

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Calpine Oneta Power, L.P.

v.

Docket No. EL04-21-000

American Electric Power Service Corp.

ORDER DENYING REHEARING

(Issued January 18, 2006)

1. This order denies rehearing of an order issued in this proceeding on August 15, 2005,¹ which denied a complaint filed by Calpine Oneta Power, L.P. (Calpine) against American Electric Power Service Corporation (AEP). Calpine unilaterally sought to modify its interconnection agreement (IA) with AEP and reclassify certain facilities as network upgrades. The Commission found in the August 15 Order that the IA did not allow the Commission to review the proposed modifications under the just and reasonable standard of the Federal Power Act,² and that the proposed modifications failed to meet the public interest standard.

Background

2. On November 13, 2003, Calpine filed a complaint against AEP claiming that AEP had unjustly and unreasonably classified certain Calpine interconnection facilities, which Calpine asserted were located beyond the point of interconnection, as direct assignment facilities rather than network upgrades. Calpine sought to have these facilities reclassified, and also sought reimbursement, in the form of transmission credits, for the actual construction of the interconnection facilities (\$5,175,907.88), plus interest. Calpine stated that the IA gave Calpine the right to have this complaint considered under the FPA's just and reasonable standard, per the Commission's holding in *Duke Hinds*,

¹ *Calpine Oneta Power L.P. v. American Electric Power Service Corp.*, 112 FERC ¶ 61,186 (2005) (August 15 Order).

² 16 U.S.C. §§ 791a-825r (2000).

LLC v. Entergy Services, Inc., which held that, where an IA provides for either party to unilaterally request changes to its IA under the FPA sections 205 and 206, the appropriate standard of review for modifying the contract is the just and reasonable standard.³

3. The August 15 Order found that Calpine's complaint was ineligible for consideration under the just and reasonable standard because the contract limits parties' rights to seek unilateral modifications, and that Calpine failed to meet the public interest standard because Calpine made no showing that its IA was unduly discriminatory or that it was excessively burdensome to customers taking service under the IA. Therefore, the Commission found that Calpine failed to meet the public interest standard and denied the complaint.

Request for Rehearing

4. In its request for rehearing, Calpine states that the August 15 Order failed to address one of the issues in its complaint. Specifically, Calpine states that the Commission failed to clarify that Calpine could apply its transmission credits to a Southwest Power Pool (SPP)-wide transmission charge and not just to that portion of the charge that represents revenues received by AEP. Calpine states that it has already accrued approximately \$5.4 million in transmission credits payable by AEP.⁴

5. Calpine argues that any credits due it under the IA should apply to the full charge for any transmission service on the SPP system that sources from Calpine's facility. Calpine states that, under the IA, AEP only allows credits to apply to that portion of the SPP transmission charge that is attributable to revenues received by AEP.⁵ Calpine argues that the IA should be modified to provide that credits apply against the full cost of transmission service regardless of the revenues received by AEP for the energy delivery transaction. Calpine states that AEP is a member of the SPP and should be required to abide by SPP's Open Access Transmission Tariff (OATT), including its transmission

³ 102 FERC ¶ 61,068 at P 21 (2003), *reh'g pending (Duke Hinds II)*.

⁴ Calpine states that its complaint sought to recover an additional \$5.175 million in credits.

⁵ Calpine states that AEP is a member of the SPP RTO and, as a result, SPP is the entity that bills for all of the Calpine transmission service in question.

crediting policy. Calpine states that the SPP's crediting policy, reflected in the SPP OATT,⁶ would allow Calpine to apply its credits to the entire portion of the transmission charge, not just that portion which represents revenue to AEP.

6. Calpine also states that the IA explicitly contemplates that Calpine may take service under SPP's OATT, and recognizes that SPP's pricing policies regarding the use of transmission credits may change. Calpine argues that AEP should be required to reform the crediting provision in the IA because section 4.4 of the Supplement to the IA provides that AEP "shall use commercially reasonable efforts to have the transmission service credit honored under such new pricing."⁷

Discussion

7. We will deny Calpine's request for rehearing. Calpine does not argue that the Commission erred in concluding that the express terms of the IA as currently written fail to support Calpine's argument regarding its entitlement to credits from Calpine's facility. Calpine also does not argue that the Commission erred in finding that Calpine had failed to present evidence supporting modification to the IA under the public interest standard to provide for those credits. Rather, Calpine raises for the first time on rehearing the argument that the Commission should require AEP to conform the IA to mirror SPP's crediting policy as reflected in SPP's OATT, relying on section 4.4 of the Supplement to the IA, which provides that AEP will use commercially reasonable efforts to have the transmission service credit reflect any changes in transmission pricing within the SPP. In fact, not only did Calpine fail to raise this argument in its original complaint, Calpine also failed to articulate this argument in its December 19, 2003 answer to AEP's answer to its complaint. The Commission looks with disfavor on parties raising new issues on rehearing. Such behavior is disruptive to the administrative process because it has the effect of moving the target for parties seeking a final administrative decision.⁸ Moreover, because Calpine is raising the argument for the first time on rehearing, AEP is not entitled to file an answer in which AEP could offer its alternative interpretation for section 4.4. Accordingly, we will deny rehearing.

⁶ Calpine's Request for Rehearing at 5 *citing* SPP's OATT, Attachment V, Original Sheet No. 372 and 373A.

⁷ See Calpine's Request for Rehearing at 5-6.

⁸ *Baltimore Gas & Electric Co.*, 92 FERC ¶ 61,043 at 61,114 (2000).

The Commission orders:

Calpine's request for rehearing is denied as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.