

122 FERC ¶ 61,214
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

United States Department of Energy-
Western Area Power Administration
(Central Valley Project, California-Oregon Transmission
Project, and Pacific Alternating Current Intertie)

Docket No. EF06-5011-001

ORDER DENYING REHEARING

(Issued March 7, 2008)

1. On February 26, 2007, Calpine Construction Finance Company, L.P. and Calpine Corporation (jointly Calpine), filed a request for rehearing of the Commission's January 25, 2007 Order Confirming and Approving Rate Schedules on a Final Basis issued in the instant docket.¹ For the reasons discussed below, the Commission denies rehearing.

Background

2. On July 26, 2006, the Deputy Secretary of Energy (Deputy Secretary) filed a request for final confirmation and approval of various Western Area Power Administration (Western) rate schedules, effective September 1, 2006, and ending September 30, 2009. As relevant here, Western removed the reactive power and voltage control from Central Valley Project (CVP) and other non-Federal generation sources service (VAR Support Service) revenue requirement from its transmission revenue requirements. Instead,

¹ *United States Department of Energy-Western Area Power Administration (Central Valley Project, California-Oregon Transmission Project, and Pacific Alternating Current Intertie)*, 118 FERC ¶ 61,052 (2007).

Western included VAR Support Service costs of \$358,374 annually in the CVP base resource and first preference power rates.

3. In its protest, Calpine objected to Western's proposal to compensate its affiliated generation for VAR Support Service while denying similar payments to unaffiliated generators.²

4. The Commission found that this issue is beyond the scope of Commission review, and that Western's filing was consistent with applicable standards.³ Accordingly, the Commission confirmed and approved Western's proposed rate schedules on a final basis for the period September 1, 2006 through September 30, 2009.

Calpine's Rehearing Request

5. On rehearing, Calpine argues that the Commission erred in: (1) not finding Western in violation of its Open Access Transmission Tariff; (2) not finding Western in violation of the Commission's Standards of Conduct; (3) not finding that Western has failed to maintain its eligibility for "safe harbor" treatment; (4) not requiring Western to provide transmission services at rates, terms and conditions comparable to those it applies to itself; (5) not addressing the arguments raised by Calpine and others regarding comparability issues, in violation of the due process protections afforded under the United States Constitution; and (6) finding Western's filing satisfied applicable standards.

Discussion

6. Western is not a public utility under the Federal Power Act,⁴ and hence its rates are not subject to review under sections 205 and 206 of that act.⁵ Rather, the Commission's authority to review Western's rates is authority delegated to the Commission by the Secretary of Energy (Secretary), and the scope of such review is different from and narrower than the scope of Commission review under the Federal Power Act.

² *Id.* P 11.

³ *Id.* P 14.

⁴ *See* 16 U.S.C. § 824, *et seq.* (2000).

⁵ *See* 16 U.S.C. §§ 824ld, e (2000).

7. The Department of Energy Organization Act (DOE Organization Act), Pub. L. No. 95-91, 91 Stat. 565 (1977), grants the Secretary authority to approve Western's rates on both an interim and final basis. The Secretary, in turn, delegated the authority to approve Western's rates on a final basis to the Commission.⁶ The delegation establishes the standard and scope for Commission review of Western's rates. The Commission's review of such rates is limited to: (1) whether the rates are the lowest possible to customers consistent with sound business principles; (2) whether the revenue levels generated by the rates are sufficient to recover the costs of producing and transmitting the electric energy, including the repayment, within the period of cost recovery permitted by law, of the capital investment allocated to power and costs assigned by Acts of Congress to power for repayment; and (3) the assumptions and projections used in developing the rate components that are subject to Commission review.

8. The Commission is prohibited from reviewing policy judgments and interpretations of laws and regulations made by the power generating agencies.⁷ The Commission may reject the rate determinations of Western's Administrator only if it finds them to be arbitrary, capricious, or in violation of the law, if they violate Department of Energy regulations (such as Order No. RA 6120.2, which sets forth financial reporting policies, procedures and methodologies), or if they violate agreements between Western's Administrator and the applicable power generating agency.

9. The Commission considers its role as that of an appellate body which reviews the record developed by the Administrator. The Commission thus may only approve or remand the rates submitted to it for final review.⁸

10. Calpine's request for rehearing suffers from the same infirmity that its original protest suffered from; a failure to acknowledge that the Commission's authority to review rates proposed by Western does not arise from the FPA, but from the Secretary of

⁶ Department of Energy Delegation Order. No. 00-037, FERC Stats. & Regs. ¶ 9,919 (2001).

⁷ The power generating agencies include the Bureau of Reclamation, the Army Corps of Engineers and the International Boundary and Water Commission. These agencies build and operate various projects. The Power Marketing Administrations, such as Western, market the output of the projects.

⁸ See, e.g., *United States Department of Energy-Western Power Administration (Salt Lake City Area Integrated Projects)*, 59 FERC ¶ 61,058, at 61,240-41, *reh'g denied*, 60 FERC ¶ 61,002 (1992).

Energy's delegation. Calpine fails to address the Commission's more limited review. Instead, it advances arguments which assume that the Commission is free to proceed under the FPA. Consequently, it frames its argument in terms of Western failing to adhere to the terms of its OATT, or failure to act consistently with the Commission's Standards of Conduct. In fact, Western's decision on how it chooses to structure its rates is within its discretionary authority. While Calpine argues general notions of due process, they do not overcome the specific statutory and regulatory regime that has been established to govern the Commission's review of rates submitted by WAPA for final confirmation and approval.

11. While the Commission can affirm or remand Western's filing, it must do so in a manner consistent with its authority. Calpine contends that Western's filing fails to satisfy applicable standards. However, Calpine focuses on comparability, and not the specific standards articulated under the DOE Organization Act and the Secretary's delegation. The Commission evaluated Western's filing for conformance to those standards, and found it was consistent with them. We found that Western's rates will generate sufficient revenue to recoup the cost of producing and transmitting power, and providing ancillary services, and to repay the remaining Federal investment, with interest, in a timely manner. Additionally, we concluded that since those rates should recover no more than Western's costs and the remaining Federal investment, the proposed rates are the lowest possible to customers, consistent with sound business principles. Our review also indicated that the assumptions and projections used were reasonable and that the Power Repayment Study (PRS) was prepared in a manner consistent with Order No. RA 6120.2.⁹

12. Western's decision to recover VAR Support Service costs in its base resource and first preference power rates, rather than in its transmission rates, is the kind of decision that is beyond the scope of the Commission's review.¹⁰ Calpine has brought nothing to

⁹ 118 FERC ¶ 61,052 at P 10.

¹⁰ *E.g.*, *United States Department of Energy-Southwestern Power Administration (Jim Woodruff Project)*, 116 FERC ¶ 61,044, at P 10-17 (2006); *United States Department of Energy-Western Power Administration (Pacific Northwest-Pacific Southwest Intertie Project)*, 87 FERC ¶ 61,346, at 62,337 (1999); *cf. United States Department of Energy-Bonneville Power Administration*, 107 FERC ¶ 61,138, at P 25-27 (2004).

the Commission's attention on rehearing that compels a different result.¹¹ Consequently, we will deny Calpine's request for rehearing.

13. Finally, we note that Calpine suggests that section 211A of the Federal Power Act¹² allows the Commission to order Western to provide transmission service at rates that are comparable to those it charges itself and on terms and conditions (not relating to rates) that are comparable to those under which the unregulated transmitting utility provides transmission service to itself, and are not unduly discriminatory or preferential. However, section 211A of the FPA is not relevant here; the Commission has not ordered Western to provide transmission service. Rather, Western is seeking confirmation and final approval of Western's rates under authority delegated to the Commission by the Secretary.

The Commission orders:

Calpine's request for rehearing is hereby denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹¹ *Accord United States Department of Energy-Bonneville Power Administration*, 122 FERC ¶ 61,143, at P 17-18 (2008).

¹² 16 U.S.C. § 824j-i (Supp. V 2005). Section 211A of the Federal Power Act grants the Commission authority to direct unregulated transmitting utilities to provide open access transmission service.