

130 FERC ¶ 61,080  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Calpine Construction Finance Company, L.P.                      Docket No.      ER10-345-000

Tampa Electric Company    Docket No.      EL10-13-000

v.

Calpine Construction Finance Company, L.P.

ORDER ACCEPTING NOTICE OF CANCELLATION  
AND DISMISSING COMPLAINT AS MOOT

(Issued January 29, 2010)

1.        On November 10, 2009, in Docket No. EL10-13-000, Tampa Electric Company (Tampa Electric) filed a complaint under section 206 of the Federal Power Act (FPA)<sup>1</sup> against Calpine Construction Finance Company, L.P. (Calpine). Tampa Electric argues that Calpine's Rate Schedule FERC No. 3 (Reactive Rate Schedule), which provides for Calpine to charge Tampa Electric for reactive power service, is no longer just and reasonable and should be vacated, effective no later than November 10, 2009.<sup>2</sup> On November 30, 2009, in Docket No. ER10-345-000, Calpine filed a notice of cancellation of its Reactive Rate Schedule, with a requested effective date of November 10, 2009. For the reasons set forth below, we will accept the notice of cancellation effective November 10, 2009 and dismiss the complaint as moot.

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<sup>1</sup> 16 U.S.C. § 824e (2006).

<sup>2</sup> We note that Tampa Electric subsequently argued that its obligation to pay Calpine under the Reactive Rate Schedule should be considered terminated effective November 1, 2009.

## I. Background

2. Tampa Electric is a public utility that owns and operates electric generation, transmission, and distribution facilities in Florida. Tampa Electric provides open access transmission and generation interconnection services pursuant to its Open Access Transmission Tariff (OATT).

3. Calpine owns a generating facility in Auburndale, Florida (Osprey Facility), which provides reactive power service to Tampa Electric under Calpine's Reactive Rate Schedule. Calpine's Reactive Rate Schedule was accepted by the Commission on March 29, 2006, with an effective date of March 15, 2005.<sup>3</sup> Under this rate schedule, Calpine charges Tampa Electric, consistent with the Osprey Facility's design criteria, pursuant to the Interconnection Agreement between Tampa Electric and Calpine, dated November 16, 2001, as revised (Interconnection Agreement).

4. The Interconnection Agreement between Tampa Electric and Calpine predates Order No. 2003<sup>4</sup> and is a non-conforming interconnection agreement because it does not contain exactly the same language as the standard Large Generator Interconnection Agreement (LGIA) under the *pro forma* OATT. Section 6.10 of the Interconnection Agreement provides that Calpine is obligated to generate reactive power within the deadband described by the prescribed (or default) voltage schedule within the Osprey Facility's power factor design limitations, to the extent that doing so does not adversely affect the real power output of the facility. Calpine's current rate schedule permits Calpine to charge Tampa Electric for reactive power service from the Osprey Facility.

5. On October 23, 2009, the Commission accepted, subject to condition, Tampa Electric's revisions to Schedule No. 2 of its OATT (August Filing), which provides for reactive power service.<sup>5</sup> As revised, Schedule No. 2 provides that all generators, whether affiliated or unaffiliated, will no longer receive compensation for reactive power produced within the applicable deadband. Schedule No. 2, as revised, also sets to zero the charges for reactive power service. The Commission directed Tampa Electric to make a compliance filing stating the rate, along with accompanying cost support, at

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<sup>3</sup> *Calpine Construction Finance Co., L.P.*, 114 FERC ¶ 61,321 (2006).

<sup>4</sup> *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007).

<sup>5</sup> *Tampa Electric Co.*, 129 FERC ¶ 61,063 (2009).

which a generator will be paid for reactive power when directed by Tampa Electric to operate outside the established deadband.<sup>6</sup>

## **II. Complaint and Notice of Cancellation**

6. Tampa Electric, in its complaint, argues that it has ceased providing compensation to its affiliated generators for reactive power service within the deadband as of November 1, 2009, and therefore, Calpine is no longer entitled to compensation for such service. Tampa Electric points out that the Commission has repeatedly and consistently held in the Order No. 2003 proceedings that an interconnected generator should not be compensated by a transmission provider for providing reactive power service within the deadband unless the transmission provider compensates its own or affiliated generators for reactive power service within the deadband. Tampa Electric further argues that its Interconnection Agreement with Calpine does not provide Calpine with an independent contractual right to compensation for reactive power within the deadband. Tampa Electric states that unless the requested relief is granted, Tampa Electric will have to pay \$1 million to Calpine for the twelve-month period beginning November 1, 2009. Tampa Electric maintains that Calpine is not entitled to this compensation under Commission policy and precedent. Therefore, Tampa Electric asserts that Calpine's Reactive Rate Schedule charging Tampa Electric for reactive power service is no longer just and reasonable and unduly discriminatory or preferential, and should be vacated, effective no later than November 10, 2009.

7. Calpine's notice of cancellation acknowledges Tampa Electric's complaint and requests cancellation of its Reactive Rate Schedule effective November 10, 2009, the date the complaint was filed with the Commission.

## **III. Notices of Filings and Responsive Pleadings**

8. Notice of Tampa Electric's complaint was published in the *Federal Register*, 74 Fed. Reg. 59,974 (2009), with interventions, protests and respondent's answer to the complaint due on or before November 30, 2009. Calpine filed an answer to the complaint. Tampa Electric filed a response.

9. Notice of Calpine's notice of cancellation was published in the *Federal Register*, 74 Fed. Reg. 66,120 (2009), with interventions and protests due on or before December 21, 2009.<sup>7</sup> Tampa Electric filed a motion to intervene and comments.

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<sup>6</sup> Tampa Electric made its compliance filing in Docket No. ER09-1653-001 on November 23, 2009, which was accepted by delegated letter on January 11, 2010.

<sup>7</sup> The Commission was closed on December 21, 2009 due to adverse weather conditions. Therefore, pursuant to Rule 2007 of the Commission's regulations, the

10. Calpine states in its answer to Tampa Electric's complaint that it is filing a notice of cancellation of its Reactive Rate Schedule on the same date it filed its answer, November 30, 2009, with a requested effective date of November 10, 2009. Calpine asserts that, once the notice of cancellation is accepted by the Commission, Calpine will no longer be authorized to receive compensation for reactive service and the complaint will be moot. Therefore, Calpine argues that the complaint proceeding should be dismissed upon the Commission's acceptance of Calpine's notice of cancellation. Calpine also asserts that Tampa Electric never contacted Calpine by telephone to discuss its August Filing, the fact that it was considering filing a complaint, or that Calpine should voluntarily cancel its Reactive Rate Schedule.<sup>8</sup> Calpine adds that if Tampa Electric had contacted Calpine's counsel, Calpine could have taken action to cancel its Reactive Rate Schedule and eliminate the need for the complaint.

11. Tampa Electric responds to Calpine's answer to its complaint, stating that it is concurrently filing a motion for leave to intervene and comments in Docket No. ER10-345-000. Tampa Electric states that it does not object to dismissal of the complaint upon acceptance of Calpine's notice of cancellation of the Reactive Rate Schedule in Docket No. ER10-345-000 provided that the Commission makes clear in accepting the cancellation that Tampa Electric's obligation to pay for reactive power under the Reactive Rate Schedule ceased on November 1, 2009.

12. Tampa Electric states in its comments filed in Docket No. ER10-345-000 that it supports cancellation of Calpine's Reactive Rate Schedule. However, Tampa Electric states that, in accepting the cancellation, the Commission should make clear that as of November 1, 2009, the effective date of Tampa Electric's revisions to Schedule No. 2 of its OATT in Docket No. ER09-1653-000,<sup>9</sup> Tampa Electric is no longer obligated to pay for reactive power under the Reactive Rate Schedule, as a matter of Commission policy as adopted in Order Nos. 2003 and 2003-A.<sup>10</sup> Tampa Electric asserts that Calpine itself recognizes in its notice of cancellation that the basis for its charges for reactive power within the deadband was removed as of November 1, 2009. Therefore, Tampa Electric contends that allowing Calpine to charge Tampa Electric for reactive power within the deadband for an additional 10 days would be contrary to Tampa Electric's OATT and Commission policy, and would result in an unjust, unreasonable, and discriminatory windfall to Calpine at Tampa Electric's expense.

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comment date was moved to December 22, 2009. 18 C.F.R. § 385.2007(a)(2) (2009). Tampa Electric filed its motion to intervene and comment on December 22, 2009.

<sup>8</sup> Calpine's Answer at 3.

<sup>9</sup> *Tampa Electric Co.*, 129 FERC ¶ 61,063 (2009).

<sup>10</sup> Order No. 2003, FERC Stats. & Regs. ¶ 31,146; Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160.

13. Tampa Electric further states that, in its complaint in Docket No. EL10-13-000, it requested “the earliest possible” effective date, “no later than” November 10, 2009, for the involuntary termination of Calpine’s Reactive Rate Schedule,<sup>11</sup> reflecting that Tampa Electric was forced to seek relief under section 206. Tampa Electric further argues that it is clear based on the Commission’s order in Docket No. ER09-1653-000 that Tampa Electric is no longer obligated to pay any generator, affiliated or unaffiliated, for reactive power within the deadband as of November 1, 2009. Therefore, Tampa Electric maintains that Calpine’s Reactive Rate Schedule was functionally a dead letter as of November 1, 2009, as a matter of Commission policy, regardless of what effective date is placed on its formal cancellation.<sup>12</sup>

#### **IV. Discussion**

##### **A. Procedural Matters**

14. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), Tampa Electric’s timely, unopposed motion to intervene serves to make it a party to the proceeding in Docket No. ER10-345-000.

15. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We will accept Tampa Electric’s answer because it has provided information that assisted us in our decision-making process.

##### **B. Commission Determination**

16. We will accept Calpine’s notice of cancellation of its Reactive Rate Schedule effective November 10, 2009, as requested. In accepting this notice of cancellation, we disagree with Tampa Electric’s argument that its obligation to pay Calpine should be considered terminated effective November 1, 2009. Under section 205 of the FPA, the filing entity, in this case Calpine controls the date of its filing and may, consistent with its Reactive Rate Schedule and section 205 of the FPA, request an appropriate effective

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<sup>11</sup> Tampa Electric’s Comments at 4.

<sup>12</sup> Tampa Electric also notes that Calpine stated in its answer to Tampa Electric’s complaint that Calpine would have voluntarily terminated its Reactive Rate Schedule effective November 1, 2009, had Tampa Electric only directed its August 24, 2009 written request to do so to Calpine’s presumed outside counsel instead of to Calpine itself. Tampa Electric argues that Calpine should therefore have no issue with a cessation of payments by Tampa Electric effective November 1.

date.<sup>13</sup> In particular, section 205(d) provides that notice shall be given by filing with the Commission and keeping open for public inspection new schedules stating plainly the change or changes to be made in the schedule or schedules then in force *and the time when the change or changes will go into effect.*<sup>14</sup>

Here, in accord with section 205 of the FPA, Calpine sought an effective date for the cancellation of its Reactive Rate Schedule of November 10, 2009. Thus, we will allow Calpine that effective date.

17. With respect to Tampa Electric's complaint, we will dismiss the complaint as moot. Our acceptance of the notice of cancellation resolves the issue raised by the complaint. Nevertheless, as to the question of the date of the cancellation of the rate schedule, under section 206 of the FPA, the Commission cannot provide relief earlier than the refund effective date.<sup>15</sup> Under section 206 of the FPA, the earliest we could have provided relief to Tampa Electric had we ruled on the complaint is November 10, 2009, the date Tampa Electric chose to file its complaint. In addition, as indicated above, in its complaint Tampa Electric requested "the earliest possible" effective date, "no later than" November 10, 2009. Thus, because under section 206 of the FPA the earliest possible date for relief under the complaint is the date the complaint was filed (i.e., November 10, 2009), and that date coincides with the cancellation date of the Calpine rate schedule, we dismiss the complaint as moot.

The Commission orders:

(A) Calpine's notice of cancellation is hereby accepted, effective November 10, 2009.

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<sup>13</sup> See, e.g., *Western Massachusetts Electric Co.*, 23 FERC ¶ 61,025 (1983) (company has the right in the first instance to change its rates as it will, unless it has undertaken by contract not to do so).

<sup>14</sup> 16 U.S.C. § 824d(d) (2006) (emphasis added). Section 205(d) further provides that "[t]he Commission, for good cause shown, may allow changes to take effect without requiring the sixty days' notice herein provided for by an order specifying the changes so to be made and the time when they shall take effect...." The Commission, however, has made clear that, for section 205 filings, it will not impose an effective date earlier than the filing utility's proposed effective date. E.g., *Portland General Electric Co.*, 98 FERC ¶ 61,050, at 61,133 (2002).

<sup>15</sup> 16 U.S.C. § 824e(b) (2006).

(B) Tampa Electric's complaint filed in Docket No. EL10-13-000 is hereby dismissed as moot.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.