

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Entergy Asset Management, Inc.
Entergy Power Ventures, L.P.
Warren Power, LLC
East Texas Electric Cooperative, Inc.

Docket No. EC04-66-000

ORDER AUTHORIZING DISPOSITION OF
JURISDICTIONAL FACILITIES

(Issued May 28, 2004)

1. On February 18, 2004, Entergy Asset Management, Inc. (Entergy Asset Management), Entergy Power Ventures, L.P. (Entergy Power Ventures), Warren Power, LLC (Warren Power) and East Texas Electric Cooperative, Inc. (ETEC) (collectively, Applicants) filed a joint application pursuant to section 203 of the Federal Power Act (FPA)¹ requesting Commission authorization to transfer certain jurisdictional facilities to ETEC. The jurisdictional facilities are interconnection facilities appurtenant to the power plants. The Commission has reviewed the transactions under the Commission's Merger Policy Statement² and will authorize the disposition as consistent with the public interest.

¹ 16 U.S.C. § 824b (2000).

² See Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement, Order No. 592, 61 Fed. Reg. 68,595 (1996), FERC Stats. & Regs. & 31,044 (1996), reconsideration denied, Order No. 592-A, 62 Fed. Reg. 33,341 (1997), 79 FERC & 61,321 (1997) (Merger Policy Statement); see also Revised Filing Requirements Under Part 33 of the Commission's Regulations, Order No. 642, 65 Fed. Reg. 70,983 (2000), FERC Stats. & Regs., Regulations Preambles July 1996-Dec. 2000 & 31,111 (2000), order on reh=g, Order No. 642-A, 66 Fed. Reg. 16,121 (2001), 94 FERC & 61,289 (2001).

I. Background

A. Description of the Parties

2. Entergy Asset Management is an indirect wholly-owned holding company subsidiary of Entergy Corporation (Entergy)³ with interests in generating facilities. It does not transact in the wholesale power market and does not have market-based rates. Entergy Asset Management has agreed to act as agent for Entergy Power Ventures and Warren Power with respect to the Ownership Interest Purchase Agreement.

3. Entergy Power Ventures is an indirect wholly-owned holding company subsidiary of Entergy. It has a 70 percent undivided interest in the Harrison County 550 megawatt (MW) generating facility in Harrison, Texas. Northeast Texas Electric Cooperative, Inc. (Northeast Texas Cooperative) owns the remaining 30 percent interest.

4. Warren Power is an indirect wholly-owned subsidiary of Entergy. Warren Power has a 300 MW generating facility in Vicksburg, Mississippi (the Warren facility). Warren Power is authorized by the Commission to sell power at market-based rates.

5. ETEC is a Texas not-for-profit, member-owned electric cooperative.⁴ Applicants note that while ETEC is currently subject to Commission jurisdiction, ETEC has submitted a loan application to the Rural Utilities Services (RUS) for financing the ownership interests in three power plants.⁵

³ Entergy is a registered public utility holding company under the Public Utility Holding Company Act of 1935, as amended. Entergy has five wholly-owned domestic retail electric utility subsidiaries: Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc. and Entergy New Orleans, Inc. (collectively, Entergy Operating Companies).

⁴ ETEC members are Northeast Texas Electric Cooperative, Inc., Sam Rayburn G&T Electric Cooperative, Inc., and Tex-La Electric Cooperative of Texas, Inc.

⁵ Applicants note that, if RUS grants the loan to ETEC and the Commission determines that the RUS loan displaces the Commission's jurisdiction, ETEC will become subject to RUS jurisdiction. On the other hand, Applicants state that if the RUS loan is not available when ETEC closes on the purchases, ETEC will seek a loan from another source and will continue to be subject to Commission's regulation. ETEC serves its members under long-term wholesale partial requirements contracts. These members, in turn, serve approximately 300,000 retail customers in east Texas and a small area in northwestern Louisiana.

B. The Transactions

6. The proposed transactions are: (1) the transfer by Entergy Power Ventures to ETEC of a 9.1 percent undivided ownership interest in the Harrison County generation facility, and (2) the transfer by Warren Power to ETEC of a 25 percent undivided ownership interest in the Warren facility in Warren County, Vicksburg Mississippi. The transactions will enable ETEC to obtain new power supply to replace certain power supply contracts set to expire at the end of 2004. According to the Applicants, the transactions will allow ETEC to maintain a diverse and efficient set of resources to serve its members. Applicants state that, as a result of the transactions, 75 MWs of capacity from the two facilities will be transferred to ETEC in the Entergy market. Applicants maintain that, since ETEC's and its members' capacity in the Entergy market is 256 MWs, the effect of the proposed transfer on competition is de minimis.

II. Notice and Further Filings

7. Notice of the filing was published in the Federal Register, 69 Fed. Reg. 8944 (2004), with comments, protests, or interventions due on or before March 10, 2004. InterGen Services, Inc. (InterGen) filed a timely motion to intervene on behalf of Cottonwood Energy Company, L.P., raising no substantive issues.⁶ The Municipal Energy Agency of Mississippi (MEAM) filed a timely motion to intervene and statement of position.⁷ Tractebel Energy Marketing, Inc. (Tractebel) filed a timely motion to intervene and protest.⁸ On March 25, 2004, Applicants filed an answer to Tractebel's protest.

⁶ InterGen is an independent developer and owner of power production facilities located in the United States and abroad. One of InterGen's projects currently in operation is its Cottonwood Project, a 1,235 MW facility located in the Entergy control area and interconnected to Entergy's transmission system in Deweyville, Texas.

⁷ MEAM is a Mississippi joint action agency whose members are the Cities of Greenwood, LeLand, Kosciusko, Canton, Durant, and Itta Bena.

⁸ Tractebel is a subsidiary of Tractebel North America, a corporation located in Houston, Texas which owns and operates natural gas infrastructure and generation facilities throughout North America.

III. Discussion

A. Procedural Matters

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

9. 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 will accept Applicants' answer because it has provided information that assisted us in the decision-making process.

B. Section 203 Analysis

10. Section 203(a) provides that the Commission must approve a disposition of facilities if it finds that the disposition "will be consistent with the public interest."⁹ The Commission's analysis of whether a disposition is consistent with the public interest generally involves consideration of three factors: (1) the effect on competition; (2) the effect on rates; and (3) the effect on regulation.¹⁰ As discussed below, we will approve the proposed disposition of jurisdictional facilities as consistent with the public interest.

1. Effect on Competition

11. Applicants maintain that the proposed transactions pass the Commission's screen for both the Economic Capacity and Available Economic Capacity measures in all markets. Applicants explain that the transfer reduces market concentration, since ETEC has a smaller market share than Entergy. Applicants state that the Economic Capacity analysis for the Entergy market indicates that the proposed transactions will reduce market concentration in most load periods and will not increase market concentration in any load period. Applicants note that the Available Economic Capacity analysis, which reflects native load, also indicates that the proposed transaction will have only a minor effect on Entergy's market, since ETEC has no uncommitted capacity for much of the year.

12. Applicants state that they found similar results for Economic Capacity and Available Economic Capacity measures in the Central and SouthWest Services (AEP-CSW) market when analyzing the transfer of a 50 MW interest in the Harrison County facility from Entergy to ETEC. Applicants maintain that the transaction leads to a small

⁹ 16 U.S.C. § 824b (2000).

¹⁰ Supra note 2.

increase in market concentration that is not large enough to be a competitive market power screen failure under the Commission's guidelines.

13. We find that the proposed transactions will not harm competition in any of the relevant geographic markets. As noted above, the proposed transaction would not materially increase market concentration levels in the relevant geographic markets.

2. Effect on Rates

14. Applicants explain that the proposed transactions will not affect rates because sales of power from the Harrison County and Warren facilities will continue to be at market-based rates.

15. With respect to the effect of the proposed transfer on rates, nothing in the application indicates that rates to the customers will increase as a result of the proposed transactions, and no customer argues otherwise. Given that all power sales from the facilities will be made at market-based rates, we find the proposed transactions will not adversely affect rates.

3. Effect on Regulation

16. Applicants state that the proposed transactions do not involve the formation of a new registered holding company system and thus will not cause a transfer of regulatory authority from the Commission to the Securities and Exchange Commission. In addition, there will be no effect on State commission regulation, since none of the sales from the Harrison County and Warren facilities are subject to State commission regulation.

17. We find that the transaction will not result in a shift of regulation from the Commission to the Securities and Exchange Commission. There will be no change in the Commission's jurisdiction over the relevant facilities. Moreover, no State alleged an adverse effect on regulation. For these reasons, and because no party argues to the contrary, we conclude that the proposed transaction will not adversely affect regulation.

4. Waiver Request

a. Arguments

18. Applicants request waiver of § 33.2 (f) of the Commission's regulations which requires the contracts related to transactions to be filed. Applicants filed a copy of the Ownership Interest Purchase Agreement. In their application, Applicants state that they are not including any other incidental contracts related to the transactions. However, if the Commission determines that the incidental contracts would otherwise have to be filed under § 33.2(f), then the Applicants request waiver of this requirement.

19. Tractebel requests that the Commission: (1) deny Applicants' request to waive requirements to file contracts incidental to the Ownership Interest Purchase Agreement; (2) order Applicants to produce all Open-Access Same-Time Information System (OASIS) requests and transmission studies for transmission services across the Entergy-Central and SouthWest interface; and (3) order Applicants to produce all OASIS requests for additional network or point-to-point transmission service, and applicable studies for transmission services from the Warren/Baxter Wilson interconnection.

20. Tractebel opposes Applicants' request to waive the filing requirements for incidental contracts for transmission capacity from points of delivery and receipt for transmission services among any Entergy affiliate, ETEC and Central & SouthWest. Tractebel expresses concern that Applicants do not produce or reference OASIS requests or transmission studies for transmission services across the Entergy-Central and SouthWest interface, which has scarce transmission capacity. Tractebel argues that Transmission Providers may not permit affiliates or existing network customers to reserve transmission service other than through the Transmission Provider's OASIS and subject to transmission studies performed on a non-discriminatory basis. It states that the Commission should deny Applicants' waiver request and order them to file the transmission studies to ensure Applicants' request for transmission service was, in fact, granted on an open and non-discriminatory basis.

21. In their answer, Applicants clarify that ETEC has received new network resource designations on the Entergy system, and intends to obtain 50 MWs of firm transmission through an assignment of an existing reservation on the Southwest Power Pool system. Applicants explain that Entergy Koch Trading, L.P. (Entergy Koch Trading) has agreed, in connection with the transactions, to assign its existing reservation of 50 MWs of firm transmission capacity on Southwest Power Pool system to ETEC. Applicants argue that since ETEC's ability to get Southwest Power Pool capacity does not relate to a new reservation, there is no service request associated with the assignment of transmission capacity from Entergy Koch Trading to ETEC. Applicants submitted in their answer the Southwest Power Pool study related to the 50 MWs of firm transmission service and the service requests and study information related to the designation by ETEC of new network resources on Entergy system in connection with the transactions. They maintain that ETEC's designation of new network resources on Entergy system was independent of the Ownership Interest Purchase Agreement governing the transactions. Applicants state that the reassignment of the 50 MWs of firm transmission service in the Southwest Power Pool from Entergy Koch Trading to ETEC will be provided in a manner consistent with Entergy Koch Trading's Market Rate Tariff, and the Transmission Provider's and the Commission's standards on an open and non-discriminatory basis.

b. Commission Decision

22. In response to Tractebel's protest, Applicants' answer provides the information requested by Tractebel. Specifically, Applicants provided: (1) the Southwest Power Pool study related to the 50 MWs of firm transmission service; (2) the service requests; and (3) the study information related to the designation by ETEC of new network resources on Entergy in connection with the transaction. Applicants explain that the reassignment of the 50 MWs of firm transmission service in Southwest Power Pool from Entergy Koch Trading to ETEC will be provided in a manner consistent with Entergy Koch Trading's Market Rate Tariff, and the Transmission Provider's and the Commission's procedures on an open and non-discriminatory basis. We find that the information provided by Applicants addresses the issues raised by Tractebel. Therefore, we will accept Applicants answer in lieu of requiring them to file the incidental contracts.

5. Accounting Treatment

23. Section 33.5, Proposed Accounting Entries, of the Commission's regulations requires that Applicants present proposed accounting entries with sufficient detail showing the effect of the transaction. ETEC did not include the proposed accounting entries and related details in the instant application, and instead requested a deferral of the requirement until 6 months after closing.

24. ETEC's request for deferral of § 33.5 of the Commission's regulations is denied. We will allow the transactions to go forward but to evaluate the accounting for the transactions and determine if it is consistent with the Commission's Uniform System of Accounts, we will direct the Applicants to provide the proposed accounting for the proposed transactions within 30 days of the date of this order.

The Commission orders:

(A) The proposed transaction is authorized upon the terms and conditions and for the purposes set forth in the application.

(B) The foregoing authorization is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of costs, or any other matter whatsoever now pending or which may come before the Commission.

(C) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted.

(D) The Commission retains authority under sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate.

(E) ETEC shall submit its proposed journal entries and related details required by § 33.5 of the Commission's regulations within 30 days of the date of this order.

(F) Applicants shall notify the Commission within ten days of the date that the disposition of the jurisdictional facilities has been consummated.

By the Commission. Commissioner Kelly not participating.

(S E A L)

Linda Mitry,
Acting Secretary.