

147 FERC ¶ 61,205
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

June 13, 2014

In Reply Refer To:
Calpine Corporation
Docket No. ER14-2023-000

King & Spalding, LLP
Attn: Neil L. Levy
1700 Pennsylvania Avenue, NW
Washington, DC 20006

Calpine Corporation
Attn: Sarah G. Novosel
875 15th Street NW
Suite 700
Washington, DC 20006

Dear Mr. Levy and Ms. Novosel:

1. This order addresses Calpine Corporation's (Calpine) request,¹ on behalf of its wholly-owned subsidiaries, Calpine Energy Services, L.P (CES) and Decatur Energy Center, LLC (Decatur), for limited waiver of certain provisions in PJM Interconnection, L.L.C.'s (PJM) Open Access Transmission Tariff (OATT).² For the reasons set forth below, the Commission grants a one-time, limited waiver of certain provisions of the PJM OATT, effective June 13, 2014.

2. Section 29 of Part III³ of the PJM OATT requires any eligible transmission customer seeking to obtain network integration transmission service to complete an application for service identifying, among other things, the relevant network resource and

¹ Hereinafter referred to as "Petition."

² PJM, Intra-PJM Tariffs, OATT, pt. III, §§ 29 (Initiating Service), 32 (Initial Study Procedures For Network Integration Transmission Service Requests).

³ Part III of the PJM OATT governs Network Integration Transmission Service in the PJM region. PJM, Intra-PJM Tariffs, OATT, pt. III (Network Integration Transmission Service).

the requested commencement date and term of service.⁴ In addition, Section 29 requires that the application include a statement, signed by an authorized officer, attesting that the eligible customer owns the resource providing generation or has committed to purchase generation from the resource.⁵ Pursuant to Section 32, once PJM receives a completed application, it will determine if an Initial Study is needed to assess whether there is sufficient available capacity to provide the requested service.⁶ If an Initial Study is needed, eligible customers must wait for up to 105 days to know the results of the Initial Study. The eligible customer must execute a service agreement, or request the filing of an unexecuted service agreement, within 30 days after the Initial Study is completed, or PJM will deem the request terminated and withdrawn.⁷

3. Calpine states that, on April 26, 2013, PJM, PJM Settlement, and CES entered into a network integration transmission service agreement that provides network integration transmission service within PJM for 720 MW of capacity and energy originating from the Tennessee Valley Authority control area (Service Agreement). Calpine adds that the Service Agreement specifies service only for the output of the Decatur Energy Center, which is the sole designated network resource, for the term June 1, 2023 to May 31, 2028.⁸

4. Calpine requests one-time, limited waiver of Sections 29 and 32. According to Calpine, such a limited waiver would permit it to substitute Decatur, in the place of CES, as the transmission customer under the Service Agreement. Calpine states that the PJM OATT does not expressly permit the substitution of one network integration transmission service customer for another, even when there is no change to the requested service or the designated network resource.⁹ Calpine adds that it has been authorized to represent that PJM supports its request for limited waiver.

5. Calpine explains that on April 28, 2014, certain of its subsidiaries – including CES and Decatur – filed an application, under Section 203 of the Federal Power Act, allowing NatGen Southeast Power LLC (NatGen) to directly or indirectly acquire all of the

⁴ Petition at 3-4; *see* PJM OATT, pt. III, §§ 29.1 (Condition Precedent for Receiving Service), 29.2 (Application Procedures).

⁵ PJM OATT, pt. III, § 29.2(viii).

⁶ PJM OATT, pt. III, § 32.1.

⁷ PJM OATT, pt. III, § 32.4.

⁸ Petition at 4.

⁹ *Id.* at 6.

membership interests in Decatur and other companies.¹⁰ Calpine states that, due to this transaction, Decatur is no longer a subsidiary of Calpine, and Decatur, not CES, will directly sell the output of the Decatur Energy Center. Calpine explains that, through such a change in designation, CES relinquished all of its rights and is relieved of all obligations and liabilities under the Service Agreement. Thus, Calpine seeks to change the Service Agreement and the associated transmission service reservation to designate Decatur, rather than CES, as the transmission customer. Calpine states that it is seeking waiver to permit the substitution of Decatur so it does not have to go through the application and study process under the OATT to obtain network integration transmission service for a network resource that has already been studied by PJM.¹¹

6. Calpine asserts that the requested one-time waiver meets the Commission's criteria for granting waiver. Specifically, Calpine states that the Commission has granted tariff waivers where: (1) the underlying error was made in good faith; (2) the waiver was of limited scope; (3) a concrete problem needed to be remedied; and (4) the waiver did not have undesirable consequences, such as harming third parties.¹²

7. Calpine asserts that it acted in good faith and, "[t]o the extent there was any 'error' in this case, the error was Calpine's good faith decision to have CES, rather than Decatur, enter into the Service Agreement with PJM."¹³ Calpine explains that it arranged for CES to enter into the Service Agreement "well before" Calpine and NatGen agreed to the acquisition transaction and both CES and Decatur fully expected that CES would be the party selling the output of the Decatur Energy Center in PJM and, therefore, needing network integration transmission service. Therefore, Calpine states that the acquisition

¹⁰ Calpine states that the Section 203 application filed in Docket No. EC14-81-000 requested that the Commission issue an order approving the transaction on or before June 16, 2014. *Id.* at 5. This delegated order was issued on June 10, 2014, *NatGen Southeast Power, LLC, et. al.*, 147 FERC ¶ 62,190 (2014).

¹¹ Petition at 5-6.

¹² *Id.* (citing *Green Energy Partners/Stonewall LLC*, 142 FERC ¶ 61,158, at P 7 (2013); *ISO New England Inc.*, 142 FERC ¶ 61,051, at P 20 (2013); *East Kentucky Power Coop., Inc.*, 142 FERC ¶ 61,028, at P 14 (2013); *PJM Interconnection, L.L.C.*, 141 FERC ¶ 61,103, at P 8 (2012); *Linden VFT, LLC*, 140 FERC ¶ 61,244, at P 11 (2012); *Pittsfield Generating Co., L.P.*, 130 FERC ¶ 61,182, at P 9 (2010); *ISO New England Inc. – EnerNOC, Inc.*, 122 FERC ¶ 61,297, at P 13 (2008)).

¹³ *Id.* at 7.

transaction is an unanticipated event that has resulted in the need to transfer the Service Agreement to Decatur.¹⁴

8. Calpine asserts that the waiver is limited in scope because CES seeks only a one-time waiver of the network integration transmission service application and study procedures set forth in the OATT. Calpine adds that the requested waiver is limited to permitting “the revision of the name of the customer under the Service Agreement.” Calpine explains that, because the designated network resource will remain the Decatur Energy Center, there will not be any change to the requested service or any other provision of the Service Agreement.¹⁵

9. Calpine states that the requested waiver is necessary to address a specific problem that, absent a waiver, Decatur will not have any rights to deliver energy and capacity from the Decatur Energy Center to PJM. Calpine adds that, if the waiver is not granted, Decatur will have to go through the network integration transmission service application and study process, which will waste time and resources given that there is already a Service Agreement in place for the requested service. Further, Calpine asserts that, absent waiver, the acquisition transaction would result in unnecessary uncertainty regarding the Service Agreement and CES would have an agreement for network integration transmission services for the Decatur Energy Center that it cannot use. CES contends that the waiver will resolve these problems by allowing Decatur, as the owner of the Decatur Energy Center, to have the right to the network integration transmission service under the Service Agreement and will relieve CES of any continuing obligations. Calpine also states that the waiver will ensure that energy and capacity from the Decatur Energy Center, a designated network resource, continues to be deliverable to maintain reliability in PJM.¹⁶

10. Calpine states that granting the waiver will not result in any adverse consequences because there will be no change in the designated network resource and, therefore, no impact on the PJM transmission system. Calpine adds that the waiver would not result in any adverse impact to any other customer or any delay in the processing of any request for network integration transmission service. Calpine also asserts that the waiver will not harm third parties and may benefit the PJM region by ensuring that external capacity and energy from the Decatur Energy Center are available to maintain reliability.¹⁷

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 8.

¹⁷ *Id.* at 9.

11. Notice of Calpine's filing was published in the *Federal Register*, 79 Fed. Reg. 32,267 (2014), with protests or interventions due on or before June 2, 2014. PJM filed a timely motion to intervene and comments in support. No protests or adverse comments were filed.

12. The Commission has previously granted limited waiver of tariff provisions where: (i) the applicant has been unable to comply with the tariff provision at issue in good faith; (ii) the waiver is of limited scope; (iii) a concrete problem will be remedied by granting the requested waiver; and (iv) the waiver does not have undesirable consequences, such as harming third parties.¹⁸ We find that, in the limited circumstances presented here, Calpine has shown good cause to grant the request for waiver. We particularly note that PJM filed timely comments in support of the waiver, provided that Decatur becomes a member of PJM¹⁹ and no other parties intervened to oppose the request.

13. In this case, renaming the customer does not change any physical facility or facility owner because CES is a power marketer who resells energy to the Tennessee Valley Authority. In fact, CES sells the output of the Decatur Energy Center, which is the entity that CES seeks to substitute in the existing network integration transmission service agreement. Calpine has shown that, at the time CES entered into the Service Agreement, both CES and Decatur fully expected that CES would be the entity needing network integration transmission service to sell the output of the Decatur Energy Center in PJM. As Calpine explains, CES and Decatur did not anticipate that an acquisition transaction would follow to require CES to transfer the Service Agreement to Decatur. Therefore, we find the waiver request to be a good faith effort to resolve this circumstance.

14. We find it appropriate to grant this one-time waiver of the network integration transmission service application and study procedures set forth in Sections 29 and 32 the OATT. The requested waiver is limited to permitting the substitution of Decatur, in the place of CES, as the transmission customer under the Service Agreement due to an unanticipated event that resulted in a need to transfer the Service Agreement to Decatur, and there will be no change to the requested service or any other provision of the Service Agreement. We also find that granting the waiver request will enable Calpine to remedy a concrete problem. By allowing Decatur to be substituted for CES as the transmission

¹⁸ See, e.g., *Southwest Power Pool, Inc.*, 146 FERC ¶ 61,110, at P 10 (2014); *PJM Interconnection, L.L.C.*, 144 FERC ¶ 61,060, at P 12 (2013); *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,184, at P 13 (2011); *ISO New England Inc.*, 134 FERC ¶ 61,182, at P 8 (2011); *California Independent System Operator Corp.*, 132 FERC ¶ 61,004, at P 10 (2010).

¹⁹ PJM Intervention and Comments at 2 (stating that Decatur is in the process of becoming a PJM member).

customer under the Service Agreement, Decatur will have the right to the network integration transmission service under the Service Agreement, which will enable energy and capacity from the Decatur Energy Center to continue to be deliverable to maintain reliability in PJM. Lastly, granting the waiver will have no undesirable consequences for PJM or any other third parties.

15. Accordingly, we grant waiver of Sections 29 and 32 of the PJM OATT for the limited purpose of allowing Calpine to change the resource designation from CES to Decatur on the Service Agreement and transmission service reservation as requested.

By direction of the Commission.

Kimberly D. Bose,
Secretary.