

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Entergy Services, Inc.

v.

Union Power Partners, L.P.

Docket No. EL06-14-000

ORDER DENYING COMPLAINT

(Issued April 10, 2006)

1. In this order, we deny Entergy Services, Inc.'s complaint on behalf of itself and Entergy Arkansas, Inc. (collectively, Entergy) against Union Power Partners, L.P. (Union Power) and, thereby, reject Entergy's request to issue an order prohibiting Union Power from charging Entergy, as of November 1, 2005, for reactive power within the specified power factor range ("within the band") and Entergy's request to rule that the hearing proceeding in Docket No. ER05-977-000 will only determine Union Power's reactive power revenue requirement within the band for the locked-in period from May 18, 2005, through October 31, 2005.

Background

2. On May 17, 2005, in Docket No. ER05-977-000, Union Power filed a proposed rate schedule for reactive power that proposed to impose on Entergy a cost-based rate for reactive power within the band. Union Power stated that its obligation to provide such service and its right to receive compensation for such service are set forth in section 4.7 of its amended and restated interconnection agreement with Entergy. Entergy protested on the basis, *inter alia*, that Union Power lacked contractual authorization for such charges under section 4.7 of its Interconnection and Operating Agreement (IOA) and that the IOA only permits the passthrough of such charges. In an order issued July 15, 2005, the Commission accepted Union Power's proposed reactive power rate schedule for

filing, effective May 18, 2005, subject to refund, and established hearing and settlement judge procedures.¹ The Commission stated that among the issues to be considered at the hearing included “whether the IOA provides for compensation for reactive power service.”²

The Complaint

3. Entergy requests that the Commission issue an order prohibiting Union Power from charging Entergy, as of November 1, 2005, for reactive power from Union Power’s generating facility located outside El Dorado, Arkansas, when such reactive power is within the facility’s band. In addition, Entergy requests that the Commission rule that the ongoing proceeding in Docket No. ER05-977-000 will determine Union Power’s reactive power revenue requirement for within the band reactive power service for the locked-in period from May 18, 2005, through October 31, 2005.

4. Entergy asserts that the relief it requests in the instant docket is consistent with the Commission’s October 14, 2005 “Order Granting Petition for Declaratory Order and Accepting and Suspending Proposed Tariff Filing” in *Entergy Services, Inc.*³ It states that, in the October 14, 2005 *Entergy* Order, the Commission granted a petition filed by Entergy in Docket No. EL05-149-000, confirming that if Entergy does not compensate its own or affiliated generators for reactive power service provided to transmission customers within the generator’s band, then Entergy need not on a prospective basis compensate a non-affiliated generator for maintaining reactive power within its band. Entergy states that, in that order, the Commission also accepted Entergy’s proposal in Docket No. ER05-1432-000 to set to zero the charge levied by Entergy for the provision of reactive power within the band from its own generating units, effective November 1, 2005.

¹ *Union Power Partners, L.P.*, 112 FERC ¶ 61,065 (2005). On March 7, 2006, the Chief Judge issued an order certifying a partial uncontested settlement of the issues of the proceeding for the period May 18, 2005, to October 31, 2005, and suspending further proceedings in the docket pending Commission action on the instant Docket No. EL06-14-000. *Union Power Partners, L.P.*, 114 FERC ¶ 63,034 (2006).

² 112 FERC ¶ 61,065 at P 14.

³ 113 FERC ¶ 61,040 (2005) (October 14, 2005 *Entergy* Order).

5. Entergy also states that, contemporaneously with the issuance of the October 14, 2005 *Entergy* Order, the Commission issued an order in a parallel proceeding in *KGen Hinds LLC*.⁴ In that proceeding, states Entergy, KGen Hinds, like Union Power, had filed a proposed rate schedule to recover its proposed cost-based revenue requirement for reactive power maintained within the band. Entergy states that the Commission accepted the proposed rate schedule for filing but noted that the rate would no longer be effective after October 31, 2005, consistent with its ruling in the October 14, 2005 *Entergy* Order:

As a consequence, effective November 1, 2005, Hinds and other reactive power generators will no longer be permitted to charge Entergy for costs related to within the band reactive power provided to Entergy. This means that the hearing established herein will only determine Hinds's reactive power revenue requirements for the period August 18, 2005, through October 31, 2005. Consistent with our order issued contemporaneously herewith in Docket No. EL05-149-000, et al. effective November 1, 2005, the charges proposed in the instant filing will become unjust and unreasonable because they would recover within the band costs that Hinds is not permitted to recover on or after that date.⁵

Entergy notes that in order to implement this ruling, the Commission also ordered KGen Hinds to make a compliance filing to terminate its proposed reactive power rate as of November 1, 2005. Entergy states that it filed the complaint in the instant docket to ensure that the rulings in the October 14, 2005 *Entergy* Order and in *KGen Hinds* are applied to Union Power's Rate Schedule No. 2, under which Union Power currently charges Entergy for reactive power within the band.

6. Entergy states that on April 6, 2000, it filed an Interconnection and Operating Agreement (IOA) between Entergy Arkansas and Union Power which provided Union Power the ability to interconnect and deliver power and energy to the Facility's point of interconnection, which the Commission accepted for filing on May 10, 2000, as FERC Rate Schedule No. 150.⁶ On September 29, 2000, Entergy filed a modified and

⁴ 113 FERC ¶ 61,041 (2005).

⁵ 113 FERC ¶ 61,041 at P 14.

⁶ See *Entergy Arkansas, Inc.*, Docket No. ER00-2133-00, Letter Order (May 10, 2000).

redesignated IOA, which the Commission accepted for filing on November 20, 2000, designating it as Service Agreement No. 219, under Entergy Arkansas's FERC Electric Tariff, First Revised No. No. 3.⁷ On March 1, 2001, Entergy filed a second amended and restated IOA with the Commission, which the Commission accepted for filing on April 26, 2001, as First Revised Service Agreement No. 219.⁸ Entergy asserts that the Union Power IOA does not provide any right to receive compensation for reactive power within the band, but rather obligates Union Power to maintain reactive power within the band consistent with "Good Utility Practice". Entergy states that the Union Power IOA provisions relating to reactive power are identical to the K Gen Hinds's IOA reactive power provisions.

7. Entergy argues that in the October 14, 2005 *Entergy* Order, the Commission confirmed that if Entergy does not compensate its own or affiliated generators for reactive power service provided within the generators' specified bands, then Entergy need not on a prospective basis compensate a non-affiliated generator for maintaining reactive power within its band. Consistent with the Commission's ruling in *KGen Hinds*, Entergy requests that the Commission rule that effective November 1, 2005, the charges proposed by Union Power in Docket No. ER05-977-000 are unjust and unreasonable because they would recover within the band costs that Union Power is not permitted to recover on or after that date. Entergy also requests that the Commission rule that the ongoing proceeding in Docket No. ER05-977-000 will only determine Union Power's reactive power revenue requirement within the band for the locked-in period May 18, 2005 through October 31, 2005. Finally, Entergy requests that the Commission remove the subject rate schedule in Docket No. ER05-977-000, effective November 1, 2005, and to set a refund effective date of November 1, 2005.

Notice of Filing and Responsive Pleadings

8. Notice of Entergy's complaint filing was published in the *Federal Register*, 70 Fed. Reg. 68,419, with an answer due by November 17, 2005. On November 17, 2005, Union Power filed its answer in this proceeding. On December 12, 2005, Entergy filed a Motion for Leave to Answer and Answer.

⁷ See *Entergy Arkansas, Inc.*, Docket No. ER00-3782-00, Letter Order (November 20, 2000).

⁸ See *Entergy Arkansas, Inc.*, Docket No. ER01-1367-000, Letter Order (April 26, 2001).

Union Power's Answer

9. Union Power asserts that the Commission should dismiss Entergy's complaint because: (1) the Commission has already ruled that Union Power may argue in its on-going proceeding in Docket No. ER05-977-000 that Union Power's interconnection agreement provides it with an independent contractual right to seek Reactive Power Service charges from Entergy regardless of whether Entergy compensates its affiliated generation units,⁹ (2) Entergy's Schedule 2 to its Open Access Transmission Tariff (OATT) permits Union Power to recover Reactive Service charges, and (3) Union Power is entitled to receive compensation for providing reactive power service.¹⁰ Thus, Union Power argues that Entergy's complaint misstates both the facts and the law. First, Union Power states that in the October 14, 2005 *Entergy* Order, the Commission stated unequivocally that to the extent that certain generators argue that they have an independent contractual right to compensation, they are free to pursue their claims in proceedings focused on their individual contracts. Union Power maintains that pursuant to section 4.7.1 of its IOA, it has a separate contractual right to recover reactive service compensation from Entergy, and that the Commission has provided it with the opportunity to present its arguments in the current proceedings in Docket No. ER05-977-000. Union Power asserts that Entergy's complaint seeks to deny Union Power the opportunity to make its contractual arguments in that case and is thus in direct conflict with the Commission's ruling in the October 14, 2005 *Entergy* Order.

10. Second, Union Power claims that Entergy's own Schedule 2 explicitly permits Union Power to continue collecting reactive service charges from Entergy. It observes that Entergy's revised Schedule 2 states that the total charges for the Reactive Power Supply and Voltage Control Services are a pass-through of the costs charged to the Transmission Provider by Union Power and Cottonwood Energy Company, L.P (Cottonwood). Moreover, Union Power states, Entergy specifically stated in Docket No. ER05-1432-000, the filing to reduce its reactive power charge to zero, that its Petition for Declaratory Order would not apply to Union Power and Cottonwood and that any challenges to Union Power's or Cottonwood's Reactive Service Rate Schedules would require further modification of the tariff.¹¹

⁹ Citing 113 FERC ¶ 61,040 at note 17.

¹⁰ Citing 113 FERC ¶ 61,040 at note 17.

¹¹ Citing Entergy's Transmittal letter to its September 2, 2005 filing in Docket No. ER05-1432-000 at notes 2 and 4.

11. Third, Union Power contends that, as discussed in Independent Generators' request for rehearing of the October 14, 2005 *Entergy* Order, non-affiliated generators providing reactive service within the band are entitled to compensation, regardless of whether Entergy compensates its own generating units. Citing the February 2005 Staff Report on reactive power issues, it states that reactive power is necessary to properly operate electric power equipment to prevent damage such as overheating of system equipment, to reduce transmission losses, and to maintain the system's ability to withstand disturbances and voltage collapse, blackouts and system collapse.¹² It asserts that non-affiliated generators provide reliability services by supplying or absorbing reactive power and varying their reactive power output in real-time to respond to system needs. Union Power takes issue with the contention that a generator producing or absorbing reactive power within the band is not providing any service, but is simply meeting an obligation associated with a real power transaction. Union Power maintains that the benefits of reactive service, *i.e.*, the protection of transmission equipment, reduction in line losses, and system stability, accrue to all users of the system. Moreover, it continues, this is true regardless of whether a generator is operating within or outside the band.

Entergy's Motion for Leave to Answer and Answer

12. Entergy requests permission to file an answer to Union Power's answer. While it acknowledges that the Commission does not typically entertain such answers, Entergy points out that the Commission has allowed such pleadings when they provide information that may assist the Commission in resolving the particular dispute at hand.

13. In response to Union Power's argument that the instant complaint will somehow deny Union Power the opportunity to make its contractual argument in the ongoing proceeding in Docket No. ER05-977-000, Entergy asserts that, in that docket, Union Power's only mention of a contractual right in the original filing is a passing reference to the IOA. Entergy asserts that, having failed to present or articulate any contractual rights argument in Docket No. ER05-977-000, Union Power should not be granted yet another opportunity in a separate proceeding. Further, Entergy argues that its complaint is fully

¹² *Principles for Efficient and Reliable Reactive Power Supply and Consumption*, Staff Report, Docket No. AD05-1-000 at 19 (Feb.4, 2005).

consistent with the Commission's ruling in the October 14, 2005 *Entergy* Order, and in three related orders in *KGen Hinds LLC*,¹³ *KGen Hot Spring LLC*,¹⁴ and *Hot Spring Power Company, LLC*,¹⁵ the Commission issued identical rulings and required those generators to remove their proposed reactive power rates as of November 1, 2005.

14. Entergy further contends that the terms and conditions of Union Power's IOA do not support the claim of a contractual right for compensation for reactive power. It points out that the reactive power provisions of the Union Power IOA, as well as most other independent generators, are found at section 4.7 of the agreements. It acknowledges that section 4.7.1 discusses compensation for generators that supply reactive power. However, rather than establishing a separate claim for compensation, Entergy argues that the language establishes a contractual right that is based solely upon the compensation of Entergy-owned units. Consequently, it maintains that, even if such a right exists under section 4.7, the contractual claims that Union Power may have had no longer exist after October 31, 2005, because of the Commission's decision in the October 14, 2005 *Entergy* Order. In the October 14, 2005 *Entergy* Order, Entergy explains, the Commission reduced the Schedule 2 rate in Entergy's OATT for reactive power supplied from Entergy-owned generation to zero as of November 1, 2005. Consequently, Entergy argues, there is nothing to pass through to Union Power because Entergy will not recover any amounts for reactive power from its own generating units under Schedule 2 of the OATT as of November 1, 2005.

15. Entergy argues that section 4.7.1 only provides for compensation to Union Power for reactive power service it actually supplies to Entergy, and such compensation would be in the form of a pass-through of the amount Entergy receives from transmission customers. Therefore, it asserts, even if Union Power is entitled to compensation under section 4.7.1, the actual compensation it would receive in the form of a pass-through would be zero on a going forward basis.

16. In addition to addressing cost-based rates, Entergy contends that section 4.7.1 contemplates that the Commission may change its regulations to allow market-based rates to generators that provide reactive power within the band. However, it notes that Union Power has not proposed such a rate in Docket No. ER05-977-000, rather Union Power has proposed cost-based rates for reactive power within the band.

¹³ 113 FERC ¶ 61,041 (2005).

¹⁴ 113 FERC ¶ 61,071 (2005).

¹⁵ 113 FERC ¶ 61,088 (2005).

17. Entergy concedes that section 4.7.3 may provide for compensation during an emergency. It notes that during an emergency as declared by the company dispatcher on the company transmission system, the company dispatcher has the authority to direct the customer to increase or decrease real power production and or reactive power production, and be compensated for its provision of reactive power needed to support Entergy's transmission system. It rejects any further claim for compensation inside the band.

18. Entergy rejects Union Power's contention that Union Power is entitled to continue collecting reactive service charges from Entergy because Schedule 2 of Entergy's OATT allows it to do so. It points out that in its September 2, 2005 transmittal letter in Docket No. ER05-1432 it explained:

Further, Entergy reserves the right to take any and all actions necessary to implement the outcome of the Petition on a prospective basis to the UPP [Union Power] and Cottonwood rate schedules (and in any other proceeding addressing reactive power charges generators are seeking to impose on Entergy). Entergy recognizes that the Commission would not be able to respond to those actions immediately, and thus the independent generators may continue to collect (subject to refund) reactive power charges under their rate schedules even after Entergy's charges for reactive power have been set to zero. Once the Commission acts, and any refunds required from independent generators are ordered, Entergy would make any appropriate pass-through refunds under its OATT and would make appropriate revisions to Schedule 2 consistent with the Commission's orders.

Entergy contends that it committed to refund any amounts received from independent generators to transmission customers and to make revisions to Schedule 2 to remove the pass-through amount of 0.05 mills if the Commission grants its complaint in this proceeding and in Docket No. EL06-13-000.

Discussion

A. Procedural Matters

19. Pursuant to Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213, the Commission will allow Entergy's answer, because it has provided information that has allowed the Commission to better understand the issues to be resolved in this proceeding.

B. Substantive Matters

20. We find that Entergy's complaint is premature and it is denied. In the October 14, 2005 *Entergy* Order, the Commission held that to the extent that certain protestors argue that they have an independent contractual right to compensation for providing reactive power service, they are free to pursue their claims in proceedings focused on their individual contracts.¹⁶ In the recent order denying rehearing of the October 14, 2005 *Entergy* Order, we reaffirmed the Commission's decision to allow such arguments in individual proceedings.¹⁷ Further, contemporaneously herewith, we have granted rehearing of the three reactive power suspension orders in *KGen Hinds LLC*,¹⁸ *KGen Hot Spring LLC*,¹⁹ and *Hot Spring Power Company, LLC*,²⁰ that Entergy cites to support of its complaint, and ruled that the generators in those proceedings may raise the issue of an independent contractual right to compensation for within the band reactive power service. As a result, the hearing established in Docket No. ER05-977-000 may resume and will include the issue of whether Union Power has an independent contractual right to compensation for within the band reactive power service. Thus, we reject Entergy's request that the Commission rule that the ongoing proceeding in Docket No. ER05-977-000 will determine Union Power's reactive power revenue requirement for within the band reactive power only for the locked-in period from May 18, 2005, through October 31, 2005. However, for the reasons stated in our March 23, 2006 *Entergy* Order, we reject Union Power's other arguments for a right to charge for within the band reactive power and decline to set such other issues for hearing.

21. Accordingly, we reject as premature Entergy's request to prohibit Union Power from charging Entergy, as of November 1, 2005, for reactive power from Union Power's generating facility located outside El Dorado, Arkansas, when such reactive power is within the facility's band and decline to direct Union Power to remove the subject rate schedule from its tariff effective November 1, 2005.

¹⁶ 113 FERC ¶ 61,040 at P 23, fn 17.

¹⁷ 114 FERC ¶ 61,303 at P 18 (2006) (March 23, 2006 *Entergy* Order).

¹⁸ 113 FERC ¶ 61,041 (2005).

¹⁹ 113 FERC ¶ 61,071 (2005).

²⁰ 113 FERC ¶ 61,088 (2005).

22. Because of the similarity of issues, for purposes of administrative efficiency, the Chief Administrative Law Judge may consolidate the hearing in the Docket No. ER05-977-000 proceeding with other pending proceedings in Docket Nos. ER05-1358-000, ER05-1394-000, ER05-1419-000, and ER05-483-000 involving the same issue of independent contractual authorization of independent generators for compensation from Entergy for the provision of within the band reactive power.

The Commission orders:

(A) Entergy's complaint is denied as discussed in the body of this order.

(B) The Chief Administrative Law Judge may to take such action as authorized above to consolidate pending proceedings.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.