

FEDERAL ENERGY REGULATORY COMMISSION  
Washington, D.C. 20426

October 13, 2004

In Reply Refer To:  
Calpine Fox, LLC  
Docket No. ER04-1148-000

Calpine Corporation  
Attn: Joseph D. Condo, Esq.  
Senior Counsel  
250 Parkway Drive, Suite 380  
Lincolnshire, Illinois 60069

Dear Mr. Condo:

1. On August 23, 2004, Calpine Fox, LLC (Calpine Fox) filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sale of capacity, energy, and ancillary services at market-based rates, the reassignment of transmission capacity, and the resale of firm transmission rights (FTRs).<sup>1</sup> It also includes the Commission's market behavior rules.<sup>2</sup> Calpine Fox's submittal, as discussed below, complies with the Commission's requirements for market-based rates and is accepted for filing, effective March 1, 2005, as requested.<sup>3</sup>

---

<sup>1</sup> Calpine Fox plans to sell certain ancillary services in the markets administered by PJM Interconnection, L.L.C. (PJM), New York Independent System Operator, Inc. (NYISO), ISO New England (ISO-NE), and California Independent System Operator, Inc. (CAISO). Calpine Fox also intends to engage in the sale of certain ancillary services to third party suppliers in other markets consistent with *Avista Corp.*, 87 FERC ¶ 61,223, *order on reh'g*, 89 FERC ¶ 61,136 (1999).

<sup>2</sup> *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218 (2003), *order on reh'g*, 107 FERC ¶ 61,175 (2004).

<sup>3</sup> FERC Electric Tariff, Original Volume No. 1, Original Sheets Nos. 1-5. Waiver of section 35.3 of the Commission's regulations is granted to allow for the effective date noted above.

2. Calpine Fox is a Wisconsin limited liability company and an indirect, wholly-owned subsidiary of Calpine Corporation (Calpine). Calpine Fox states that it will be engaged in the construction, leasing, and operation of a 600 MW generating facility to be located in the Town of Kaukauna, Outagamie County, Wisconsin. The facility will be located in the Wisconsin Energy Corp. (WEC) service territory and will be interconnected with American Transmission Company, LLC.

3. The facility will be owned by Fox Energy Company LLC (Fox), which is currently a wholly-owned subsidiary of Calpine.<sup>4</sup> Pursuant to a purchase and sale, construction agency, and subsequent lease transaction, all of the membership interests in Fox will be transferred to an affiliate of the General Electric Company, and Calpine Fox will complete the construction and testing of the facility.

### **Procedural Matters**

4. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 358.214 (2004), an entity's filing of a notice of intervention or a timely unopposed motion to intervene in a proceeding makes it a party to that proceeding. None was filed.

### **Discussion**

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

5. 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>5</sup> As discussed below, we conclude that Calpine Fox satisfies the Commission's standards for market-based rate authority.

6. Calpine Fox cites section 35.27(a) of the Commission's regulations, which provides that applicants shall not be required to demonstrate any lack of market power in

---

<sup>4</sup> Calpine is a Delaware corporation, engaged through subsidiaries in the development, acquisition, ownership and operation of power generation facilities and sales of electricity in the United States and abroad.

<sup>5</sup> See, e.g., *Progress Power Marketing, Inc.*, 76 FERC ¶ 61,155 at 61,919 (1996), *Letter Order Approving Settlement*, 79 FERC ¶ 61,149 (1997); *Northwest Power Marketing Co., L.L.C.*, 75 FERC ¶ 61,281 at 61,899 (1996); *accord Heartland Energy Services, Inc., et al.*, 68 FERC ¶ 61,223 at 62,062-63 (1994).

generation with respect to sales from capacity constructed after July 9, 1996.<sup>6</sup> 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>7</sup>

7. Calpine Fox commenced construction of the facility in October 2003, and neither it nor any of its affiliates owns or controls any generation in the relevant market. Accordingly, Calpine Fox satisfies the generation market power standard for authorization to transact under market-based rates.

8. Calpine Fox states that neither it nor any of its affiliates owns or controls any transmission facilities. Based on Calpine Fox's representation, we find that Calpine Fox satisfies our transmission market power standard for market-based rates.

9. Calpine Fox states that neither it nor any of its affiliates is able to erect barriers to entry because they do not control any interstate fuel transportation systems that could be used to impede downstream generators from gaining access to low-cost gas supplies in the relevant geographic markets. Calpine Fox states that to the extent that it and its affiliates have contracts for firm, interstate and intrastate gas transportation to serve some of their generating plants, the amount of transportation capacity they control is small in comparison to capacity on the relevant pipelines. Based on Calpine Fox's representations we are satisfied that neither Calpine Fox nor its affiliates can erect barriers to entry.

10. Calpine Fox states that neither it nor any of its affiliates has a franchised service area for the sale of electricity. Calpine Fox states that under these circumstances, the Commission routinely grants waiver of any market-based rate code of conduct requirements. Based on this representation, we find that Calpine Fox satisfies our concerns with regard to affiliate abuse. Further, where an applicant has no affiliates with a franchised service territory, a market-based rate code of conduct is not required. Accordingly, Calpine Fox's request for waiver in this regard is moot.

11. Calpine Fox requests authority to engage in the sale of certain ancillary services (listed in the proposed tariff) at market-based rates into the markets administered by the ISO-NE, PJM, NYISO, and CAISO. Consistent with Commission precedent granting authority to sellers to engage in such transactions in those markets, the Commission will

---

<sup>6</sup> 18 C.F.R. § 35.27(a) (2004).

<sup>7</sup> *AEP Power Marketing, Inc., et al.*, 107 FERC ¶ 61,018 at P 69, *order on reh'g*, 108 FERC ¶ 61,026 (2004).

grant Calpine Fox's request.<sup>8</sup> Calpine Fox also intends to engage in the sale of certain ancillary services to third party suppliers in other markets consistent with *Avista Corp.*, 87 FERC ¶ 61,223, *order on reh'g*, 89 FERC ¶ 61,136 (1999). We will grant this request.

12. In addition, Calpine Fox proposes to sell additional ancillary services in additional geographic markets as the Commission may specify and authorize from time-to-time in orders that extend such authority to all sellers previously authorized to sell energy and/or capacity at market-based rates. We will grant Calpine Fox's request in this regard; however, our grant does not relieve it of the requirement to have current and complete tariffs on file with the Commission, pursuant to 18 C.F.R. § 35.1 (2004).<sup>9</sup>

13. Calpine Fox also requests authority to reassign transmission capacity, and FTRs or their equivalent. We find these provisions consistent with the Commission's requirements.<sup>10</sup>

#### **Other Waivers, Authorizations and Reporting Requirements**

14. Calpine Fox requests the following waivers and authorizations: (1) waiver of Subparts B and C of Part 35 of the Commission's regulations requiring the filing of cost-of-service information, except as to sections 35.12(a), 35.13(b), 35.15 and 35.16; (2) waiver of Parts 41, 101 and 141 of the Commission's accounting and periodic reporting requirements; (3) abbreviated filings with respect to interlocking directorates under Part 45 of the Commission's regulations; and (4) blanket authorization under Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability.

---

<sup>8</sup> See, e.g., *New England Power Pool*, 85 FERC ¶ 61,379 (1998), *reh'g denied*, 95 FERC ¶ 61,074 (2001); *Atlantic City Electric Company, et al.*, 86 FERC ¶ 61,248, *clarified*, 86 FERC ¶ 61,310 (1999); *Central Hudson Gas & Electric Corporation, et al.*, 86 FERC ¶ 61,062, *order on reh'g*, 88 FERC ¶ 61,138 (1999); *AES Redondo Beach, L.L.C., et al.*, 85 FERC ¶ 61,123 (1998), *order on reh'g*, 87 FERC ¶ 61,208 (1999), *order on reh'g and clarification*, 90 FERC ¶ 61,036 (2000).

<sup>9</sup> *Calhoun Power Co.*, 96 FERC ¶ 61,056 (2001).

<sup>10</sup> See *Southwestern Public Service Company*, 80 FERC ¶ 61,245 (1997).

15. We will grant the requested waivers and authorizations consistent with those granted other entities with market-based rate authorizations.<sup>11</sup> Notwithstanding the waiver of the accounting and reporting requirements here, we expect Calpine Fox to keep its accounting records in accordance with generally accepted accounting principles.

16. Within 30 days of the date of the issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Calpine Fox should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.211 and 385.214.

17. Absent a request to be heard within the period set forth above, Calpine Fox is hereby authorized to issue securities and assume obligations or liabilities as guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Calpine Fox, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

18. Until further order of this Commission, the full requirements of Part 45 of the Commission's regulations, except as noted below, are hereby waived with respect to any person now holding or who may hold an otherwise proscribed interlocking directorate involving Applicant. Any such person instead shall file a sworn application providing the following information:

- (1) full name and business address; and
- (2) all jurisdictional interlocks, identifying the affected companies and the positions held by that person.

19. The Commission reserves the right to modify this order to require a further showing that neither the public nor private interests will be adversely affected by continued Commission approval of Calpine Fox's issuances of securities or assumptions of liabilities, or by the continued holding of any affected interlocks.

---

<sup>11</sup> It should be noted that the Commission is examining the issue of continued applicability of the waivers of its accounting and reporting requirements (18 C.F.R. Parts 41, 101 and 141) as well as continued applicability of the blanket authorization for the issuance of securities and the assumption of obligations and liabilities, (18 C.F.R. Part 34). *See Accounting and Reporting of Financial Instruments, Comprehensive Income, Derivatives and Hedging Activities*, Order No. 627, 67 Fed. Reg. 67,691 at P 23 and P 24 (October 10, 2002), FERC Stats. & Regs. ¶ 32,558 (2002).

20. 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>12</sup> Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.<sup>13</sup> Accordingly, Calpine Fox must file its first Electronic Quarterly Report no later than 30 days after the first quarter Calpine Fox's rate schedule is in effect.<sup>14</sup>

21. We will direct Calpine Fox to inform the Commission promptly of any change in status that would reflect a departure from the characteristics the Commission has relied upon in approving market-based pricing. These characteristics include, but are not limited to: (1) ownership of generating or transmission facilities or inputs to electric power production other than fuel supplies; or (2) affiliation with any entity not disclosed in the filing that owns generation or transmission facilities or inputs to electric power production, or affiliation with any entity that has a franchised service area.

---

<sup>12</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/Electric/eqr/eqr.htm>.

<sup>13</sup> The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b.

<sup>14</sup> Failure to file an Electric Quarterly Report (without an appropriate request for extension), or failure to report an agreement in a 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.

22. Calpine Fox is directed to file an updated market power analysis within three years of the date of this order, and every three years thereafter. The Commission reserves the right to require such an analysis at any intervening time.

By direction of the Commission.

Magalie R. Salas,  
Secretary.