

**November 2001**

**Calpine UK Holdings Limited's  
completed acquisition of Saltend  
Cogeneration Company Limited**

**A consultation paper**

# 1. Introduction

## *Purpose of this document*

1.1 This document:

- ◆ gives details of the completed acquisition of Saltend Cogeneration Company Limited by Calpine UK Holdings Limited;
- ◆ explains the merger control process for this transaction; and
- ◆ requests comments on the regulatory issues arising from the proposed transaction.

1.2 Ofgem<sup>1</sup> will make recommendations to the Director General of Fair Trading in relation to the merger. In order to allow comments to be considered, Ofgem needs to receive these not later than 5pm on 14 November 2001.

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<sup>1</sup> With the commencement of the relevant provisions of the Utilities Act in December 2000, the duties and functions of the Director Generals of Electricity and Gas Supply were transferred to the new Gas and Electricity Markets Authority. However, this document refers to the Office of Gas and Electricity Markets (Ofgem) throughout.

## 2. Details of the completed acquisition

- 2.1 On 4 July 2001 Calpine UK Holdings Limited (Calpine) entered into an agreement with Entergy Power Saltend Limited to purchase all the issued share capital of the Saltend Cogeneration Company Limited. Saltend Cogeneration Company Limited owns Saltend power station, a 1,200 MW gas-fired plant near Hull, Yorkshire, which commenced commercial operations in November 2000.
- 2.2 The acquisition of Saltend Cogeneration Company Limited was completed on 24 August 2001 and Calpine has assumed operation of Saltend power station. In October 2001 Calpine notified the completed transaction to the Office of Fair Trading (OFT) for a decision by the Secretary of State to clear the transaction or to refer it to the Competition Commission for further investigation.

### 3. Merger Control Process

- 3.1 This transaction falls within the scope of UK merger control law since the value of the assets involved exceeds the £70 million threshold under the Fair Trading Act 1973 (FTA). The transaction will therefore be assessed under the provisions of the FTA and the Secretary of State for Trade and Industry may refer the transaction to the Competition Commission if the transaction may, in the Secretary of State's opinion, give rise to significant competition concerns.
- 3.2 It is the responsibility of the OFT, headed by the DGFT, to advise the Secretary of State as to whether the transaction should be referred to the Competition Commission. In accordance with the concordat between the OFT and Ofgem, the OFT will consult Ofgem before advising the Secretary of State. Where the OFT advises that the transaction should be referred to the Competition Commission, the OFT may, in lieu of such a reference, advise that the Secretary of State invites binding undertakings from the parties to the transaction which would remedy any adverse effects on competition identified by the OFT.
- 3.3 If the Secretary of State decides to refer the transaction to the Competition Commission, the Competition Commission has to consider whether the transaction operates, or is likely to operate, against the public interest. If the Competition Commission concludes that the transaction is not likely to operate against the public interest, the Secretary of State has no power to prevent the merger. If the Competition Commission decides that an adverse effect can be expected, the Secretary of State has the power to block the transaction or attach conditions to it, or to ask the DGFT to negotiate undertakings to be given by the parties to counter the adverse effects identified; though the Secretary of State is under no obligation to use these powers.
- 3.4 In advising the OFT, Ofgem will need to consider what modifications might be needed to the licences held by Calpine and whether any assurances and/or undertakings are necessary.

## 4. Details of the Parties

### *Calpine UK Holdings Limited*

- 4.1 Calpine UK Holdings Limited (Calpine) is a wholly owned subsidiary of the Calpine Corporation. The Calpine Corporation is involved in the development, acquisition, ownership and operation of power generation facilities and in the sale of electricity, predominantly in the United States.
- 4.2 The Calpine Corporation was not engaged in the generation or sale of electricity in Great Britain prior to the completion of this transaction. As stated above, the Saltend power station has a capacity of 1,200 MW. Given that total installed capacity in England and Wales is 67.4 GW, this represents 1.8 per cent of the England and Wales generation market. Therefore, in the event that the transaction is approved by the Secretary of State, Calpine will own 1.8 per cent of the England and Wales generation market<sup>2</sup>.
- 4.3 Saltend Cogeneration Company Limited is a signatory of the Balancing and Settlement Code.

### *Entergy Corporation*

- 4.4 The Entergy Corporation (Entergy) is a United States-based global energy company with power generation operations on five continents. In the United States, Entergy owns, manages, or invests in international power plants generating more than 30,000 megawatts of electricity. Entergy provides retail energy services to about 2.5 million customers in the U.S. in an area covering portions of Arkansas, Louisiana, Mississippi and Texas. Through Entergy-Koch LP, the Entergy Corporation also provides wholesale energy marketing and trading services.
- 4.5 In the UK, following the transaction, Entergy (through its subsidiary Entergy Power Operation UK Limited) continues to own and operate an 800 MW gas-fired power station at Damhead Creek in Kent. In the event that the transaction

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<sup>2</sup> Calpine's share of the Great Britain generation market will be around 1.6 per cent.

is approved by the Secretary of State, Entergy's share of total generating capacity in the England and Wales market will fall from 3.0 per cent to 1.2 per cent<sup>3</sup>.

- 4.6 In addition, Entergy Koch LP, through its trading and marketing subsidiary Axia Energy, trades electricity in the England and Wales wholesale market and is a signatory of the Balancing and Settlement Code.

***Saltend power station***

- 4.7 Saltend power station is a 1200 MW gas-fired power station near Hull, Yorkshire, which commenced commercial operations in 2000.
- 4.8 In 2000/01, Saltend produced 5.3 TWh, representing 1.8 per cent of generation output in England and Wales<sup>4</sup>.

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<sup>3</sup> Entergy's share of total Great Britain generating capacity will fall from around 2.6 per cent to around 1.1 per cent.

<sup>4</sup> Or around 1.6 per cent of generation output in Great Britain.

## 5. Issues arising from the proposed acquisition

### *Concentration of generation interests in Great Britain*

- 5.1 Ofgem considers that there is scope for generators to manipulate the market and so damage competition and/or harm customers. This ability is a result of the special features of the electricity market, including the inability to store electricity other than at very high cost, the complexity of the market rules and relatively inelastic demand and supply, particularly close to real time. Generators may be able to do this despite holding relatively low market shares.
- 5.2 At present there are limited regulatory safeguards regarding companies with relatively low market shares manipulating the market, particularly in relation to the potential gaming of transmission constraints, complex market rules or the withdrawal of generation capacity.
- 5.3 The DTI is consulting on a proposed generation licence condition regarding system balancing and capacity withdrawal. If the DTI introduces the proposed licence condition in generation licences, Ofgem will have explicit regulatory safeguards against the manipulation of the wholesale markets.
- 5.4 Ofgem will need to consider, in the context of existing regulatory safeguards, whether the acquisition of Saltend Cogeneration Company Limited by Calpine represents a concentration in the generation market of Great Britain, which would have detrimental effects on the development of competition in the generation market.
- 5.5 Calpine is a new entrant into the England and Wales generation market. As noted above, in the event that the transaction is approved by the Secretary of State, Calpine will own 1.8 per cent of capacity in the England and Wales generation market whilst Entergy's share of capacity in that market will fall from 3.0 per cent to 1.2 per cent. This transaction will, therefore, result in a small deconcentration of the England and Wales generation market. Accordingly, Ofgem's initial view is that the transaction does not raise any competition concerns. Views are welcome on this issue.

### *Fuel supply and offtake contracts*

- 5.6 As a cogeneration plant, Saltend provides electricity and steam for BP Chemical's Hull Works plant under the terms of a fifteen-year agreement. The balance of the plant's output is sold into the wholesale market. In addition, BP Gas Marketing is supplying gas for the plant under the terms of an existing fifteen-year contract. Both of these contracts remain in place.
- 5.7 Ofgem will need to consider whether these agreements give rise to any competition concerns, or whether they should be viewed as ancillary to the transaction. Our initial view is that, as with similar transactions, such agreements are not ancillary to the acquisition and that Ofgem should retain the ability to take appropriate action under the Competition Act 1998 if any or all of the agreements were to have any anti-competitive effects. Views are welcome on this issue.



## 6. Conclusion

- 6.1 Ofgem is seeking the views of interested parties on the acquisition of Saltend Cogeneration Company Limited by Calpine, so that it may make recommendations to the Director General of Fair Trading.
- 6.2 Responses will normally be available in the Ofgem library unless there are good reasons why they must remain confidential. Consultees should mark the part of their response (or whole response) which is to remain confidential, if this is the case, and where possible should consign any confidential material to appendices.
- 6.3 Comments on the proposed acquisition should be sent, by 5pm on 14 November 2001, to:

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Head of Secretariat  
Office of Gas and Electricity Markets  
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London SW1P 3GE

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