

113 FERC ¶ 61,158
 UNITED STATES OF AMERICA
 FEDERAL ENERGY REGULATORY COMMISSION

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

Calpine Energy Services, L.P.	Docket Nos.	ER00-3562-003
		ER05-817-001
Calpine PowerAmerica-OR, LLC.		ER03-341-002
Calpine PowerAmerica-CA, LLC		ER03-342-002
Power Contract Financing, L.L.C.		ER03-838-003
PCF2, LLC		ER04-1081-001
Calpine Energy Management, L.P.		ER04-1080-001
CES Marketing V, L.P		ER03-209-002
Calpine Northbrook Energy Marketing, LLC		ER03-36-004
MEP Pleasant Hill, LLC		ER99-2858-008
Calpine Bethpage 3, LLC		ER05-48-001
Ontelaunee Power Operating Company, LLC		ER05-1266-001
CES Marketing VIII, LLC		ER05-818-001
CES Marketing IX, LLC		ER05-819-001
CES Marketing X, LLC		ER05-820-001
Zion Energy, LLC		ER02-1319-004
Calpine Newark, LLC		ER04-831-002
Calpine Parlin, LLC		ER04-832-002
Calpine Construction Finance Company, L.P.		ER00-1115-003
Calpine Philadelphia Energy, Inc.		ER03-446-002
CPN Bethpage 3 rd Turbine, Inc.		ER02-1959-003
Bethpage Energy Center 3, LLC		ER04-1099-001
TBG Cogen Partners		ER04-1100-001
Gilroy Energy Center, LLC		ER01-2688-008
Creed Energy Center, LLC		ER02-2227-004
Delta Energy Center, LLC		ER02-600-006
Goose Haven Energy Center, LLC		ER02-2229-003
Los Esteros Critical Energy Facility, LLC		ER03-24-003
Metcalf Energy Center, LLC		ER05-67-001
Pastoria Energy Facility L.L.C.		ER05-68-001
Geysers Power Company, LLC		ER99-1983-003
Calpine California Equipment Finance Company, LLC		ER03-290-002

ORDER ADDRESSING CHANGE IN STATUS FILING
AND PROVIDING GUIDANCE

(Issued November 17, 2005)

1. In this order, the Commission accepts a notice of change in status filed by Calpine Energy Services, L.P. (CES) and its affiliated public utilities (collectively, the Calpine Entities), to report a change in status that reflects a departure from the characteristics that the Commission relied upon in granting these entities market-based rate authority, pursuant to the reporting requirements of Order No. 652.¹ For the reasons discussed below, and based on Calpine Entities' representations, we accept the Calpine Entities' change in status filing.

Background

2. On September 9, 2005, CES and the Calpine Entities filed a notice of change in status to report that CES, a power marketer, had entered into two Energy Management Agreements regarding certain third party-owned electric generating assets as described below. In addition, the Calpine Entities state that CES anticipates entering into a third such agreement, as also described below. The Calpine Entities state that under the Commission's regulations, they are required to report any change in status that would reflect a departure from the characteristics the Commission relied upon in granting them market-based rate authority.² The Calpine Entities assert that they are providing this notice here out of an abundance of caution based on their belief that the Energy Management Agreements described in their filing do not constitute a change in status, as contemplated by the Commission's regulations. The Calpine Entities claim that CES will not acquire control of the facilities at issue under these agreements.³

¹ *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, FERC Stats. & Regs., Regulations Preambles III ¶ 31,175 (Feb. 10, 2005) (Order No. 652), *order on reh'g*, 111 FERC ¶ 61,413 (2005). 18 C.F.R. § 35.27(c) (2005).

² *See, e.g.*, 18 C.F.R. § 35.27(c)(1) (defining a "change in status" to include, but not be limited to, "ownership or control of generating or transmission facilities or inputs to electric power production other than fuel supplies.").

³ The agreements themselves were not included by the Calpine Entities in their submittal.

3. The Calpine Entities state that even assuming CES is deemed to acquire control of these facilities, this authority would not alter the Commission's prior determinations that CES and its affiliates satisfy the Commission's four-part test for market based rate authority.

The IECC Agreement

4. The Calpine Entities state that on July 29, 2005, CES and Inland Empire Energy Center, LLC (IECC) entered into an Energy Management Agreement (IECC Agreement), pursuant to which CES will provide certain services to IECC, the owner of a 775 MW natural gas-fired electric generating facility located in Riverside County, California (IECC Facility). The Calpine Entities state that the IECC Facility is expected to begin commercial operations in 2008, with the output of the facility to be delivered into the transmission system operated by the California Independent System Operator, Inc. (CAISO).

5. The Calpine Entities state that CES will act as IECC's agent to market and schedule the energy, capacity, ancillary services, and any other product produced by the IECC Facility and arrange for the procurement and maintenance of transmission service for the products produced by the IECC Facility. CES states it will also arrange for the procurement and scheduling of natural gas supplies for use at the IECC Facility. The Calpine Entities state that IECC will be the operator of the IECC Facility and that CES will act pursuant to orders from IECC. CES states it will have limited discretion as to prices for which it sells the output of the IECC Facility and purchases products used to generate the IECC's Facility's output and deliver this output to third parties.

The POA Agreement

6. The Calpine Entities state that on August 5, 2005, CES and Project Orange Associates, L.L.C. (POA) entered into an Energy Management Agreement (POA Agreement), pursuant to which CES will provide certain services to POA, the owner of an 80 MW natural gas-fired cogeneration facility located in Syracuse, New York (POA Facility). The Calpine Entities state that the output of the POA Facility will be sold into the markets operated by the New York Independent System Operator (NYISO). CES states that it will act as POA's agent and, as directed by POA, bid, schedule, and sell the output of the POA Facility in the NYISO market. CES also states it will schedule natural gas transportation deliveries and assist in managing POA's pipeline imbalances. The Calpine Entities state that CES will have limited discretion concerning the prices for which it sells the output of the POA Facility and purchases fuel and other products.

The OPOC Agreement

7. The Calpine Entities state that CES and Ontelaunee Power Operating Company, LLC (OPOC) expect to enter into an Energy Management Agreement in September 2005 (OPOC Agreement), pursuant to which CES will provide certain services to OPOC, the owner of a 587 MW electric generation facility located in Reading, Pennsylvania. The Calpine Entities state that the output of the facility will be sold into the markets operated by PJM Interconnection, L.L.C. (PJM). CES states that it will provide the following services at the direction of, and subject to the approval of, OPOC: power management services (including marketing, bidding, and scheduling), fuel management, and risk management services. CES states that it will have the authority to enter into transactions for the purchase or sale of fuel or power with a term of 31 days or less. In addition, the Calpine Entities state that the authority for CES to execute other types of transactions could be delegated by OPOC from time-to-time by written notice.

8. Finally, the Calpine Entities include in their submittal tariff revisions for those of their affiliates who have not previously filed to revise their market-based rate tariffs to include the reporting requirement for changes in status, as required by Order No. 652.

9. Notice of the Calpine Entities' submittal was published in the *Federal Register*,⁴ with interventions or protests due on or before October 11, 2005. None was filed.

Discussion

10. For the reasons discussed below, we will accept the Calpine Entities' notice of change in status, as it relates to the POA Agreement and the OPOC Agreement. We will not address, at this time, the Calpine Entities' representations as they relate to the IECC Agreement, given the premature nature of any evaluation concerning market conditions in the CAISO market as of the IECC Facility's projected 2008 in-service date.

11. Order No. 652 requires that a seller with market-based rate authority notify the Commission of a change in status that would reflect a departure from the characteristics relied upon by the Commission in granting the seller market-based rate authority. Section 35.27(c)(1) of the Commission's regulations defines a change in status to include but not be limited to "ownership or control of generation or transmission facilities or inputs to electric power production other than fuel supplies."

12. The Calpine Entities state that under the Energy Management Agreements described herein CES will not exercise control over the generating facilities at issue (*i.e.*, over the IECC Facility, the POA Facility, or the OPOC Facility), as contemplated by

⁴ 70 Fed. Reg. 57,573 (2005).

Order No. 652.⁵ However, we cannot make this determination here based on the record before us, in the absence of the agreements at issue and/or a more detailed description of the services provided under these agreements and their effect on the Calpine Entities' market power analyses.

13. We clarify, in this regard, that sellers making a change in status filing to report an energy management agreement are required to make an affirmative statement in their filing as to whether the agreement at issue transfers control of any assets and whether the agreement results in any material effect on the conditions that the Commission relied upon for the grant of their market-based rate authority. On some occasions, and at the Commission's discretion, the Commission may request the seller to submit a copy of the agreement and provide supporting documentation.

14. We further clarify that a seller making a change in status filing is required to state whether it has made a filing pursuant to section 203 of the Federal Power Act.⁶ To the extent the seller has made a section 203 filing that it submits is being made out of an abundance of caution and thus has voluntarily consented to the Commission's section 203 jurisdiction, the seller will be required to incorporate this same assumption in its market-based rate change in status filing (*e.g.*, if the seller assumes that it will control a jurisdictional facility in a section 203 filing, it should make that same assumption in its market-based rate change in status filing and, on that basis, inform the Commission as to whether there is any material effect on its market-based rate authority).⁷

15. The Calpine Entities argue that even assuming that CES will control the capacity attributable to its Energy Management Agreements, neither CES nor any of its affiliates would possess generation market power in the relevant markets (*i.e.*, in the CAISO, PJM, or the NYISO), or fail to satisfy the Commission's other requirements applicable to their market-based rate authority.⁸

⁵ "In short, if an applicant has control over certain capacity such that the applicant can affect the ability of the capacity to reach the relevant market, then the capacity should be attributed to the applicant when performing the generation market power screens." Order No. 652 at P 47.

⁶ 16 U.S.C. § 824b (2000).

⁷ Order No. 652 at P 35.

⁸ The Calpine Entities rely, in this regard, on their recently submitted triennial review analyses, for each of these three markets.

16. We agree that even attributing the capacity associated with the POA Facility and the OPOC Facility to the Calpine Entities would not alter our recent determinations that the Calpine Entities, in these markets (*i.e.*, in the NYISO and PJM), continue to satisfy our requirements applicable to the grant of their market-based rate authority.⁹ However, as noted above, we cannot decide this issue at this time, as it relates to the IECC Facility, which is not scheduled to become operational until 2008. A change in status filing regarding CES' agreement with regard to the IECC Facility should be made by the Calpine Entities no later than 30 days after the IECC Facility becomes operational.

17. Finally, we will accept for filing the Calpine Entities' proposed tariff revisions incorporating the reporting requirement for changes in status, as required by Order No. 652.

The Commission orders:

(A) The Calpine Entities' notice of change in status and proposed tariff revisions are hereby accepted for filing, in part, as discussed in the body of this order.

(B) The Secretary is directed to publish a copy of this order in the *Federal Register*.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁹ See *Creed Energy Center, LLC*, Docket No. ER02-2227-003, (November 2, 2005) (unpublished letter order). See also *CES Marketing VI, LLC et al.*, 111 FERC ¶ 61, 261 (2005).