

113 FERC ¶ 61,040  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Entergy Services, Inc. Docket No. EL05-149-000

Entergy Services, Inc. Docket No. ER05-1432-000

Entergy Services, Inc. Docket No. EL06-2-000

ORDER GRANTING PETITION FOR DECLARATORY ORDER AND ACCEPTING  
AND SUSPENDING PROPOSED TARIFF FILING, INSTITUTING  
INVESTIGATION, ESTABLISHING REFUND EFFECTIVE DATE AND HEARING  
AND SETTLEMENT JUDGE PROCEDURES, AND CONSOLIDATING DOCKETS

(Issued October 14, 2005)

1. In this order, we grant Entergy Services, Inc.'s petition for declaratory order (Petition), on behalf of the Entergy Operating Companies,<sup>1</sup> (collectively, Entergy) in Docket No. EL05-149-000 regarding Entergy's obligation to compensate third-party generators for Reactive Supply and Voltage Control from Generation Sources Services (reactive power) within their specified power factor range (dead band). We accept for filing Entergy's proposed tariff sheets for Schedule 2 under its Open Access Transmission Tariff (OATT), which sets to zero Entergy's charge to its customers for providing reactive power within the dead band by Entergy's own generators. We also accept for filing Entergy's proposed modification to Schedule 2 under its OATT, which will pass through to transmission customers the charges of third-party generators for reactive power service, and suspend it for a nominal period, to become effective November 1, 2005, subject to refund. We also establish hearing and settlement judge

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<sup>1</sup> Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc.

procedures. Further, we institute an investigation under section 206 of the Federal Power Act (FPA)<sup>2</sup> in Docket No. EL06-2-000, concerning the proposed rate and establish a refund effective date. We also will consolidate Docket No. EL06-2-000 with Docket ER05-1432-000.

### **Docket No. EL05-149-000**

#### **A. Petition for Declaratory Order**

2. On September 2, 2005, Entergy filed its Petition, requesting that the Commission confirm that if Entergy does not compensate its own or affiliated generators for reactive power service provided to transmission customers within the generator's dead band, then Entergy need not on a prospective basis compensate a non-affiliated generator for maintaining reactive power within its dead band.

3. According to Entergy, the Commission's established policy, both under Order No. 888<sup>3</sup> (and related case law) and under Order No. 2003,<sup>4</sup> is that a transmission provider is not required to compensate non-affiliated generators for maintaining reactive power within the dead band as long as the transmission provider is not compensating its own or its affiliated generating facilities for providing reactive power within the dead band. Entergy states that the Commission considers such reactive power, maintained

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<sup>2</sup> 16 U.S.C. § 824(e) (2000).

<sup>3</sup> *See Promoting Wholesale Competition Through Open Access Non discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 61 Fed. Reg. 21,540 (1996), FERC Stats. & Regs. ¶ 31,036 at 31,980-81 (1996), *order on reh'g*, Order No. 888-A, 62 Fed. Reg. 12,274 (1997), FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

<sup>4</sup> *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs. ¶ 31,146 at P 21 (2003), *order on reh'g*, Order No. 2003-A, 69 Fed. Reg. 15,932 (March 26, 2004), FERC Stats. & Regs. ¶ 31,160 (2004), *order on reh'g*, 109 FERC 61,287 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (June 30, 2005).

within the dead band while the generating facility is in operation, to be no more than part of an interconnected generator's core obligation as a condition of interconnecting with the transmission provider's system without degrading the reliable operation of the transmission grid. Further, Entergy states that the Commission has specifically rejected requests for compensation in such circumstances.<sup>5</sup>

4. Entergy notes that the only exception to the general rule of non-compensation for reactive power maintained within the dead band is the potential for undue discrimination. Entergy points to the Commission's statement that it would be unduly discriminatory to allow the transmission provider's affiliated generation to recover costs of maintaining reactive power within the dead band unless non-affiliated generation was afforded the same compensation opportunity.<sup>6</sup>

5. Entergy also recognizes that, if a generator is required by the transmission provider to increase or decrease its reactive power output *beyond* the specified power factor, this is considered an ancillary service and the Commission has held that, in those circumstances, the generator may be compensated.<sup>7</sup>

6. Entergy alleges that its grid interconnects with approximately 18,000 MW of independent generation and each independent generator is interconnected with Entergy under the terms and conditions of an Interconnection Agreement. As of the time the Petition was filed, Entergy states that four<sup>8</sup> of the independent generators that are

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<sup>5</sup> *Michigan Electric Transmission Co.*, 96 FERC ¶ 61,214 at 61,906 (*METC I*), *order on reh'g*, 97 FERC ¶ 61,187 at 61,852 (2001) (*METC II*).

<sup>6</sup> *See* Order No. 2003-A at P 411, 416.

<sup>7</sup> *See METC II*, 97 FERC at 61,852 (“[T]o the extent that reactive power is provided as an ancillary service, and thus outside reactive design limitation, Generators would be entitled to compensation.”); *see also Detroit Edison Co.*, 95 FERC ¶ 61,145 at 62,538 (“A generator is required to supply reactive power in order to operate the facility in a safe and reliable manner and in accordance with good utility practice. If, however, a transmission provider requests a generator to increase or decrease reactive power output, the generator must be compensated by the transmission provider.”), *order on reh'g*, 96 FERC ¶ 61,309 (2001).

<sup>8</sup> Since the filing of the instant Petition, a fifth such generator, Hot Spring Power Company, LP, has also submitted a filing with the Commission in Docket No. ER05-1419-000.

interconnected with Entergy's grid have stated their intention to charge Entergy for reactive power provided within the dead band and have proposed reactive power rate schedules pending before the Commission.<sup>9</sup> Entergy contends that the rate schedules proposed by these independent generators would result in substantial charges that burden Entergy and its customers without benefit because the generators are required to provide reactive power to meet their basic obligations under Order No. 2003.

7. Entergy asserts that it is willing to forego revenues currently collected from its own and affiliated generators under Schedule 2 for reactive power within the dead band. Entergy argues that if it does not compensate its own or affiliated generators, it need not compensate unaffiliated generators under Order No. 2003 for reactive power within the dead band. Thus, according to Entergy, all generators supplying reactive power service to Entergy within the dead band would be treated comparably for meeting their obligation.

#### **B. Notice of Filing and Responsive Pleadings**

8. Notice of Entergy's filing was published in the *Federal Register*, 70 Fed. Reg. 55,365 (2005), with interventions and protests due on or before October 3, 2005. Motions to intervene were filed by several parties.<sup>10</sup> East Texas Cooperatives, Louisiana Municipals,<sup>11</sup> and MDEA Cities<sup>12</sup> filed motions to intervene and comments. Occidental

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<sup>9</sup> Cottonwood Energy Company LP (Docket No. ER05-483-000), Union Power Partners, L.P. (Docket No. ER05-977-000), KGen Hinds LLC (Docket No. ER05-1358-000), and KGen Hot Spring LLC (Docket No. ER05-1394-000).

<sup>10</sup> Conway Corporation, the West Memphis Utilities Commission, the City of Osceola, Arkansas (collectively, Arkansas Cities); Allegheny Supply Company, LLC; Louisiana Public Service Commission; East Texas Electric Cooperative, Inc., Sam Rayburn G&T Electric Cooperative, Inc., and Tex-La Electric Cooperative of Texas (collectively, East Texas Cooperatives); South Mississippi Electric Power Association; Electric Power Supply Association.

<sup>11</sup> Lafayette Utilities System and the Louisiana Energy and Power Authority (jointly, Louisiana Municipals).

<sup>12</sup> Mississippi Delta Energy Agency, the Clarksdale Public Utilities Commission of the City of Clarksdale, Mississippi and the Public Service Commission of Yazoo City of the City of Yazoo City, Mississippi (collectively, MDEA Cities).

Chemical Corporation (Occidental), NRG,<sup>13</sup> and Independent Generators,<sup>14</sup> filed motions to intervene and protests.

9. East Texas Cooperatives state their support for Entergy's proposed revisions to Schedule 2 and note that the proposal would reduce reactive power charges assessed to them. MDEA Cities likewise support the Petition. Louisiana Municipals state that Entergy's proposal is the only solution that will permit comparable treatment among all load serving entities and generators, without unfair cross subsidization.

10. Occidental protests that Entergy's petition serves no legitimate business purpose and is anti-competitive as well as being inconsistent with Commission precedent. According to Occidental, Order No. 2003-C only addresses the need for compensation parity but does not address or justify a transmission provider stopping compensation to affiliated or non-affiliated generators for an OATT ancillary service as a means to eliminate its obligation to compensate non-affiliated generation for providing reactive power within the dead band. Occidental argues that Entergy's proposal should be denied on the grounds that it is unlawfully discriminatory and predatory in nature because it is intended to raise the costs of its smaller rivals by eliminating a source of revenue.

11. NRG states that the Commission should reject the Petition because the premise underlying the proposal is fatally flawed. NRG contends that Entergy's generation is compensated for reactive supply service through the bundled rates that are assessed by Entergy to its native load customers. NRG additionally states that the fact that Entergy is not required to unbundle its transmission and ancillary service charges to native load customers does not diminish the fact that Entergy's generation is, in fact, compensated for reactive supply service by most users of its transmission system.

12. Further, NRG protests that Entergy's proposal is inconsistent with Order Nos. 888 and 2003. NRG claims that there is nothing in Order No. 888 to support Entergy's position, and that Entergy only seeks to eliminate compensation to generators for reactive supply service that they provide in support of overall system operation. NRG argues that Entergy is misguided in its interpretation of an Order No. 888 requirement that if a

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<sup>13</sup> Bayou Cove Peaking Power LLC, Big Cajun I Peaking Power LLC, Louisiana Generating LLC, NRG Power Marketing, Inc., and NRG Sterlington Power LLC (collectively, NRG).

<sup>14</sup> Calpine Corporation, Cottonwood Energy Company LP, KGen Power Management Inc., Suez Energy North America, Inc., and Union Power Partners, LP (collectively, Independent Generators).

transmission customer is permitted to self-supply ancillary services for its transactions, the transmission provider, as part of such self-supply arrangement, is not required to purchase ancillary services that it does not need. NRG argues that Order No. 888 deals only with the terms under which a transaction customer self-supplies ancillary services for a specific OATT transaction rather than paying the transmission provider a transaction-specific ancillary charge.

13. NRG argues that the precedents that Entergy cites regarding payments to generators for reactive power have been overtaken by later Commission precedent providing that generators may seek compensation and prescribing a specific methodology for deriving the compensation, and more recently, by the Commission's determination to reevaluate comprehensively its policies on reactive power. NRG states that the current Commission policy requires transmission owners to compensate, without regard to dead band distinctions, based on the methodology set forth in *American Electric Power Service Corporation*,<sup>15</sup> and pending the establishment of new policies, Commission policy mandates that generators continue to be compensated.

14. With respect to Order No. 2003, NRG claims that, by removing a Schedule 2 charge from its OATT, Entergy cannot support its claim that its generation is not being compensated for reactive supply by the users of the transmission grid. NRG also states that "there is no inconsistency between Order No. 2003 and the Commission's policy of requiring transmission owners to compensate generators under the *AEP* methodology." NRG claims that Entergy's proposal to no longer compensate within the dead band disregards the Commission determination to revisit its policies.

15. Independent Generators respectfully request that the Commission deny the petition, stating, regardless of whether Entergy compensates its own generating units under Schedule 2 of its OATT, non-affiliated generators should be permitted to file for and receive compensation for reactive power because (i) they are providing a service that is valuable to the transmission system; (ii) comparability demands they be compensated; (iii) their interconnection agreements contractually permit them to file for and recover compensation for reactive power; and (iv) it is sound policy and provides the right incentives.

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<sup>15</sup> 88 FERC ¶ 61,141 (1999) (*AEP*).

16. Independent Generators contend that, a generator's reactive power output is largely independent of its real power output, and the fact that a generator provides reactive power while delivering real power to the grid does not mean that a generator is simply meeting its obligations when supplying reactive power. Further, Independent Generators state that, generators aid the system by meeting location-specific voltage schedules determined by the System Operator. Also, Independent Generators claim that generators aid the transmission system by varying their reactive power output in real-time to help stabilize the transmission system. Independent Generators argue that, it is a critical factual point that a generator's reactive output/consumption will fluctuate based on the needs of the *system*, not simply because of the need to "meet the obligations" of the generator.

17. Independent Generators protest that, generators are entitled to compensation because they are providing a service regardless of whether Entergy compensates its own units. They contend that section 205 of the FPA permits generators to seek Commission approval for rates or charges made in "connection with the transmission or sale of electric energy" subject to the jurisdiction of the Commission, including reactive power.

18. Independent Generators express their concern that Entergy may nevertheless be compensating its affiliated units' reactive power capability through means other than Schedule 2 of its OATT. If so, Independent Generators state that, Entergy must compensate independent generators as well. Independent Generators claim that, most of Entergy's generation costs are recovered at the retail level and because Entergy does not define which portion of its generation facilities are dedicated to real power and which are dedicated to producing reactive power, it is not possible based on Entergy's filing to determine whether Entergy is receiving compensation for the generation equipment used to produce reactive power via its retail rates. Independent Generators maintain that, a significant portion of Entergy's reactive power costs will be recovered by Entergy through its retail rates and, possibly, in the rates for its various ancillary service schedules.

19. Independent Generators argue that Entergy's proposal creates comparability concerns between static and dynamic sources of reactive power, and if the Petition is granted, Entergy will be able to recover revenues for its static reactive power capability while generators will be denied compensation for providing a more valuable dynamic reactive power. Moreover, Independent Generators assert that a separate contractual

right exists within their interconnection agreements with Entergy, which allows them to seek reactive power compensation.<sup>16</sup>

20. Independent Generators argue that the Commission should note market power issues that Entergy's Petition raises. Independent Generators argue that Entergy can use its control over the interconnection process to require reactive service capabilities and establish a dead band. Independent Generators state that if Entergy were to receive a favorable ruling on its Petition, then Entergy could use its control over Schedule 2 to establish the level of compensation to which independent generators are entitled. Independent Generators argue that if a Transmission Provider is able to eliminate compensation to independent generators simply by refusing to compensate affiliated units, then the Transmission Provider can effectively determine compensation for all generators in the region. Independent Generators also argue that allowing Transmission Providers to avoid compensating independent generators for reactive service destroys price signals, eliminates incentives for Transmission Providers to procure such service in the most cost-effective manner, and may lead to independent generators being unable to recover the cost of some of their initial investments.

### **C. Discussion**

#### **1. Procedural Matters**

21. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

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<sup>16</sup> Independent Generators reference section 4.7.1 of the interconnection agreements with Entergy, which typically permits generators to file for and recover compensation for providing reactive power. They also state that section 4.7.1 does not limit a generator to recovering reactive power compensation only if Entergy's units are compensated, and nowhere in the interconnection agreement is a generator's right to compensation tied to Entergy receiving compensation. Nor, Independent Generators claim, do the interconnection agreements prevent generators from being compensated for providing reactive power within the dead band. In fact, Independent Generators state that the interconnection agreements specifically contemplate paying generators for providing service within the dead band because section 4.7.4 specifically states that a generator may seek compensation for providing service under section 4.7.2, *i.e.*, the section establishing the dead band.

## 2. Substantive Matters

22. We grant Entergy's Petition and agree that, consistent with Order No. 2003, where a transmission provider does not compensate its own or affiliated generators for reactive power service within the dead band, it need not compensate non-affiliated generators for reactive power service within the dead band.

23. Protestor's arguments fail to reflect the Commission's action in Order No. 2003.<sup>17</sup> There the Commission emphasized that an interconnecting generator "should not be compensated for reactive power when operating its Generating Facility within the established power factor range, since it is only meeting its obligation."<sup>18</sup> Generators interconnected to a transmission provider's system need only be compensated where the transmission provider directed the generator to operate outside the dead band.<sup>19</sup> Protestor's challenges in this proceeding are little more than collateral attacks on these determinations.

24. In response to concerns of discrimination between transmission-based and generation-based suppliers of reactive power, the Commission clarified in Order No. 2003-A<sup>20</sup> that where a transmission provider compensates its own or affiliated generators for reactive power within the established power range, it must also compensate non-affiliated generators for the same service.<sup>21</sup> Because Entergy has chosen to forego revenues currently levied under Schedule 2 from its own and affiliated

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<sup>17</sup> To the extent that protestors raise concerns about Entergy's bundled retail rates, those concerns are merely unsubstantiated allegations, and those rates are beyond the scope of this proceeding. To the extent that certain protestors argue that they have an independent contractual right to compensation, they are free to pursue their claims in proceedings focused on their individual contracts; in fact, there are already pending proceedings involving most of these protestors.

<sup>18</sup> See Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 546. The Commission recognized certain limited exceptions.

<sup>19</sup> *METC I*, 96 FERC ¶ 61,214 at 61,906, *order on reh'g*, 97 FERC ¶ 61,187 at 61,852 (2001) "[T]o the extent that reactive power is provided...outside reactive design limitations, Generators would be entitled to compensation."

<sup>20</sup> See Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 at P 416.

<sup>21</sup> *Id.* at P 416.

generators for reactive power within the dead band, no concerns of undue discrimination due to non-compensation of non-affiliated generators for the same service arise.

**Docket No. ER05-1432-000**

**A. Tariff Filing**

25. Entergy proposes to modify Schedule 2 of its OATT, which sets forth the rates, terms and conditions for reactive power. Specifically, Entergy proposes to: (1) set to zero the charge for the provision of reactive power from its own generating units; and (2) pass through to transmission customers the costs that third-party generators are currently charging Entergy for reactive power pursuant to rate schedules already accepted for filing by the Commission. Entergy requests an effective date of November 1, 2005 for the proposed Schedule 2 modifications.

26. Entergy states that it currently collects two-tenths of one mil (\$0.0002) for each kWh transmitted under Schedule 2. Entergy asserts that the proposed tariff sheets will eliminate the \$0.0002 rate and replace it with a rate that is essentially a pass through of the costs that third-party generators may charge Entergy for reactive power service. Entergy states that it is proposing to convert the amount charged to it for reactive power by third-party generators from a fixed amount to a cost/kWh rate and that the pass-through Schedule 2 rate will be based only on the revenue requirements for reactive power of the independent generators that have been approved or accepted by the Commission. Further, Entergy states that the proposed pass-through rate of \$0.00005 for each kWh transmitted will result in a significant rate decrease from the current rate of \$0.0002 per kWh.

27. By eliminating compensation for the provision of reactive power from its own generating facilities, Entergy notes that it has addressed concerns articulated by the Commission, in which the Commission explained that it would not evaluate Entergy's proposed pass through of independent generators' reactive power costs without also considering Entergy's costs from its own generation facilities.<sup>22</sup> Here, Entergy claims it is eliminating its own costs.

28. Entergy asserts that its methodology to pass through reactive power charges from third-party generators is just and reasonable. Entergy claims that the method proposed is

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<sup>22</sup> *Entergy Services, Inc.*, 112 FERC ¶ 61,074 (2005).

a simplified version of a model submitted in Docket No. ER00-3327-000 by PJM Interconnection, LLC (PJM). While Entergy concedes that there are significant differences between PJM, which procures reactive power services from third parties, and Entergy, which owns and operates generation resources that supply reactive power, Entergy states that the Commission recognized that additional revenue requirements from third-party generators could be collected by PJM from transmission customers. Further, Entergy notes other cases in which the Commission concluded that it is reasonable to pass through the reactive power costs of generators to transmission customers based on the load ratio share of transmission customers.<sup>23</sup> Entergy additionally states that recently, in Order No. 2003-C, the Commission recognized that “a Transmission Provider may propose to incorporate in its rates any such increase in Schedule 2 amounts.”<sup>24</sup>

#### **B. Notice of Filing and Responsive Pleadings**

29. Notice of Entergy’s filing was published in the *Federal Register*, 70 Fed. Reg. 54,736 (2005), with interventions and protests due on or before September 23, 2005. Motions to intervene were filed by Arkansas Electric Cooperative Corporation (AECC) and MDEA Cities. East Texas Cooperatives, Louisiana Municipals, Arkansas Cities, and Independent Generators<sup>25</sup> filed motions to intervene and comments. Occidental filed a motion to intervene and protest. South Mississippi Electric Power Association, the Electric Power Supply Association, and NRG filed motions to intervene out of time. Entergy filed an answer to the comments and protests.

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<sup>23</sup> See, e.g., *Virginia Elec. and Power Co.*, 108 FERC ¶ 61,108 at P 27 (2004); *American Transmission Sys., Inc.*, 106 FERC ¶ 61,111 (2004) (accepting methodology to pass through multiple generators’ reactive power requirements).

<sup>24</sup> Order No. 2003-C, 111 FERC ¶ 61,401 at P 44.

<sup>25</sup> Cottonwood Energy Company LP (Cottonwood), KGen Power Management Inc. (KGen), Suez Energy North America, Inc. (Suez), and Union Power Partners, LP (Union Power) (collectively, the Independent Generators).

30. East Texas Cooperatives and Louisiana Municipals<sup>26</sup> state that they support Entergy's proposed revisions to Schedule 2. East Texas Cooperatives restate their comments submitted in support of Entergy's Petition for Declaratory Order and note that the proposed changes to Schedule 2 would preclude Entergy and/or third-party generators from charging Entergy and its transmission customers in the future for reactive power within the dead band.

31. Independent Generators are not opposed to Entergy's proposal. However, they caution the Commission against limiting the pass-through mechanism in the manner Entergy requests because Entergy presumes a favorable ruling on its Petition in Docket No. EL05-149-000. They suggest that the Commission ask Entergy to clarify whether each generation owner with a Commission-accepted rate schedule will be paid its monthly revenue requirement, regardless of the amount Entergy actually recovers under Schedule 2. Also, they believe that Entergy should be required to account for additional revenues. Further, Independent Generators state that the Commission should require Entergy to confirm that its proposal does not result in the improper shifting of costs to other ancillary services.<sup>27</sup>

32. Arkansas Cities state that, as transmission customers of Entergy, they would welcome the elimination of reactive power charges altogether if their rights as co-owners

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<sup>26</sup> Louisiana Municipals raises the question of whether the provision of reactive power within the dead band by generators, as a requirement in their interconnection agreements, should be considered as a generation charge or as a transmission ancillary service. Louisiana Municipals contends that, if reactive power costs are treated as a transmission cost, some generators would be paid but others, owned by non-public utilities, would not. Louisiana Municipals states that, in a non-RTO situation, only public utilities can file to recover reactive power costs against Entergy and that Louisiana Municipals are not entitled to make such a filing under the FPA. Louisiana Municipals states that, if reactive power costs within the dead band are treated as a generation cost, as Entergy proposes, then none of the generation units is subsidized and all customers are treated comparably.

<sup>27</sup> According to the Independent Generators, cost shifting could result if the cost of providing the reactive power service, which is proposed to be set to zero in the instant filing, was disproportionately larger than the costs of providing the other ancillary services. If Entergy did not adjust the charges for the other services, it would be over-recovering its costs.

of two generators with Entergy Arkansas, Inc. were balanced accordingly.<sup>28</sup> Arkansas Cities claims that Entergy's proposal to eliminate reactive power charges for its own affiliated units must also be applied to independent generators. Otherwise, Arkansas Cities argues that they would be discriminated against by not being allowed to charge or receive credits for reactive power services related to the co-owned units.

33. Occidental protests that Entergy's filing serves no legitimate business purpose and expresses a belief that Entergy is willing to endure short-term losses to achieve a long-term goal of reducing competition and avoiding scrutiny of its costs of supplying reactive power. Occidental argues that Entergy is attempting to raise the costs of non-affiliated generators that seek to compete with Entergy's generation by eliminating reactive power compensation for those non-affiliated generators.

34. Occidental states that Entergy has failed to provide cost support to justify its proposed change in reactive power rates. According to Occidental, Entergy's proposal is not similar to the "pass-through" mechanism accepted for PJM and Dominion, where fixed rates were replaced for all reactive power costs, including their own costs, with a formula rate that would recover reactive power costs for all generators. Occidental asserts that Entergy proposes to allow the pass through of reactive power costs of all generators except its own.

35. Occidental contends that Entergy's proposed "zero" rate is contrary to the Commission's goal of establishing a policy that achieves optimal investment and production of reactive power. Occidental states there are clear benefits to a policy that requires the procurement of and payment for reactive power from all generators with the capability to provide it. Occidental protests that Entergy's "zero" rate sends the wrong price signals as it reflects neither a market price nor a cost-based charge of providing a necessary service and encourages no investment by the dominant generator and primary provider of reactive power in its region. Finally, Occidental suggests that the Commission require Entergy to file the costs from its own generation facilities to support any change in the Schedule 2 rate.

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<sup>28</sup> However, Arkansas Cities argues that Entergy's filing appears to circumvent their rights as co-owners by unilaterally eliminating the charges that they are credited with for their ownership share of the two generators.

## C. Discussion

### 1. Procedural Matters

36. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We will grant South Mississippi Electric Power Association, the Electric Power Supply Association, and NRG's motions to intervene out of time, given their respective interest, the early stage of this proceeding, and the absence of undue prejudice or delay.

37. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept Entergy's answer and will, therefore, reject it.

### 2. Substantive Matters

38. We will accept Entergy's proposed Schedule 2 revision to set to zero the charge currently levied by Entergy for the provision of reactive power from its own generating units. As noted in the discussion of the Petition above, the Commission in Order No. 2003 stated that an interconnecting generator should not be compensated for reactive power when operating within the established power factor range; Article 9.6.3 of the Large Generator Interconnection Agreement states that the transmission provider is required to pay the interconnecting generator for reactive power only in instances where the transmission provider requests the generator to operate outside of the dead band. The Commission subsequently clarified that if the transmission provider pays its own or affiliated generators for reactive power service *within* the specified range, it must also pay the interconnecting generator for providing reactive power within the specified range.<sup>29</sup>

39. Further, Entergy's proposal to set to zero the charge currently levied by Entergy for the provision of reactive power within the dead band from its own generating units is consistent with Order No. 2003-A and Commission policy on reactive power. And Entergy's proposal provides comparable treatment to all independent generators.

40. However, Entergy's proposal to pass through to transmission customers the costs that third-party generators charge Entergy for reactive power service raises issues of

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<sup>29</sup> Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 at P 416; Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 at P 114.

material fact that cannot be resolved based on the record before us, including an appropriate mechanism for recovery from transmission customers of reactive power costs for reactive power service outside the dead band provided by third-party generators to Entergy beginning November 1, 2005, and are more appropriately addressed in the hearing and settlement judge procedures ordered below.

41. Our preliminary analysis indicates that Entergy's filing has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept Entergy's proposed rate schedule for filing, suspend it for a nominal period, make it effective November 1, 2005, subject to refund, and set it for hearing and settlement judge procedures.

42. In light of the concerns raised by parties in Docket No. ER05-1432-000, which may require a further reduction in rates, we will also institute an investigation under section 206 of the FPA into the justness and reasonableness of Entergy's proposed pass-through rate and will establish a refund effective date.

43. In cases where, as here, the Commission institutes a section 206 investigation on its own motion, section 206(b) of the FPA, as recently amended by section 1285 of the Energy Policy Act of 2005,<sup>30</sup> requires that the Commission establish a refund effective date that is no earlier than the date of publication of notice of its initiation of the investigation, but no later than five months subsequent to that date. Consistent with our general policy,<sup>31</sup> we will set the refund effective date as the date publication of notice of its initiation of the investigation.

44. Section 206(b), as amended, also requires that, if no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to section 206, the Commission shall state the reasons why it has failed to do so and shall state its best estimate as to when it reasonably expects to make such a decision. To implement that requirement, we will direct the presiding judge to provide a report to the Commission no later than 15 days in advance of the refund effective date in the event the presiding judge has not by that date: (1) certified to the Commission a settlement which, if accepted, would dispose of the proceeding; or (2) issued an initial decision. The judge's report, if required, shall advise the Commission of the status of the investigation

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<sup>30</sup> Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005).

<sup>31</sup> See, e.g., *Seminole Electric Cooperative, Inc. v. Florida Power & Light Co.*, 65 FERC ¶ 61,413 at 63,139 (1993); *Canal Electric Co.*, 46 FERC ¶ 61,153 at 61,539, *reh'g denied*, 47 FERC ¶ 61,275 (1989).

and provide an estimate of the expected date of certification of a settlement or issuance of initial decision.

45. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute 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>32</sup> If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.<sup>33</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 commencement of a hearing by assigning the case to a presiding judge.

46. Finally, because there are common issues of law and fact, we will consolidate Docket No. EL06-2-000 with Docket No. ER05-1432-000 for purposes of settlement, hearing, and decision.

The Commission orders:

(A) The Petition for Declaratory Order is hereby granted, effective November 1, 2005.

(B) The proposed modification to set to zero the charge currently levied by Entergy for the provision of reactive power within the dead band from its own generating units is hereby accepted, effective November 1, 2005.

(C) Entergy's proposed pass-through rate is hereby accepted for filing and suspended for a nominal period, to become effective November 1, 2005, as requested, subject to refund, as discussed in the body of this order.

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<sup>32</sup> 18 C.F.R. § 385.603 (2005).

<sup>33</sup> If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list 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).

(D) 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 by 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 Entergy's proposed pass-through rate. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Paragraphs (E) and (F) below.

(E) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2005), 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 within five (5) days of the date of this order.

(F) Within sixty (60) days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge 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 sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(G) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a pre-hearing conference in these proceedings in a hearing room of the Commission, 888 First Street, N.E., Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding 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.

(H) The refund effective date in Docket No. EL06-2-000, established pursuant to section 206(b) of the Federal Power Act, shall be the date of publication of notice of the initiation of Docket No. EL06-2-000.

(I) The Secretary is hereby directed to publish notice of the initiation of Docket No. EL06-2-000 in the *Federal Register*.

(J) Docket Nos. EL06-2-000 and ER05-1432-000 are hereby consolidated for purposes of settlement, hearing, and decision.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.