

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suede G. Kelly.

Reliant Energy Choctaw County, LLC
Complainant

Docket No. EL04-61-000

v.

Entergy Services, Inc.
Respondent

ORDER DENYING COMPLAINT

(Issued May 10, 2004)

1. In this order we deny the Reliant Energy Choctaw County, LLC's (Reliant) complaint protesting Entergy Services Inc.'s, and Entergy Mississippi, Inc.'s (Entergy) refusal to allow Reliant to receive credits against transmission service taken elsewhere on the system. This order benefits customers because it ensures that the terms, conditions, and rates for interconnection service are just and reasonable and thus encourages more competitive markets.

I. Description

2. Reliant has a combined cycle, natural gas-fired generation facility with a design capacity of approximately 875 megawatts in Choctaw County, Mississippi (Choctaw Facility) in the Entergy Mississippi, Inc. (Entergy Mississippi) service area. Reliant and Entergy Services, Inc. (Entergy Services) are parties to an Interconnection and Operating Agreement (IOA) that is still pending rehearing.¹ Entergy and Reliant have agreed on the amount of the credits Reliant should receive against its transmission rates to repay it for the upgrades to the network, but dispute how the credits should be applied.

¹ Entergy Services, Inc., 100 FERC ¶ 61,367 (2002); reh'g granted, Pacific Gas and Electric Co., Wrightsville Power Facility, LLC, et al., 102 FERC ¶ 61,070 (2003) (January 2003 Order) reh'g pending (directing Entergy and Reliant to modify their IA to be consistent with Commission's policy on network upgrades and transmission credits).

3. In this complaint, Reliant protests Entergy's refusal to allow other Reliant affiliates to apply the credits associated with the Choctaw Facility against transmission service taken by Reliant elsewhere on Entergy's transmission system when the Choctaw facility is not operating or designated as the point of receipt. Reliant states it has accumulated almost \$15 million in transmission credits due to upgrades on Entergy's transmission system that Reliant paid for. Reliant asserts that Entergy has refused to allow Reliant to use these credits against transmission related to other Reliant generating facilities when the Choctaw Facility is not dispatched.

4. Reliant argues that Commission precedent supports its position that a transmission provider cannot refuse a transmission credit for periods when the facility with which the credits are associated is not dispatched.² Reliant further asserts that Commission policy states that transmission credits are available with respect to all transmission services.³ Additionally, Reliant argues that Entergy recognized this policy in 2002 when it stated that a customer could transfer transmission credits to another facility.⁴

5. Additionally, Reliant argues that Order No. 2003⁵ supports its argument that a transmission customer should be able to use transmission credits from one operating facility against any of its transmission charges.

II. Notices and Interventions

6. Notice of Reliant's filing was published in the Federal Register, 68 Fed. Reg. 5847 (2004), with interventions and comments due on or before February 19, 2004. Louisiana Public Service Commission (Louisiana Commission) and Arkansas Public Service Commission (Arkansas Commission) filed notices of intervention. PacifiCorp and Southern Company Services, Inc. (Southern) filed timely motions to intervene. PacifiCorp filed comments, and Southern filed a protest. Duke Energy North America, LLC (Duke Energy) filed an out-of-time motion to intervene. On February 29, 2004,

² In support, Reliant cites Arizona Public Service Company, 97 FERC ¶ 61,170 (2001) and Colton Power, L.P. et al. v. Southern California Edison Company, 101 FERC ¶ 61,150 (2002).

³ Arizona Public Service Company, 97 FERC ¶ 61,170 (2001).

⁴ Entergy Services, Inc., 99 FERC ¶ 61,127 (2002).

⁵ Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs., Regulations Preambles ¶ 31,146 (2003) (Order No. 2003), order on reh'g, Order No. 2003-A, 69 Fed. Reg. 15,932 (March 5, 2004), FERC Stats. & Regs., Regulations Preambles ¶ 31,160 (2004) (Order No. 2003-A) reh'g pending.

Entergy filed an answer, and on March 16, 2004, Reliant filed a response to the protests. On March 31, 2004, Entergy filed an answer in response to Reliant's response.

7. PacifiCorp argues that allowing an interconnection customer to transfer transmission credits is discriminatory, poor policy and likely to result in cost-shifting.

8. Southern requests that the Commission reject Reliant's complaint because Reliant's IOA specifically states that transmission credits can only be used against transmission from the Choctaw facility. It says that the Commission is prohibited from modifying this signed, approved agreement. Furthermore, Southern argues that allowing transmission credits to be used for service elsewhere on the system is inconsistent with prior policy and that Order No. 2003 is not applicable to previously approved IAs. Finally, Southern argues that Reliant's crediting proposal would result in inefficient siting of new generation, contrary to Commission policy and precedent.

9. In Entergy's February 19, 2004 answer, it argues that the IOA limits the use of credits to transmission reservations that designate the Choctaw Facility as the point of receipt. Entergy asserts that Reliant is requesting a contract modification, not enforcement of a contract obligation. Furthermore, Entergy argues that Reliant had several opportunities to raise this issue before the IA received Commission approval, and failed to do so.

10. Entergy argues that Reliant's argument is based on Duke Orleans I⁶ and fails to recognize that the Commission order in that proceeding only applied to that interconnection agreement. Furthermore, Entergy asserts that in Duke Orleans II,⁷ the Commission determined that Duke Orleans I was moot, since the interconnection customer withdrew the interconnection agreement at issue. Therefore, contrary to Reliant's claim, Duke Orleans I does not establish precedent.

11. Entergy also argues that Reliant's reliance on Arizona Public Service Company and Colton Power⁸ is misplaced. Entergy asserts that these cases dealt with transmission providers restricting the use of credits to times when the generating facility was producing power. Entergy argues that Reliant's IOA allows Reliant to apply its credit against all transmission reservations from that facility, whether or not the facility is operational. Entergy argues that Commission policy requires some relationship between the transmission service being credited and the facility that earned the credits.

⁶ Entergy Servs., Inc., 101 FERC ¶ 61,289 (2002) (Duke Orleans I) order on reh'g 105 FERC ¶ 61,105 (2003) (Duke Orleans II).

⁷ Id.

⁸ Supra note 2.

12. Additionally, Entergy argues that Reliant's proposal would violate the Commission's "or" pricing policy, since it would require Entergy's other customers to subsidize network upgrades from which they do not benefit. Finally, Entergy argues that Order No. 2003 clearly stated that it did not require any changes to previously accepted interconnection agreements. Therefore, Entergy requests the Commission deny Reliant's complaint.

III. Discussion

13. Pursuant to rule 214 of the Commission's Rule of Practice and Procedure, 19 C.F.R. § 385.214 (2003), the notices of intervention and timely unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2003), and given its interest, the early stage of the proceeding, and the absence of any undue prejudice or delay, we find good cause to grant Duke Energy's untimely, unopposed motion to intervene.

14. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2003), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept Reliant's answer and Entergy's March 31st response and will, therefore, reject them.

15. Section 23.4 of the IOA permits a party to unilaterally file an amendment to the contract under section 205 or 206 of the FPA.⁹ Since the parties specifically preserved the rights of both parties, either party can have the IOA reviewed by the Commission based on the just and reasonable standard under section 206.¹⁰ Therefore, the Commission's review of Reliant's request that we require Entergy to allow flexible use of the credits is based on the just and reasonable standard.

16. The purpose of the up front payment for network upgrades is to provide a source of funds for the network upgrades and an incentive for interconnection customers to make efficient siting decisions. The purpose of transmission credits is to reimburse the generator for the up front payment. We note that the up front payment is not a rate for service, and is not the means for a transmission provider to recover its costs. Transmission providers recover the costs of network upgrades through their right to charge for transmission service at the higher of an embedded cost or incremental rate.

17. Allowing an interconnection customer to receive credits unrelated to service from the generating facility at issue would tend to insulate the interconnection customer from the consequences of its siting decision because the interconnection customer would not

⁹ Supra note 1.

¹⁰ Duke Energy Hinds, LLC et al., 102 FERC ¶ 61,068 (2003) reh'g pending.

be made to bear an appropriate level of risk that the network upgrades may be rendered unnecessary should its facility become commercially infeasible. For example, under a flexible transmission crediting plan, an interconnection customer can force a transmission provider to expand the grid and then cease to use the generation facility, but still be fully repaid in credits against the transmission service for its other generating facilities. While all customers do benefit from upgrades to the transmission network, they do not benefit equally from upgrades that may be required for a particular interconnection. Allowing interconnection customers to transfer transmission credits in the manner requested by Reliant tends to shift the risk from the interconnection customer to other transmission customers.¹¹

18. We note that credits must be made available whenever the interconnection customer is incurring charges for transmission service related to the generating facility at issue. Whether or not the generating facility is dispatched is immaterial; the incurrence of transmission charges is the determining factor. If the generator pays for reserving transmission service, it can receive credits against those payments. This ensures that the transmission customer will have an opportunity to receive transmission credits for this full amount of its up front payments.

19. Therefore, in order to promote efficient and cost effective siting decisions, we find that it is just and reasonable to limit the credits to transmission service taken from the facility that generated the credits, and Reliant's complaint is denied.

The Commission orders:

Reliant's complaint is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

¹¹ We recognize that some prior Commission orders have required that transmission credits be made against transmission service the generator takes anywhere on the system. However, the Commission rethought this policy in the course of our interconnection rulemaking, as explained in Order No. 2003-A, ¶614. Order No. 2003-A does not apply to this case (since neither it nor Order No. 2000 is retroactive). However, in light of the arguments raised in this case, as well as in Order No. 2003, we have decided that allowing a generator to receive credits against transmission service from another generating facility would undermine its incentive to make efficient siting decisions.