component by first determining the portion of the Generating Facility's generator/excitation system and the generator step-up transformers used to produce reactive power in accordance with the methodology that the Commission

¹ Sutter is interconnected to Western's Central Valley Project, a transmission system that is part of Western's Sierra Nevada Region.

approved in *AEP*,² and that the revenue requirement is simply the fixed costs attributable to reactive power production capability. Calpine states that, once it had determined the fixed cost, it then determined the annual revenue requirement using a levelized annual carrying cost approach by applying a fixed charge rate.

4. Calpine states that it executed an Interconnection Agreement with Western to interconnect the Generating Facility to Western on January 18, 2000.³ It says that sections 15 and 2.2 of the Interconnection Agreement require it to provide reactive power and voltage control services to Western and reflect Western's acknowledgment that Calpine would charge it for the services.⁴ Calpine states that it is seeking to recover the Generating Facility's costs as a supplier of reactive power and voltage control services, just as Western recovers the cost of the same services that its generating facilities provide.⁵

² *American Electric Power Service Corporation*, 88 FERC ¶ 61,141 (1999), *order on reh'g*, 92 FERC ¶ 61,001 (2000) (*AEP*).

³ According to Calpine, when it negotiated the Interconnection Agreement with Western, Pacific Gas and Electric Company (PG&E) had contractual control of the Central Valley project. Calpine states that PG&E has put all of the transmission facilities it controlled within the control area operated by the California Independent System Operator Corporation (CAISO). Calpine further states that PG&E recently decided to end the contract under which it operated Western's Central Valley Project facilities, and Western decided to operate the Central Valley Project under a contract with the Sacramento Municipal Utility District (SMUD), which is not a member of CAISO. Because the Generating Facility is no longer within the control area of CAISO, it can no longer be paid for ancillary services as a generation source within the CAISO control area. That is why the Generating Facility is now seeking payment for its reactive power and voltage control services from Western. For the background of Western's relationships with CAISO, PG&E, and SMUD, *see California Independent System Operator Corporation*, 109 FERC ¶ 61,391 (2004), *order on reh'g*, 111 FERC ¶ 61,363 (2005).

⁴ Transmittal Letter at 4.

⁵ Transmittal Letter at 5.

5. Calpine states that Commission policy, as expressed in Order No. 2003-A,⁶ is that a transmission provider must pay a generator interconnected to its transmission system for reactive power and voltage control services. Calpine notes that while Order No. 2003-A is prospective, it does not preclude a generator from seeking compensation for reactive power service if the generator's pre-Order No. 2003-A contract allows compensation. According to Calpine, the Interconnection Agreement provides that it may bill Western for reactive power service.⁷

Notice of Filing and Responsive Pleading

6. Notice of the filing was published in the *Federal Register*, 70 Fed. Reg. 25,038 (2005), with interventions and protests due on or before May 20, 2005. On May 20, 2005, Western filed a protest and comments.⁸

7. Western argues that since, under section 205 of the Federal Power Act,⁹ the Commission lacks jurisdiction over Western, the Commission cannot direct Western to pay the charges in Calpine's proposed tariff.¹⁰ Western also argues that the Commission must review Calpine's filing in light of the Interconnection Agreement, and not under Order No. 2003-A.¹¹ It says that the Interconnection Agreement does not provide for

⁶ *Citing Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 Fed. Reg. 49845 (Aug. 19, 2003), FERC Stats. & Regs. ¶ 31,146 (2003) (Order No. 2003), *order on reh'g*, Order No. 2003-A, 69 Fed. Reg. 15,932 (Mar. 26, 2004), FERC Stats. & Regs. ¶ 31,160 (2004) (Order No. 2003-A), *order on reh'g*, Order No. 2003-B, 70 Fed. Reg. 265 (Jan. 4, 2005), FERC Stats. & Regs. ¶ 31,171 (2005) (Order No. 2003-B), *order on reh'g*, Order No. 2003-C, 111 FERC ¶ 61,401 (2005) (Order No. 2003-C). *See also* Notice Clarifying Compliance Procedures, 106 FERC ¶ 61,009 (2004).

⁷ Transmittal Letter at 4.

⁸ Western did not seek to intervene in this proceeding. *See* Protest at 1, 9.

⁹ 16 U.S.C § 824d (2000).

¹⁰ Protest at 4-13. Western also argues that the federal reclamation laws give it exclusive jurisdiction to determine the terms and conditions of its contracts. *Id.* at 9-13.

¹¹ Protest at 16-20.

payment for reactive power and voltage control services.¹² Western maintains that, under *Mobile/Sierra*,¹³ neither Calpine nor the Commission can amend the Interconnection Agreement to provide for charges for those services. Finally, Western argues that the Generating Facility does not, in fact, provide it with reactive power and voltage control services.¹⁴

Discussion

8. Western argues that the Commission cannot require it to pay the charges at issue here, given that Western is a federal agency. However, Calpine is a jurisdictional public utility and so must file with the Commission the rates, terms and conditions of reactive power and voltage control services that the Generating Facility supplies to anyone. We emphasize that it is the services that Calpine claims the Generating Facility provides to Western that falls under the Commission's jurisdiction.¹⁵

9. The Interconnection Agreement could have: (1) committed Calpine to provide reactive power and voltage control services without compensation; (2) committed Western to pay for the services; or (3) not addressed the issue. Only in the first instance would it be clear that Calpine is not entitled to charge for the service.

10. Calpine's filing presents issues of material fact that we cannot resolve based on the record before us and that are more appropriately addressed in the trial-type evidentiary hearing that we are ordering below. These material issues of fact include, but are not limited to, the issue of whether the Interconnection Agreement provides for compensation to Calpine Generating Facility for reactive power and voltage control services.

¹² Protest at 16. Western also argues that there are no provisions in Calpine's service agreement with Western (dated August 30, 1999) that provide for the payment for reactive power or voltage control services. Protest at 15-16.

¹³ *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348, 353 (1956); *United Gas Pipeline Co. v. Mobile Gas Service Corp.*, 350 U.S.332, 340 (1956) (*Mobile-Sierra*).

¹⁴ Protest at 20-22.

¹⁵ See *Pacific Gas and Electric Company*, 109 FERC ¶ 61,392 at P 56 (2004). See also Order No. 2003-A at P 137, P 139 (2004).

11. Our preliminary analysis indicates that Calpine's filing has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Accordingly, we will accept the proposed rate schedule for filing, suspend it for a nominal period, make it effective June 1, 2005, as requested, subject to refund, and set it for hearing and settlement judge procedures.

12. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.¹⁶ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.¹⁷ The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) Calpine's proposed rate schedule for reactive power and voltage control service is hereby accepted for filing and suspended for a nominal period, to become effective June 1, 2005, as requested, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning Calpine's proposed rate schedule for reactive

¹⁶ 18 C.F.R. § 385.603 (2004).

¹⁷ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

power and voltage control services. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Paragraphs (C) and (D) below.

(C) Pursuant to rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2003), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(D) Within sixty (60) days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a conference in these proceedings in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.