

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Union Power Partners, L.P.

Docket No. ER05-977-001

ORDER GRANTING IN PART AND DENYING IN PART REHEARING

(Issued December 15, 2005)

1. Entergy Services, Inc. (Entergy) seeks rehearing of an order issued in this proceeding on July 15, 2005 (July 15 Order).¹ For the reasons discussed below, we will grant in part and deny in part rehearing.

Background

2. On May 17, 2005, Union Power Partners, LP (Union Power) filed a proposed rate schedule specifying its cost-based revenue requirement for providing Reactive Support and Voltage Control from Generation Sources Service (reactive power).

3. In the July 15 Order, the Commission accepted Union Power's proposed rate schedule for filing, suspended it for a nominal period, to become effective May 18, 2005, subject to refund, and set it for hearing and settlement judge procedures.

Request for Rehearing

4. Entergy requests rehearing with respect to three issues: waiver of the Commission's 60-day prior notice requirement; the length of the suspension period; and Union Power's proposed revenue requirement.

5. Entergy contends that the Commission erred by permitting the reactive power tariff to become effective one day after its filing. Entergy argues that the Commission routinely denies waiver of its 60-day prior notice requirement when good cause is not

¹ *Union Power Partners, L.P.*, 112 FERC ¶ 61,065 (2005) (July 15 Order).

shown, and here, Union Power failed to identify any justification to support its requested effective date. In particular, Entergy asserts that the Commission's established precedent dictates that waiver of notice will generally be appropriate when the filing has no rate impact or reduces the rate. Moreover, according to Entergy, if the rate increase is not provided for in a contract or settlement on file with the Commission, or a new service will not result in a rate decrease to customers, a strong showing of good cause is required. Entergy further maintains that even though Union Power failed to identify any justification supportive of the May 18, 2005 effective date it proposed for the reactive power tariff, the Commission granted Union Power's requested effective date without discussion or consideration of Entergy's objections.

6. Next, Entergy maintains that the Commission failed to impose a meaningful suspension period and, therefore, on rehearing, the Commission should impose a five-month suspension of the proposed reactive power tariff. Entergy states that the July 15 Order "claims" to suspend the reactive power tariff for a nominal period, but

the only discernable length to such 'suspension' period is the one day period commencing on the date UPP [Union Power] made its filing and concluding on the date UPP requested that its filing be made effective. Thus, in effect, no suspension was imposed by the Commission, even though the Order found that 'the filing may be unjust, unreasonable, or that it may be inconsistent with other statutory standards.'²

7. Further, Entergy states that its protest to the May 17 Filing noted numerous flaws in Union Power's cost support that resulted in more than 10 percent excessive revenues, and where more than 10 percent of the proposed increase is found to be excessive, the Commission suspends the rates for the full five-month maximum suspension.

8. Finally, Entergy states that its protest to the May 17 Filing noted that Union Power's proposed fixed charge rate of 20.248989 percent³ was overstated because in addition to including a sinking fund depreciation rate as one cost component, Union Power improperly included a straight line depreciation rate of 2.654614 percent. Entergy goes on to state that in response to Entergy's protest Union Power agreed that its proposed revenue requirement contained this error and that a correction was necessary.

² Entergy Rehearing Request at 7.

³ The annual fixed charge amount is computed by multiplying the fixed charge rate by the total plant in service.

Entergy also notes that Union Power committed to make the requisite adjustment to its rate schedule at the appropriate time.

Discussion

9. We will grant in part and deny in part Entergy's request for rehearing of the July 15 Order. In the July 15 Order, the Commission determined to accept the proposed rate schedule for filing, suspend it for a nominal period, make it effective May 18, 2005, subject to refund, and set it for hearing and settlement judge procedures.

10. First, we reject Entergy's argument that Union Power failed to identify any justification to support its requested effective date and that the Commission should have denied Union Power's request for waiver of the Commission's 60-day prior notice requirement. In its filing, Union Power explicitly requested waiver of the Commission's prior notice requirement, explaining that "[t]he Commission has regularly granted waiver establishing effective dates less than (60) days after filing for Reactive Service rate schedules. See, e.g., *Tenaska Virginia Partners, L.P.*, 107 FERC ¶ 61,207 (2004) (requested suspension rejected, not set for hearing, and effective date less than sixty days after date of filing granted); *FPL Energy Marcus Hook, L.P.*, 110 FERC ¶ 61,087 (2005) (effective date of less than sixty days after date of filing granted); *Cottonwood Energy Company LP*, 110 FERC ¶ 61,303 (2005) (effective date of filing eight days after filing made)."⁴ The Commission typically has permitted waiver of its prior notice requirement for filings for reactive service rate schedules, and consistent with that precedent, just cited, did so for Union Power in this proceeding. Under the statutes, the underlying regulations, and *Central Hudson*, the Commission may grant waiver of its prior notice requirement for good cause.⁵ In Order No. 2003-A,⁶ moreover, the Commission explained that if a transmission provider pays its own or its affiliated generators for reactive power, it must also pay non-affiliated generators. Accordingly, Union Power is

⁴ Union Power Application at 7-8.

⁵ 16 U.S.C. § 824d(e) (2000); 18 C.F.R. § 35.11 (2005). *Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106 at 61,339 (1992), *reh'g denied*, 61 FERC ¶ 61,089 (1992).

⁶ *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 P 416 (2004), *order on reh'g*, Order No. 2003-B, 70 Fed. Reg. 265 (Jan. 4, 2005), FERC Stats. & Regs. ¶ 31,171 (2005), *order on reh'g*, Order No. 2003-C, 111 FERC ¶ 61,401 (2005).

also entitled to receive compensation for reactive power. There is simply no justification in this case for delaying compensation to Union Power, when Entergy has been compensating, for some time, its affiliated generators for reactive power. Thus, good cause exists for Union Power to be compensated as soon as possible and the Commission properly granted waiver of its prior notice requirement to permit this result.

11. Next, we deny Entergy's request for rehearing with respect to the Commission's decision to suspend for a nominal period the effectiveness of Union Power's proposed rate. Section 205 of the FPA provides that the Commission may suspend proposed rates, terms and conditions, "but not for a longer period than five months;" the statute contains no limitations as to how short the period can be, however.⁷ The Commission has broad discretion in determining the particular length of the suspension period in each case. The Commission's decision to suspend and set a proposed rate for hearing, moreover, is based on a preliminary analysis that is a rough, first-cut review performed within a statutorily-mandated, limited time (typically within 60 days) on the basis of then-available information.⁸ When the Commission suspends proposed rates and establishes a hearing, it is not making a final determination as to the reasonableness of the proposed rates, but is indicating that the proposed rates require the development of an evidentiary record.⁹ In this case, the Commission performed that preliminary analysis and determined that suspension for a nominal period was appropriate,¹⁰ i.e., the proposed rates were not substantially excessive sufficient to warrant a five-month suspension.¹¹ As the Courts of Appeals have recognized, the very purpose of the hearing is to allow the Commission the

⁷ 16 U.S.C. § 824d(e) (2000).

⁸ *West Texas Utilities Co.*, 18 FERC ¶ 61,189 (1982). A discussion of that analysis at that early date, i.e., in the order suspending the rates and establishing a hearing, in fact, would effectively amount to an inappropriate prejudgment on the merits of the very issues being set for hearing. *See infra* note 8.

⁹ *See, e.g., Jersey Central Power & Light Co.*, 56 FERC ¶ 61,3376 at 62,435 (1991); *Pennsylvania Electric Co.*, 20 FERC ¶ 61,401 at 61,817 (1982).

¹⁰ While the suspension period here, i.e., a nominal period, was short, it was within the limits imposed by section 205 of the FPA, i.e., it was not longer than five months.

¹¹ *See Florida Power and Light Company*, 91 FERC ¶ 61,269 at 61,920 (2000). This analysis differs from that used in determining the appropriate rate ultimately to be found just and reasonable by the Commission, which is what the Commission set for hearing and settlement judge procedures in this proceeding.

opportunity to determine whether the proposed rates are reasonable, and it is unreasonable to expect the Commission to provide at such an early stage of a proceeding a detailed explanation of its reasons for suspending a proposed rate change or of the various factors that lead to the choice of a particular suspension.¹² Accordingly, we will reject Entergy's argument that the Commission should have suspended the rate filing for a full five-month period.

12. Last, we grant Entergy's request for rehearing with respect to its argument that the Commission erred by not summarily ruling on the depreciation rate issue and ordering Union Power to immediately adjust its admittedly excessive fixed charge rate consistent with its commitment rather than allow the excessive rate to become effective.¹³ We agree with Entergy that Union Power should adjust its fixed charge rate now rather than at the end of this proceeding. Therefore, we will require Union Power to make a compliance filing, within 30 days of the date of this order, to change the fixed charge rate of 20.248989 percent to 17.594375 percent, effective May 18, 2005, to reflect the removal of the straight line depreciation rate.

The Commission orders:

(A) Entergy's request for rehearing is hereby granted in part and denied in part, as discussed in the body of this order.

(B) Union Power is hereby directed to make a compliance filing, within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

¹² See, e.g., *Boroughs of Ellwood City*, 701 F.2d 266, 271 (3rd Cir. 1983); *Cities of Anaheim v. FERC*, 723 F.2d 656, 661-62 (9th Cir. 1984); *Otter Tail Power Co. v. FERC*, 583 F.2d 399, 408 n.38 (8th Cir. 1978), *cert. denied*, 440 U.S. 950 (1979); and *Papago Tribal Utility Authority v. FERC*, 628 F.2d 235, 243 (D.C. Cir. 1980).

¹³ Entergy Rehearing Request at 10.