

156 FERC ¶ 61,016
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

LS Power Development, LLC
Luminus Management, LLC

Docket No. EC08-126-001

ORDER GRANTING SUSPENSION OF REPORTING REQUIREMENT

(Issued July 6, 2016)

1. On May 11, 2016, LS Power Development, LLC (LS Power) and Luminus Management, LLC (Luminus Management) (collectively, Applicants) filed a request for suspension of reporting obligations established in an order issued on December 4, 2008.¹ In the December 2008 Order, the Commission granted authorization under section 203(a)(1) of the Federal Power Act (FPA)² for Applicants to acquire up to 40 percent of the common stock of Calpine Corporation (Calpine) (Proposed Transaction). In this order, we grant Applicants' request for suspension of the quarterly reporting obligations that were imposed in the December 2008 Order.

I. Background

2. In the December 2008 Order, the Commission authorized the Proposed Transaction, finding it to be consistent with the public interest. Because the Proposed Transaction would result in a disposition of up to 40 percent of the common stock of Calpine and could, therefore, result in a change in control of a public utility, the Commission asserted jurisdiction over the Proposed Transaction under FPA section 203(a)(1).³

¹ *LS Power Dev., LLC*, 125 FERC ¶ 61,267 (2008) (December 2008 Order).

² 16 U.S.C. § 824b (2012).

³ December 2008 Order, 125 FERC ¶ 61,267 at P 24.

3. In the December 2008 Order, the Commission required Applicants to file with the Commission, for informational purposes, within 45 days of the end of the quarter, a quarterly report of holdings by both LS Power and Luminus Management of the outstanding shares of Calpine. The Commission required that the outstanding shares of Calpine be stated in terms of the numbers of shares held at the end of the quarter and as a percentage of the outstanding shares.⁴

II. Request for Suspension of Quarterly Reporting Obligation

4. Applicants state that since the issuance of the December 2008 Order, they have submitted quarterly reports to the Commission despite the fact that Applicants and their affiliates have held less than 10 percent of Calpine's outstanding shares for several years. Applicants state that, specifically, they and their affiliates have collectively held less than 10 percent of Calpine's outstanding shares since mid-2013, as shown in the quarterly reports filed between August 14, 2013, through February 16, 2016. Applicants note that the Commission has adopted a rebuttable presumption that a transfer of less than 10 percent of a public utility's securities does not constitute a transfer of control of jurisdictional facilities requiring approval under section 203.⁵ In order to reduce the administrative burden of preparing quarterly reports, Applicants request that the Commission suspend the applicability of the reporting obligations established in the December 2008 Order until such time as Applicants and their affiliates collectively hold 10 percent or more of Calpine's outstanding voting securities.

III. Notice of Filing and Responsive Pleadings

5. Notice of Applicants' request was published in the *Federal Register*, 81 Fed. Reg. 31,931 (2016), with interventions and protests due on or before May 26, 2016. None was filed.

IV. Discussion

6. Because the disposition or acquisition of 10 percent or more of the voting interests of a public utility could result in a change of control of the public utility,⁶ the

⁴ *Id.* P 27.

⁵ Request at 2 n.9.

⁶ The Commission's general policy creates a rebuttable presumption that "a transfer of *less than 10 percent* of a public utility's holdings is not a transfer of control if: (1) [a]fter the transaction, the acquirer and its affiliates and associate companies, directly or indirectly, in aggregate will own less than 10 percent of such public utility; and (2) the facts and circumstances do not indicate that such companies would be able to directly or (*continued ...*)

Commission asserted jurisdiction over the Proposed Transaction under FPA section 203(a)(1). The Proposed Transaction authorized in the December 2008 Order involved up to 40 percent of the common stock of Calpine, and the Commission required Applicants to file quarterly reports listing Applicants' holdings of Calpine shares of common stock.

7. Applicants represent that they and their affiliates have not collectively held 10 percent or more of Calpine's outstanding securities since mid-2013, as shown in the quarterly reports. Specifically, the quarterly reports submitted to the Commission from August 14, 2013, to February 16, 2016, reflect that the highest percentage of shares outstanding that Applicants held in Calpine was 9.4 percent, which is below the 10 percent rebuttable presumption threshold. Since August 2013, Applicants' quarterly reports reflect that the percentage of outstanding shares that Applicants held in Calpine varied from 7.6 percent to 9.4 percent.⁷

8. Therefore, based on the facts here, we will suspend the reporting requirement until such time as Applicants and their affiliates hold 10 percent or more of Calpine's outstanding shares. As of the most recent quarterly report submitted on February 16, 2016, Applicants' holdings of Calpine's common stock are below this level, and therefore, as of the date of issuance of this order, Applicants are not required to file with the Commission a quarterly report listing their holdings of the outstanding shares of Calpine. This suspension of the reporting requirement shall continue in effect until such time as it is either rescinded or modified by the Commission or until Applicants' holdings of common stock in Calpine are 10 percent or more than 10 percent. In this regard, we accept Applicants' commitment that, upon Applicants and their affiliates collectively acquiring 10 percent or more of Calpine's outstanding voting securities, they will resume submitting quarterly reports of their holdings of Calpine pursuant to the December 2008 Order.⁸

indirectly exercise a controlling influence over the management or policies of the public utility . . . Further, if holding companies or other acquirers believe that facts and circumstances prevent them from exercising control even if they own 10 percent or more of a public utility, they may seek to make such a demonstration to the Commission.” *FPA Section 203 Supplemental Policy Statement*, FERC Stats. & Regs. ¶ 31,253, at P 57 (2007) (emphasis added), *order on clarification and reconsideration*, 122 FERC ¶ 61,157 (2008).

⁷ Request at 2 nn.5-6.

⁸ *Id.* at 3. See also *LS Power Dev., LLC*, 143 FERC ¶ 61,216, at P 9 (2013).

The Commission orders:

Applicants' request for suspension of the quarterly reporting obligation imposed in the December 2008 Order is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.