

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Hot Spring Power Company, LP

Docket No. EL07-54-000

v.

Entergy Arkansas, Inc., and  
Entergy Services, Inc.

ORDER DISMISSING COMPLAINT

(Issued June 14, 2007)

1. This order dismisses a complaint filed by Hot Spring Power Company, LP (Hot Spring) requesting that the Commission require Entergy<sup>1</sup> to reclassify the Magnet Cove substation (Magnet Cove) as a Network Facility under its interconnection agreement (IA) with Entergy,<sup>2</sup> and provide transmission credits for its facility after reclassification.

**I. Background**

2. Hot Spring filed its complaint on April 13, 2007. Hot Spring states that it paid for and built Magnet Cove, and then transferred the facility to Entergy at no cost, in accordance with Appendix A of the IA. Under the IA, Magnet Cove is currently

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<sup>1</sup> In this order, we use "Entergy" to identify both Entergy Arkansas, Inc. and Entergy Services, Inc., the parties named in Hot Spring's complaint.

<sup>2</sup> See *Entergy Services, Inc.*, Docket No. ER02-1023-000 (May 15, 2002) (unpublished letter order) (accepting the IA between Hot Spring and Entergy).

classified as a directly assignable Interconnection Facility.<sup>3</sup> Hot Spring, however, argues that the substation is not, in fact, an Interconnection Facility because it is located "at or beyond" the "Point of Interconnection" as defined by the IA.<sup>4</sup>

3. According to Hot Spring, the Commission's interconnection policy treats all facilities located at or beyond the Point of Interconnection as Network Upgrades that are entitled to transmission credits if paid for by the interconnection customer. Hot Spring argues that Entergy, therefore, must reclassify Magnet Cove as a Network Upgrade and give Hot Spring transmission credits, with interest.<sup>5</sup>

## **II. Notice of Filings and Responsive Pleadings**

4. Notice of Hot Spring's complaint was published in the *Federal Register*, 72 Fed. Reg. 19,919 (2007), with interventions and answers due on or before May 3, 2007.

5. Entergy filed an answer arguing that the Commission should dismiss the complaint because the Independent Coordinator of Transmission (ICT) currently is performing an independent analysis of Magnet Cove pursuant to Attachment T (recovery of New Facilities costs) of Entergy's Open Access Transmission Tariff (OATT). Entergy states that, under Attachment T, the ICT reviews previously-incurred costs associated with three types of interconnection facilities: (1) direct interconnections; (2) required upgrades; and (3) optional upgrades. Attachment T further provides for a three-step process for the ICT to evaluate these facilities and determine their classifications.<sup>6</sup>

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<sup>3</sup> Interconnection Facilities are defined as "facilities presently in place" or "proposed to be installed" or "later installed" in order to "interconnect and deliver energy from the Facility to the Company Transmission System including, but not limited to, connection, distribution, engineering, administrative, transformation, switching, metering and safety equipment." IA at § 1.10.

<sup>4</sup> The point of interconnection in this case is "where [Hot Spring's] 500 kV conductors connect to the Entergy 500 kV switches" as indicated on a drawing attached to Appendix A. IA, App. A at 53.

<sup>5</sup> It claims the facility cost \$16,981,039.00.

<sup>6</sup> First, the ICT will identify those direct interconnect facilities that do not, under any circumstance, contribute to meeting North American Electric Reliability Council, Southeastern Electric Reliability Council, or local reliability criteria. Second, the ICT will evaluate "required upgrades" to determine whether the "upgrade" would be required for short circuit and/or stability protection, absent the interconnecting generator; or

(continued)

6. Entergy states that the only previously-incurred costs under IAs that the ICT will not review in accordance with Attachment T are those costs: (1) that are associated with facilities constructed prior to January 1, 1997; (2) that have been fully credited; (3) that are under IAs that permit changes only in accordance with the "public interest" standard; or (4) that are under IAs that were pending before the Commission at the time that the April 24 Order<sup>7</sup> was issued (and that still are pending). Entergy argues that, in the instant case: (1) Magnet Cove was constructed after January 1, 1997; (2) the costs at issue have not been fully credited; (3) the IA may be amended under the "just and reasonable" standard; and (4) the IA was not pending before the Commission at the time the April 24 Order was issued. Accordingly, Entergy concludes, the ICT is reviewing Magnet Cove as required under the ICT agreement approved by the Commission.

7. Entergy notes that, once the ICT completes its review, either Entergy or Hot Spring can file with the Commission proposed modifications to the applicable IA to implement the ICT's findings, or can file to question the ICT's conclusions.

8. In addition, Entergy argues that Hot Spring fails to meet its burden of proof under section 206 of the Federal Power Act<sup>8</sup> because it does not mention the standards that apply under Attachment T to determine whether the costs of transmission facilities or upgrades on the Entergy system are eligible for credits or should be assigned directly to the party that requested the facility or upgrade. Entergy states that the complaint cannot be used as a vehicle to apply a different standard for credits than the one that applies under Attachment T. Finally, Entergy argues that Hot Spring has not adequately quantified the level of credits it seeks, failing to include certain expenses such as breakers and metering costs.

9. On May 16, 2007, the Southwest Power Pool, Inc. (SPP), as the ICT, filed a motion to intervene out of time indicating that it is currently studying Magnet Cove as part of the Attachment T analysis. On May 18, 2007, Hot Spring filed a motion for leave to answer and an answer to Entergy's response, and on May 24, 2007, SPP filed an

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whether the upgrade would be required for additional current capability, absent the interconnecting generator. Third, for all facilities that the ICT cannot classify in the first two steps, the ICT will perform a further study using its most recent Base Case model.

<sup>7</sup> *Entergy Services, Inc.*, 115 FERC ¶ 61,095 (2006) (April 24 Order), *errata notice*, May 4, 2006, *order on reh'g*, 116 FERC ¶ 61,275 (2006).

<sup>8</sup> 16 U.S.C. § 824e (2000).

answer to Hot Spring's answer. On June 4, 2007, Entergy filed an answer to Hot Spring's answer.

### **III. Discussion**

#### **A. Procedural Matters**

10. We will grant SPP's untimely intervention pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2006).

11. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), prohibits an answer unless otherwise ordered by the decisional authority, and we will not accept Hot Spring's, SPP's, or Entergy's answers.

#### **B. Analysis**

12. In the April 24 Order, the Commission accepted Entergy's proposed ICT as well as the process through which the ICT would review and reclassify facilities on Entergy's grid. Entergy's proposal to charge customers directly for supplemental upgrades did not conflict with earlier precedent regarding participant funding because of the independence and oversight authority vested in the ICT. In accepting the ICT, we found no conflict between Entergy's proposal and with the *Duke Hinds* line of cases.<sup>9</sup>

13. Section 5.1 of Entergy's OATT, Attachment T, states that the ICT will conduct "a one-time analysis of prior interconnection costs on the Transmission System, for purposes of determining the correct cost allocation for such investments." The analysis will cover all interconnection-related facilities constructed by Entergy over the period from January 1, 1997 through the effective date of Attachment T (November 17, 2006).

14. In the April 24 Order, the Commission stated that it was accepting Entergy's proposal to have the ICT review all previously incurred interconnection costs back to January 1, 1997 involving IAs without *Mobile-Sierra* language.<sup>10</sup> The Commission also stated:

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<sup>9</sup> April 24 Order at P 242-44; *see Duke Hinds*, 102 FERC ¶ 61,068, at P 21 (2003), *order on reh'g*, 117 FERC ¶ 61,210 (2006).

<sup>10</sup> *See United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (*Mobile-Sierra*).

We clarify that if the ICT finds that any facility should be reclassified, either the transmission customer or Entergy may file with the Commission for consideration of such evidence, as allowed by each individual IA. However, we clarify that ...the ICT may not analyze previously incurred interconnection costs associated with IAs that are currently pending before the Commission. After the Commission's disposition of these proceedings, either party to the IA may petition the ICT to review the previously incurred interconnection costs, pursuant to that party's IA reopener rights....<sup>11</sup>

The Commission also clarified that for any IA that is reviewed by the ICT, the cost responsibility decisions will ultimately be made by the Commission after an appropriate filing with the Commission to reopen the IA. With respect to the effective date of any reclassification (Base Plan or Supplemental) and the date that Entergy could cease providing credits for any upgrade deemed to be Supplemental, the Commission held that "the date would be the date granted by the Commission in the applicable section 205 [of the FPA<sup>12</sup>] filing."<sup>13</sup>

15. Currently, the ICT is in the process of reviewing and reclassifying facilities on Entergy's grid and has stated that it is currently considering Magnet Cove.<sup>14</sup> As we have stated previously, "the Commission will not prejudge the outcome of any ICT review of previously incurred interconnection costs."<sup>15</sup> Instead, as we stated in the April 24 Order, we will review each classification when it is submitted under section 205. We clarify that such review will occur only after the ICT completes its review. Any Commission action on the complaint before the ICT has completed its review would interfere with the procedures that we established in the April 24 Order. Because the ICT has not yet completed its review of Magnet Cove, Hot Spring's complaint is premature and will be dismissed. Nothing in this order prevents Hot Spring from challenging the ICT's classification of Magnet Cove in the future under the process established by Entergy's ICT Agreement.

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<sup>11</sup> April 24 Order at P 237.

<sup>12</sup> 16 U.S.C. § 824d (2000).

<sup>13</sup> April 24 Order at P 240, 245.

<sup>14</sup> SPP May 16, 2007 Motion to Intervene at 1.

<sup>15</sup> April 24 Order at P 238.

The Commission orders:

Hot Spring's complaint is dismissed for the reasons discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.