

114 FERC ¶ 61,301  
FEDERAL ENERGY REGULATORY COMMISSION  
Washington, D.C. 20426

March 22, 2006

In Reply Refer To:  
Power Contract Financing, L.L.C.,  
PCF2, LLC,  
Calpine Energy Management, L.P.,  
CES Marketing V, L.P.,  
Calpine California Equipment Finance  
Company, LLC,  
Calpine Power America-OR, LLC,  
Calpine Power America-CA, LLC,  
RockGen Energy LLC,  
Geysers Power Company, LLC,  
Broad River Energy LLC,  
Calpine Philadelphia Inc.,  
Tiverton Power Associates, L.P.,  
Calpine Construction Finance  
Company, L.P.,  
Rumford Power Associates, L.P.,  
Docket Nos. ER03-838-004,  
ER04-1081-002,  
ER04-1080-002,  
ER03-209-003,  
ER03-290-003,  
ER03-341-003,  
ER03-342-003,  
ER99-970-004,  
ER99-1983-004,  
ER00-38-005,  
ER03-446-003,  
ER00-1171-003,  
ER00-1115-004, and  
ER00-2080-003

Davis Wright Tremaine LLP  
Attn: James B. Vasile, Esq.  
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Dear Mr. Vasile:

1. On January 17, 2006, Calpine Entities<sup>1</sup> filed a combined updated market power analysis and tariff revisions to incorporate the change in status reporting requirement<sup>2</sup> and market behavior rules.<sup>3</sup> On February 24, 2006, RockGen, Broad River, Tiverton and Rumford filed tariff revisions to prohibit inter-affiliate sales “without first receiving” Commission authorization<sup>4</sup> as well as other minor changes. As discussed below, the Commission concludes that Calpine Entities satisfy the Commission’s standards for market-based rate authority and will accept the proposed tariff revisions,<sup>5</sup> effective March 21, 2005.<sup>6</sup>

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<sup>1</sup> Power Contract Financing, L.L.C. (PCF), PCF2, LLC (PCF2), Calpine Energy Management, L.P. (CEM), CES Marketing V, L.P. (CESM V), Calpine California Equipment Finance Company, LLC (CCEFC), Calpine PowerAmerica-OR, LLC (CPA-OR), Calpine PowerAmerica-CA, LLC (CPA-CA), RockGen Energy LLC (RockGen), Geysers Power Company, LLC (Geysers Power), Broad River Energy LLC (Broad River), Calpine Philadelphia Inc. (CPI), Tiverton Power Associates, L.P. (Tiverton), Calpine Construction Finance Company, L.P. (CCFC), Rumford Power Associates, L.P. (Rumford) (collectively, Calpine Entities).

<sup>2</sup> *Reporting Requirement for Changes in Status for Public Utilities With Market-Based Rate Authority*, Order No. 652, 70 Fed. Reg. 8,253 (Feb. 18, 2005), FERC Stats. & Regs. ¶ 31,175 (2005), *order on reh’g*, 111 FERC ¶ 61,413 (2005).

<sup>3</sup> On February 16, 2006, the Commission issued an order rescinding market behavior rules 2 and 6 effective upon publication of the order in the *Federal Register*. *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 114 FERC ¶ 61,165 (2006). On that date, the Commission also adopted a final rule codifying market behavior rules 1, 3, 4 and 5 in the Commission’s regulations, effective on the date of publication of the final rule in the *Federal Register*. *Conditions for Public Utility Market-Based Rate Authorization Holders*, Order No. 674, 71 Fed. Reg. 9,695 (Feb. 27, 2006), 114 FERC ¶ 61,163 (2006).

<sup>4</sup> *Aquila, Inc.*, 101 FERC ¶ 61,331 at P 12 (2002).

<sup>5</sup> Only RockGen Energy, LLC, FERC Electric Tariff No.1, Original Volume No. 1, First Revised Sheet No.1 (supersedes Original Sheet No. 1); Broad River Energy, LLC, FERC Electric Tariff No. 1, Original Volume No. 1, First Revised Sheet No. 1, (supersedes Original Sheet No. 1); Tiverton Power Associates, L.P., FERC Electric Tariff No. 1, Original Volume No.1, First Revised Sheet Nos.1-2 (supersedes Original Sheets Nos. 1-2); Rumford Power Associates, L.P., FERC Electric Tariff No. 1, Original Volume No.1, First Revised Sheet Nos. 1-2 (supersedes Original Sheet Nos. 1-2) are accepted, excluding the Commission’s market behavior rules, effective March 21, 2005.

<sup>6</sup> We note that Calpine Entities filed certain tariff sheets with an effective date of both March 21, 2005 and March 21, 2006. We will grant the request made by Calpine  
(continued...)

2. Calpine Entities state that they are indirect wholly-owned subsidiaries of Calpine Corporation (Calpine).<sup>7</sup> Calpine is a Delaware corporation engaged through subsidiaries in the development, financing, acquisition, ownership and operation of independent power production facilities and the wholesale marketing of electricity in the United States and abroad.

3. Calpine Entities state that PCF, PCF2, CEM, CESM V, CPA-OR, CPA-CA, and CCEFC are power marketers. Calpine Entities state that they own or control approximately 1,422 MW in the ISO-New England, Inc. (ISO-NE) market, 463 MW in the Midwest Independent Transmission System Operator, Inc., (Midwest ISO) market and 840 MW in the Duke Energy Corporation (DUK) control area from generating plants that began construction after July 9, 1996. Calpine Entities also state that no other affiliated generation for which construction began prior to July 9, 1996 is located in those relevant control areas. Rumford, a Maine limited partnership, leases and operates a 265 MW generating plant located in Rumford, Maine. Tiverton, a Rhode Island limited partnership, leases and operates a 265 MW generation plant located in Tiverton, Rhode Island, in the ISO-NE market. One of CCFC's generating facilities, the 528 MW Westbrook generation facility, is located in the ISO-NE market. Calpine Entities affiliates' own the 200 MW Dighton Power Plant and a 32.3 percent interest in the 136 MW Androscoggin Energy Center, which are also located in ISO-NE. RockGen, a Wisconsin limited liability company, leases and operates a 463 MW generating plant

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Entities' in their transmittal letter for waiver of the Commission's prior notice requirement so that the tariff sheets may become effective March 21, 2005. *See Central Hudson Gas & Electric Corporation*, 60 FERC ¶ 61,106 at 61,337, *reh'g denied*, 61 FERC ¶ 61,089 (1992) (Commission will waive prior notice requirement when filing has no rate impact). The tariff sheets accepted herein have been corrected to reflect the requested effective date of March 21, 2005.

<sup>7</sup> On December 20, 21, and 27, 2005, Calpine and certain Calpine Entities filed voluntary petitions to restructure under Chapter 11 of the U.S. Bankruptcy Code, 11 U.S.C. §§ 101-1330, in the U.S. Bankruptcy Court for the Southern District of New York. Calpine Entities state that in filing their updated market power analysis, the Calpine Entities do not waive any protections that might be afforded to them under the Bankruptcy Code. We note that the Bankruptcy Code excepts the following from the automatic stay of certain actions against debtors: "[a]n action or proceeding by a governmental unit . . . to enforce such governmental unit's or organization's police and regulatory powers . . ." 11 U.S.C. § 362(b)(4); *see also, e.g., Mirant Corp. v. Potomac Elec. Power Co. (In re Mirant Corp.)*, 378 F.3d 511, 523 (5th Cir. 2004) ("the Bankruptcy Code clearly anticipates ongoing government regulatory jurisdiction while a bankruptcy proceeding is pending"); *Louisiana Pub. Serv. Comm'n v. Mabey (In re Cajun Elec. Power Coop., Inc.)*, 185 F.3d 446, 453 (5th Cir. 1999).

located in Wisconsin and in the Midwest ISO market. Broad River, a Delaware limited liability company, leases and operates a 840 MW generating facility located in Cherokee County, South Carolina within the DUK control area.

4. Further, Calpine Entities state that Geysers Power, CCFC and CPI lease or operate generation in control areas in which Calpine owns generation facilities for which construction commenced prior to July 9, 1996. Geysers Power, a limited liability company, and CCFC leases and operate approximately 1,293 MW in the California Independent System Operator Corporation (CAISO) market. CPI, a Delaware corporation, leases two generating facilities with a combined capacity of approximately 23 MW located in Philadelphia, Pennsylvania in the PJM Interconnection, L.L.C. (PJM) market and CCFC operates 609 MW from the Osprey facility, located near Auburndale, Florida in the Tampa Electric Company (TECO) control area.

### **Notice of Filings**

5. Notice of Calpine Entities' January 17, 2006 filing was published in the *Federal Register*, 71 Fed. Reg. 4,908 (2006), with protests and motions to intervene due on or before February 7, 2006. The California Electricity Oversight Board, Southern California Edison Company and Pacific Gas and Electric Company filed interventions.

6. Notice of Calpine Entities' February 24, 2006 filing was published in the *Federal Register*, 71 Fed. Reg. 12,351 (2006), with protests and motions to intervene due on or before March 9, 2006. None was filed.

### **Discussion**

#### **Procedural Matters**

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

#### **Market-Based Rate Authorization**

8. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, market power in generation and transmission and cannot erect other barriers to entry. The Commission also considers

whether there is evidence of affiliate abuse or reciprocal dealing.<sup>8</sup> As discussed below, the Commission concludes that Calpine Entities satisfy the Commission's standards for market-based rate authority.

9. In the Commission's order issued in *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018, *order on reh'g*, 108 FERC ¶ 61,026 (2004), we adopted two indicative screens for assessing generation market power. Section 35.27(a) of the Commission's regulations provides that applicants shall not be required to demonstrate any lack of market power in generation with respect to sales from capacity constructed after July 9, 1996.<sup>9</sup>

10. If an applicant sites generation in an area where it or its affiliates own or control other generation assets, the applicant must study whether its new capacity, when added to existing capacity, raises generation market power concerns.<sup>10</sup> The Commission clarified that in circumstances where construction on all of an applicant's generation commenced after July 9, 1996, no generation market power analysis need be performed.<sup>11</sup> Calpine Entities cite to the above exemption, and consequently did not perform a market power analysis for those relevant control areas.<sup>12</sup>

11. Calpine Entities prepared both the pivotal supplier and the wholesale market share screen analyses for the markets in which Calpine Entities or their affiliates own or control generation for which construction commenced prior to July 9, 1996.<sup>13</sup> The Commission has reviewed Calpine Entities' generation market power analyses for the CAISO, TECO, NYISO, PJM and Central and Southwest markets and has determined that Calpine

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<sup>8</sup> See, e.g., *Progress Power Marketing, Inc.*, 76 FERC ¶ 61,155 at 61,919 (1996); *Northwest Power Marketing Co., L.L.C.*, 75 FERC ¶ 61,281 at 61,899 (1996); *accord Heartland Energy Services, Inc.*, 68 FERC ¶ 61,223 at 62,062-63 (1994).

<sup>9</sup> 18 C.F.R. § 35.27(a) (2004). We note that the Commission intends to address as part of the generic rulemaking proceeding in Docket No. RM04-7-000 whether to retain or modify section 35.27(a) of its regulations.

<sup>10</sup> See April 14 Order, 107 FERC ¶ 61,018 at P 69, *order on reh'g*, 108 FERC ¶ 61,026 (2004).

<sup>11</sup> See July 8 Order, 108 FERC ¶ 61,026 at P 110.

<sup>12</sup> The relevant markets and control areas are: ISO-NE, Midwest ISO and Duke Power.

<sup>13</sup> The relevant markets and control areas where Calpine Entities and their affiliates own or control generation are: CAISO, New York Independent System Operator (NYISO), PJM, Central and Southwest Services (Central and Southwest), and TECO.

Entities pass both screens in those markets. Based on Calpine Entities' representations, Calpine Entities satisfy the Commission's generation market power standard for the grant of market-based rate authority.

12. Calpine Entities state that neither they nor any of their affiliates own any transmission facilities other than those needed to interconnect generating facilities to the grid. Based on Calpine Entities' representations, the Commission finds that Calpine Entities satisfy the Commission's transmission market power standard for the grant of market-based rate authority.

13. Calpine Entities state that neither they nor any of their affiliates have dominant control over sites or other scarce inputs to generation that could be used to prevent competitors from entering the relevant wholesale electric markets. Based on Calpine Entities' representations, the Commission is satisfied that Calpine Entities cannot erect barriers to entry.

14. Calpine Entities state that they are not affiliated with any utility that has a franchised service territory. Based on Calpine Entities' representations, the Commission finds that Calpine Entities satisfy the Commission's concerns with regard to affiliate abuse.

15. Consistent with the procedures the Commission adopted in Order No. 2001, an entity with market-based rates must file electronically with the Commission an Electric Quarterly Report containing: (1) a summary of the contractual terms and conditions in every effective service agreement for market-based power sales; and (2) transaction information for effective short-term (less than one year) and long-term (one year or greater) market-based power sales during the most recent calendar quarter.<sup>14</sup> Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.<sup>15</sup>

16. In Order No. 664, the Commission stated that it intends to no longer grant waivers of the full requirements of Part 45 in its orders granting market-based rate authority.

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<sup>14</sup> *Revised Public Utility Filing Requirements*, Order No. 2001, 67 Fed. Reg. 31,043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127 (2002). Required data sets for contractual and transaction information are described in Attachments B and C of Order No. 2001. The Electric Quarterly Report must be submitted to the Commission using the EQR Submission System Software, which may be downloaded from the Commission's website at <http://www.ferc.gov/docs-filing/eqr.asp>.

<sup>15</sup> The exact dates for these reports are prescribed in 18 C.F.R. § 35.10b (2005). Failure to file an Electric Quarterly Report (without an appropriate request for extension), or failure to report an agreement in an Electric Quarterly Report, may result in forfeiture of market-based rate authority, requiring filing of a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

Rather, persons seeking to hold interlocking positions will be required henceforth to comply with the full requirements of Part 45.<sup>16</sup> With respect to an individual who currently is authorized to hold interlocking positions, that individual will not need to refile under the full requirements of Part 45 to continue to hold such interlocking positions (unless and until that individual assumes different or additional interlocking positions).<sup>17</sup> Thus, consistent with Order No. 664, Calpine Entities will be required to comply with the full requirements of Part 45.

17. Calpine Entities must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.<sup>18</sup>

18. Calpine Entities propose to consolidate their updated market power analyses to make the process more efficient. The Commission grants that request and directs Calpine Entities to file a combined updated market power analysis within three years of the date of this order. The Commission also reserves the right to require such analyses at any intervening time.

By direction of the Commission.

Magalie R. Salas,  
Secretary.

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<sup>16</sup> *Commission Authorization to Hold Interlocking Positions*, Order No. 664, 70 Fed. Reg. 55,717 (September 23, 2005), FERC Stats. & Regs. ¶ 31,194 (2005), *order on reh'g*, Order No. 664-A, 114 FERC ¶ 61,142 (2006).

<sup>17</sup> *Id.* at P 36.

<sup>18</sup> Order No. 652, FERC Stats. & Regs. ¶ 31,175 (2005).