

111 FERC ¶ 61,136

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suedeen G. Kelly.

Calpine Construction Finance Company, L.P.

Docket No. ER05-677-000

ORDER ACCEPTING AND SUSPENDING FILING, AND ESTABLISHING  
HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued May 2, 2005)

1. On March 3, 2005, Calpine Construction Finance Company, L.P. (Calpine)<sup>1</sup> filed a proposed rate schedule<sup>2</sup> under which it specifies its annual and monthly revenue requirements for providing cost-based Reactive Supply and Voltage Control from Generation Sources Service (reactive power service) from its natural gas-fired combined cycle electric generation facility located in Auburndale, Florida. Calpine requests that the Commission accept the proposed rate schedule for filing and requests an effective date of March 15, 2005. As discussed below, we will accept the proposed rate schedule for filing and suspend it for a nominal period, to become effective on March 15, 2005, subject to refund, and establish hearing and settlement judge procedures. This order benefits customers by ensuring a timely inquiry into whether the proposed rate schedule is just and reasonable.

**Background**

2. Calpine owns and operates an approximately 624 MW gas-fired combined cycle electric generation facility (Osprey Facility) located in Auburndale, Florida, which is interconnected with the Tampa Electric Company (Tampa Electric) transmission system.

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<sup>1</sup> Calpine is a Delaware limited partnership and an indirect, wholly-owned subsidiary of Calpine Corporation. Calpine is also authorized by the Commission to make wholesale sales of power at market-based rates, *see Calpine Construction Finance Co., L.P.*, 90 FERC ¶ 61,164 (2000).

<sup>2</sup> Rate Schedule FERC No. 3.

The Osprey Facility commenced commercial operation in May 2004. The Osprey Facility has never been owned by an investor-owned, vertically integrated utility.

### **The Instant Filing**

3. Calpine states that the Osprey Facility's obligation to provide reactive power service to Tampa Electric and its right to receive compensation for such service is set forth in Section 6.10 of the Interconnection and Operating Agreement (IA)<sup>3</sup> by and between Calpine and Tampa Electric. Section 6.10 provides in part:

Reactive Power Obligation. When the Facility is operating and to the extent it does not adversely affect real power output of the Facility, the Facility shall generate such reactive power up to, but not in excess of, the reactive design capabilities of the Facility's equipment in operation in accordance with the voltage schedule prescribed by Company so as to maintain reactive support in the area.

4. Section 6.10.3 of the IA provides:

Payment for Reactive Power. At such time as FERC accepts a tariff, rate schedule, or market mechanism for reactive power services or otherwise permits Customer to charge Company and/or other users for reactive power services provided by Customer, Customer shall be entitled to seek compensation for reactive power services from Company and/or others using such reactive power services in accordance with the terms and conditions of such tariff, rate schedule, or market mechanism, or as otherwise permitted by FERC.

5. In addition to the provisions of the IA, Calpine asserts that its filing is consistent with the provisions of Order No. 2003-A, which states, "[i]f the Transmission Provider pays its own or its affiliated generators for reactive power within the established range, it

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<sup>3</sup> The original IA between Calpine and Tampa Electric was filed with the Commission on December 17, 2001. The Commission conditionally accepted the agreement for filing on February 1, 2002, and directed Tampa Electric to make a compliance filing. See *Tampa Electric Co.*, Docket No. ER02-551-000 (February 1, 2002) (unpublished letter order). On February 28, 2002, Tampa Electric filed an executed version of the IA in Docket No. ER02-551-002, which was accepted by delegated letter order issued April 3, 2002.

must also pay the Interconnection Customer.”<sup>4</sup> Calpine claims that Tampa Electric-owned generation is paid for reactive power service under Schedule 2 of its Open Access Transmission Tariff (OATT).

6. The proposed rate schedule sets forth Calpine’s cost-based revenue requirements for providing reactive power service. Calpine states that typically reactive power service revenue requirements are broken into three components: (1) fixed costs attributable to reactive power production capability (Fixed Capability Component); (2) increased generator and step-up transformer heating losses that result from production of reactive power (Heating Losses); and (3) lost opportunity costs in the event the facility is directed to modify its energy output to produce additional reactive power (Lost Opportunity Cost Component). However, Calpine’s total reactive power service revenue requirements consists of the Fixed Capability Component only, which is designed to recover the portion of the plant costs attributable to the reactive power capability of the Osprey Facility’s generators. Calpine states that it has omitted the Heat Losses Component and the Lost Opportunity Cost Component from the instant filing, but is reserving its right to amend its rate schedule in a subsequent filing should it elect to seek compensation for such components. Calpine states that its Fixed Capability Component was calculated by first determining the portion of the Osprey Facility’s generator/excitation system and the generator step-up transformers used to produce reactive power in accordance with the *AEP* methodology.<sup>5</sup> Calpine states that since this equipment contributes to the provision of both real and reactive power, an allocator is applied to apportion the cost of this plant fairly between real and reactive power and that its annual revenue requirement was developed using a levelized annual carrying cost approach.

7. Further, Calpine states that, because it is a non-utility generator not subject to traditional rate regulation, it has adopted a return on equity and an overall rate of return that is based on a proxy derived from the capital structure and return on equity of Tampa Electric, the transmission owner with which it is connected. Lastly, Calpine states that use of this proxy for the Osprey Facility’s overall rate of return and capital structure is

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<sup>4</sup> *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003-A, 69 Fed. Reg. 15,932 (Mar. 26, 2004), FERC Stats & Regs. ¶ 31,160 at 31,020 (2004), *order on reh’g*, Order No. 2003-B, 70 Fed. Reg. 265 (Jan. 4, 2005), FERC Stats. & Regs. ¶ 31,171 (2005), *reh’g pending*.

<sup>5</sup> *See American Electric Power Service Corp.*, 88 FERC ¶ 61,141 (1991), *order on reh’g*, 92 FERC ¶ 61,001 (2000) (*AEP*).

conservative since it is a merchant generator that faces market risks that are greater than those normally associated with the service of a transmission provider like Tampa Electric.

8. Calpine requests waiver of the Commission's prior notice requirement so that its proposed rate schedule may become effective on March 15, 2005.

### **Notice of Filing, Interventions and Protests**

9. Notice of Calpine's filing was published in the *Federal Register*<sup>6</sup> with interventions and protests due on or before March 24, 2005. Tampa Electric filed a timely motion to intervene and protest. Calpine filed an answer to Tampa Electric's protest, and Tampa Electric filed an answer to Calpine's answer.

10. Tampa Electric contends that Calpine has failed to demonstrate that the revenue requirements proposed for recovery in Calpine's rate schedule are just and reasonable and that there are material issues of fact raised in Calpine's proposal that cannot be resolved without an evidentiary hearing. Tampa Electric claims that the IA imposes limited obligations on Calpine to provide reactive power and does not require Tampa Electric to provide compensation to Calpine.

11. Specifically, Tampa Electric states that, except in emergency circumstances, the IA requires Calpine to do no more than provide reactive power necessary to support the existence of the Osprey Facility on Tampa Electric's system, if and when it is in operation. Further, Tampa Electric claims that under no circumstances does it have the authority under the IA to require Calpine to bring the Osprey Facility on line to provide reactive power or for any other purpose. Tampa Electric states that the IA does not require that Calpine be compensated for reactive power that it provides, rather the IA provides an opportunity to seek to justify compensation before the Commission, without prejudging the Commission's actions.

12. Tampa Electric argues that the Commission's Order No. 2003-A does not prejudice how the interconnection customer is to be compensated for reactive power and the question of how an independent generator like Calpine is to be compensated must be addressed in light of how comparable the generator's reactive power service truly is. Tampa Electric states that the reactive power services it provides and the reactive power services Calpine provides are not comparable services and that this difference underscores the inappropriateness of the reactive power service charges proposed by

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<sup>6</sup> 70 Fed. Reg. 13,024 (2005).

Calpine. Further, Tampa Electric states that the annual and monthly demand charges are completely inappropriate and clearly excessive given the circumstances of the Osprey Facility's operation, location and contractual obligations.

13. In addition, Tampa Electric claims that Calpine's cost support contains material deficiencies and does not conform clearly to the Uniform System of Accounts, which precludes a summary finding that the revenue requirements are just and reasonable, and in fact indicate that they are excessive. Tampa Electric states that power factor of 0.85 has not been justified and should not be used in the reactive power allocator calculation. Tampa Electric asserts that the proxy used for the capital structure and return on equity is improper and unsupported and has no relationship to Calpine's own capitalization and cost of capital. Tampa Electric states that the fixed charge rate used to derive the revenue requirements failed to make an adjustment for accumulated deferred income taxes (ADIT) and that the use of straight line depreciation results in an excessive fixed charge rate. Tampa Electric also argues that the accessory electric equipment allocator used by Calpine departs from the *AEP* methodology and has not been justified, and that a hearing is necessary.

14. Finally, Tampa Electric asserts that the proposed rate schedule should be suspended for the maximum period permitted by law and made effective only subject to refund pending completion of the hearing and resolution of the issues.

### **Discussion**

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

16. Rule 213(a)(2) of the Commission's Rules of Practices and Procedure, 18 C.F.R. § 385.213(a)(2)(2004), prohibits an answer to a protest and/or answer unless otherwise ordered by the decisional authority. We are not persuaded to accept Calpine's answer and Tampa Electric's answer to Calpine's answer and will, therefore, reject them.

17. The proposed rate schedule submitted by Calpine raises issues of material fact that cannot be resolved on the record before us, and are more appropriately addressed in the hearing and settlement judge procedures ordered below.<sup>7</sup>

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<sup>7</sup> We note that the Commission is also addressing issues regarding reactive power service in Docket No. AD05-1-000.

18. The Commission's preliminary analysis of Calpine's filing indicates that it has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Accordingly, we will accept Calpine's proposed rate schedule for filing, suspend it for a nominal period, to become effective on March 15, 2005, subject to refund, and set it for hearing and settlement judge procedures as ordered below.

19. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.<sup>8</sup> If the parties desire, they may, by mutual agreement, request a specific judge as a settlement judge in the proceeding; otherwise the Chief Judge will select a judge for this purpose.<sup>9</sup> The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for the commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) The proposed rate schedule is hereby accepted for filing and suspended for a nominal period, to become effective on March 15, 2005, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of the proposed rate schedule.

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<sup>8</sup> 18 C.F.R. § 385.603 (2004).

<sup>9</sup> If the parties decide to request a specific judge, they must make their request to the Chief Judge by telephone at 202-502-8500 within five days of the date of this order. The Commission's website contains a listing of Commission judges and a summary of their background and experience ([www.ferc.gov](http://www.ferc.gov) - click on Office of Administrative Law Judges).

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However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and procedure, 18 C.F.R. § 385.603 (2004), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge by telephone within five (5) days of the date of this order.

(D) Within sixty (60) days of the date of this order, the settlement judge shall file a report with the Chief Judge and with the Commission on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every 30 days thereafter, informing the Chief Judge and the Commission of the parties' progress toward settlement.

(E) If settlement judge procedures fail, and a trial-type evidentiary hearing is to be held, a presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a pre-hearing conference in this proceeding, to be held within approximately fifteen (15) days of the date on which the Chief Judge designates the presiding judge, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, D.C. 20426. Such conference shall be held for the purpose of establishing a procedural schedule, including a date for the submission of Calpine's case-in-chief. The presiding administrative law judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss), as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

( S E A L )

Linda Mitry,  
Deputy Secretary.