

134 FERC ¶ 61,100  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Ross Bachofer

v.

Docket No. EL11-3-000

Calpine Corporation

ORDER ON COMPLAINT

(Issued February 11, 2011)

1. On October 26, 2010, Ross Bachofer filed a motion for late intervention and complaint<sup>1</sup> pursuant to section 206 of the Commission's Rules of Practice and Procedure.<sup>2</sup> Mr. Bachofer alleged that the actions of Calpine Corporation (Calpine) resulted in damage to his property, and interruption of the quiet enjoyment of said property. We will dismiss the complaint for the reasons discussed below.

**I. Background**

2. Mr. Bachofer explains that he owns property adjacent to Rocky Mountain Energy Center, LLC's (Rocky Mountain) manifold building and well field site in Keenesburg, Colorado. Rocky Mountain is a 652 MW natural gas combined-cycle generation facility

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<sup>1</sup> The motion for late intervention and complaint was originally filed in Docket No. EC10-71-000, a proceeding that was already fully adjudicated. *Pub. Serv. Co. of Colorado*, 132 FERC ¶ 63,032 (2010) (among other things, authorizing Public Service Company of Colorado (PS Colorado) to acquire 100 percent of the limited liability interests of Rocky Mountain, merging Rocky Mountain into PS Colorado, authorizing PS Colorado to acquire all of Rocky Mountain's rights and assets, and to assume all of its liabilities and other obligations). The filing was subsequently redocketed in Docket No. EL11-3-000.

<sup>2</sup> 18 C.F.R. § 385.206 (2010).

that is owned and operated by a Calpine subsidiary.<sup>3</sup> Mr. Bachofer alleges flood and cosmetic damage to his property, as well as devaluation to his property, due to operation of the manifold building. He states that he was denied review of his claims by local government agencies. According to Mr. Bachofer, he then contacted representatives of Rocky Mountain regarding the alleged damages but received no relief. Mr. Bachofer asks that Calpine either provide a replacement property similar to his current property or monies to rebuild his home on elevated land.

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

3. Notice of the complaint was published in the *Federal Register*, 75 Fed. Reg. 69,432 (2010), with interventions and protests due on or before November 24, 2010. PS Colorado filed a timely motion to intervene and protest. Calpine filed an answer and a request for dismissal of the complaint.

4. PS Colorado states that the complaint should be dismissed because it concerns matters that are beyond the Commission's statutorily-prescribed jurisdiction and that the complaint seeks remedies that the Commission has no legal authority to award.<sup>4</sup> It explains that the Commission's jurisdiction is narrowly prescribed and that it is well-settled that the Commission does not have jurisdiction over real property or damages claims by landowners or landowner valuation claims.<sup>5</sup> Moreover, PS Colorado states that the Commission lacks the authority to award the relief Mr. Bachofer seeks, i.e., it cannot award money damages or otherwise compensate property owners for diminished property values.<sup>6</sup>

5. Calpine acknowledges that over the past several years, Mr. Bachofer has complained to Calpine about Rocky Mountain, particularly regarding the well field and related facilities that are located adjacent to Mr. Bachofer's property. Calpine states that, without offering any credible supporting evidence or arguments, Mr. Bachofer has alleged that Rocky Mountain caused flood damage to his property and that Rocky Mountain violated unspecified laws or regulations governing construction permits, noise

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<sup>3</sup> We note that, subsequent to the filing of Mr. Bachofer's complaint, PS Colorado acquired ownership of Rocky Mountain, as the Commission had previously authorized. *Pub. Serv. Co. of Colorado* 132 FERC ¶ 63,032.

<sup>4</sup> PS Colorado Protest at 3.

<sup>5</sup> *Id.* at 4 (citing *Arlington Storage*, 125 FERC ¶ 61,306, at P 43 (2008)).

<sup>6</sup> *Id.* at 5 (citing *LSP-Cottage Grove, L.P. v. Northern Natural Gas Co.*, 111 FERC ¶ 61,108, at P 44-45 (2005)).

levels, and erosion control measures. Calpine responds that Rocky Mountain invested time and money into investigating these complaints and ultimately concluded that they lacked merit.<sup>7</sup> Further, Calpine understands that Mr. Bachofer also contacted various Colorado agencies, including the Weld County, Colorado Attorney with similar allegations. Calpine states that as far as it is aware, those claims have been rejected and that Mr. Bachofer has not filed any complaints or other claims with any local court or agency.

6. Calpine states that the complaint does not meet the minimum requirements set forth in the Commission's Rules of Practice and Procedure, e.g., Rule 203's requirement that all pleadings must set forth relevant facts, the position taken by the participant, and the basis in law and fact for such position.<sup>8</sup> Also, Calpine states that Rule 206 requires complainants to clearly identify the action or inaction that is alleged to violate applicable statutory standards or regulatory requirements and provide an explanation of how that action or inaction violates the applicable statutory standards or regulatory requirements.<sup>9</sup> Calpine argues that the complaint must be dismissed as patently deficient because it provides no basis in law or in fact for Mr. Bachofer's position and it does not identify any specific statutory provision or Commission rule or regulation that Calpine or its subsidiary, Rocky Mountain, may have violated.<sup>10</sup> Further, Calpine points out that the complaint makes conclusory statements asserting that the alleged injuries were caused by Calpine or Rocky Mountain without credible evidence or arguments in support of those claims.<sup>11</sup> Calpine characterizes the complaint as vague and conclusory and states that the allegations are insufficient to put Calpine on notice of the claims against it, or to allow it to respond and mount an effective defense of those claims.<sup>12</sup>

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<sup>7</sup> Calpine Answer at 3-4.

<sup>8</sup> 18 C.F.R. § 385.203(a)(6)-(7) (2010).

<sup>9</sup> Calpine Answer at 7 (citing 18 C.F.R. § 385.206(b)(1) (2010)).

<sup>10</sup> Calpine Answer at 7.

<sup>11</sup> *Id.* at 7-8 (citing *Energy Mgmt. Corp. v. Peoples Gas System Inc.*, 78 FERC ¶ 61,044, at 61,181 (1997)). Calpine states that, like the instant case, the complaint in *Energy Mgmt Corp.* was dismissed as "vague" and "confusing" and consisted of "conclusory statements devoid of any factual support."

<sup>12</sup> *Id.* at 8.

7. Calpine concludes that the Commission should dismiss the complaint in all respects because it does not state a legally recognizable claim that the Commission has the statutory or regulatory power to address.<sup>13</sup>

### III. Discussion

#### A. Procedural Matters

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the timely, unopposed motion to intervene serves to make PS Colorado a party to this proceeding.

#### B. Substantive Matters

9. Issues of property valuation, siting or construction of generation, and environmental impacts --like those raised by Mr. Bachofer-- are not within the Commission's jurisdiction under Part II of the Federal Power Act,<sup>14</sup> and are more appropriately addressed in some other forum.<sup>15</sup> Monetary damages are also beyond the scope of the Commission's authority under Part II of the Federal Power Act.<sup>16</sup> Therefore, we dismiss the complaint.

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<sup>13</sup> *Id.* at 6 (citing *Californians for Renewable Energy v. Cal. Indep. Sys. Operator Corp.*, 129 FERC ¶ 61,075, at P11 (2009)).

<sup>14</sup> 16 U.S.C. § 824 (2006).

<sup>15</sup> *See PSI Entergy, Inc.*, 55 FERC ¶ 61,254, at 61,811, *reh'g denied*, 56 FERC ¶ 61,237 (1991); *see also Montana Megawatts I, LLC*, 107 FERC ¶ 61,140, at P 6 (2004) (stating that "such matters as...the construction or siting of generation are not within the scope of the Commission's authority.").

<sup>16</sup> *See, e.g., Montana-Dakota Utilities Co. v. Northwestern Pub. Serv. Co.*, 341 U.S. 246, 260 (1951); *cf. LSP-Cottage Grove, L.P. v. Northern Natural Gas Co.*, 111 FERC ¶ 61,108, at P 45 (2005) (finding that monetary damages and other contractual remedies are a matter of state law); *South Carolina Pub. Serv. Auth. v. FERC*, 850 F.2d 788, 794-795 (1988) (potential liability for damages caused by licensees for damages caused by their projects is a matter left by Congress to state law).

The Commission orders:

The complaint is hereby dismissed, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.