

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Entergy Services, Inc.

Docket No. ER04-901-000

ORDER ACCEPTING AND SUSPENDING PROPOSED TARIFF SHEETS AND
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued July 30, 2004)

1. In this order, we accept for filing Entergy Services, Inc.'s (Entergy)¹ filing proposing revisions to its standard Generator Imbalance Agreement (GIA), and suspend the proposed revised tariff sheets for five months to become effective January 1, 2005, subject to refund.² We also establish hearing and settlement judge procedures. This action benefits customers because it provides the parties with a forum in which to resolve their disputes over the proposed revisions to Entergy's standard GIA.

The GIA Filing

2. On June 1, 2004, Entergy filed revisions to its standard GIA, which applies to all independent power producers (IPP) who have interconnection agreements with Entergy (GIA Filing). Among other things, the GIA contains the rates and terms of imbalance service. Entergy asserts that the purpose of the filing is to provide greater assurances that the scheduled and delivered energy from each generator will balance. The filing contains a number of related provisions Entergy claims will serve to ensure that its system remains within acceptable voltage ranges over its daily load profile by coordinating the operation of independent generators more closely with its own units. Entergy seeks an effective date of August 1, 2004.

¹ Entergy Services, Inc. filed on behalf of the Entergy Operating Companies, which include Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc.

² The proposed changes are contained in Attachment P to Entergy Services Inc. FERC Electric Tariff, Second Revised Volume No. 3, Second Revised Sheet Nos. 420-442, First Revised Sheet Nos. 442A- 442E, and Original Sheet Nos. 442E-442M.

3. Entergy maintains that the current GIA contains insufficient incentives for generators to match their schedules and outputs in real-time. Entergy states that the current mechanisms in the GIA also do not adequately compensate Entergy for regulation service it provides. Entergy states that it has discussed the problem with generators and as a result delayed its filing while incorporating points raised by generators. Entergy explains that as a member of the Southeastern Electric Reliability Council (SERC) Regional Compliance and Enforcement Program, it is now subject to financial sanctions for non-compliance with Control Performance Standard 1, Control Performance Standard 2, and the Disturbance Control Standard. These enhanced reliability obligations require that the supply provided by all units connected to the Entergy system more closely balance actual system load than was the case in the past.

4. Entergy's principal remedy for these concerns is a new Generator Regulation Service (GRS) charge in response to moment-to-moment deviations between scheduled output and actual generation. Entergy states that this proposed charge is different from that for its existing Generator Imbalance Service (GIS), and will enhance reliability. Entergy asserts that this service is provided on a "cost basis" for capacity used outside a +/- 2 percent or 2 MW bandwidth for the hour of the day with the greatest amount of GRS used. Entergy states that the maximum quantity of service for a calendar day cannot be established during an hour in which an unforeseen event occurs that causes a facility to trip off-line. The proposed charge is \$0.093/kilowatt day, calculated based on Entergy's generating units with automatic generation control (AGC) capability. Entergy states that use of a levelized gross plant method for depreciation is justified here as Entergy has been using this method from the initial phases of its regulatory costing system and not switching from another methodology midstream. Entergy claims that the service is just and reasonable, pointing to other areas where the Commission has approved regulation service under similar circumstances.

5. Entergy also proposes not to purchase excess energy above 120 percent of a delivering party's schedule, stating that this will provide a further incentive for the generators to schedule accurately and avoid delivering large amounts of unscheduled energy to Entergy. The GIA currently allows generators to receive compensation for all energy delivered above the scheduled amount at 90 percent of avoided cost. Entergy claims that generators are continuing to over deliver in relation to their schedules despite this relatively low compensation rate. Entergy's GIA currently states that during the testing period, Entergy will not purchase energy in excess of the approved MW profile amount from non-qualifying facility delivering parties. Entergy also desires to extend this restriction to the start-up and shut-down periods.

6. With respect to testing periods, start-up periods and shut-down periods, Entergy seeks to implement a requirement that requests by a delivering party contain the MW profile on a ten-minute interval. Entergy states that this will ensure the system operations center's (SOC) ability to evaluate comprehensively and with sufficient granularity all

requests for these periods. Entergy also proposes that delivering parties submit a North American Electric Reliability Council (NERC) Tag to deliver approved energy during approved testing periods, start-up periods and shut-down periods. This will enable the SOC to monitor and settle approved energy during the aforementioned periods, while giving delivering parties the flexibility to modify or reduce a period obligation by modifying the NERC Tag.

7. Entergy's filing also includes new creditworthiness procedures in Article II, section III of the GIA. Entergy proposes to conduct a credit review of each delivering party upon its initial request for GIS or GRS, or upon the anniversary of the delivering party's receipt of either service, or upon request by the delivering party. Uncreditworthy delivering parties will be asked to provide financial assurances sufficient to protect Entergy against the risk of non-payment. Entergy reserves the right to re-evaluate creditworthiness and request additional security in the event of a credit downgrade or if previous assurances become insufficient. Entergy seeks the authority to suspend GIS or GRS if a non-defaulting delivering party fails to provide required financial assurances within 35 days after receipt of notice. Entergy proposes to notify the Commission of any suspensions.

8. Entergy seeks to give the SOC authority to direct the delivering parties to maintain their output to match their schedules, and to curtail a delivering party's schedules in the next hour to maintain system reliability if the burden of providing energy will cause Entergy to be unable to safely and reliably serve its load or meet NERC operating criteria. Entergy also proposes to modify the default notification option in its tariff from telephone notification to meter notification because meter notification is more prevalent. Entergy would keep telephone notification as an option.

Notice and Interventions

9. Notice of the filing in Docket No. ER04-901-000 was published in the *Federal Register*, 69 Fed. Reg. 34,345 (2004), with comments, interventions and protests due on or before June 22, 2004. Duke Energy North America and Duke Energy Trading and Marketing, NRG Companies, Arkansas Electric Cooperative Corporation, KGen Partners LLC, Tractebel Energy Marketing, Inc., and Virginia Electric Power Company filed motions to intervene. Calpine Corporation and Cottonwood Energy Company, LP filed a motion to intervene, protest, and request for summary rejection. The Electric Power Supply Association, Dynegy Power Marketing, Inc. and Calcasieu Power, LLC, Plum Point Energy Associates, LLC, Union Power Partners, L.P., Occidental Chemical Corporation, Joint Movers,³ and Aquila Merchant Services, Inc. filed motions to

³ The Joint Movers include ConocoPhillips Company, the Dow Chemical Company, Exxon Mobil Corporation, Occidental Chemical Corporation and PPG Industries, Inc.

intervene and protest.⁴ The non-affiliate generators⁵ filed comments in this proceeding and several other proceedings that include a request for consolidation of this proceeding with the proceeding in Docket No. ER04-699-000. The Louisiana Public Service Commission (Louisiana Commission) filed a motion for late intervention. On July 7, 2004, Entergy filed an answer.

Protests and Answer

10. The Protesting Parties make similar points and therefore it is not necessary to summarize each protest in detail. All of the protests assert in various ways that Entergy's proposed GRS charge is discriminatory and is designed to restrict competition by independent generators. The Protesting Parties assert that the use by Entergy of power purchase contracts that provide for the delivery of power in graduated steps (instead of the standard 16 hour block contract) would reduce over- and under- deliveries during the ramp-up and ramp-down phase of daily operations. They also assert that measuring the greatest and smallest deviations over an hour does not allow for the fact that these may be far apart and that Entergy may not have to move its units each time to cover the difference. The Protesting Parties similarly assert that charging each generator individually does not allow for the fact that over- or under-deliveries by one generator may offset those of another. They argue that using the highest hour of the day for the use of GRS services by an individual generator does not allow for the fact that Entergy may have provided no GRS services during that hour of the day, and that the over- or under-delivery may in fact have relieved it of that need.

11. The Protesting Parties also argue that Entergy has a great deal of capacity idling during the early and latter portions of the day as its own system ramps up to peak load. As much of this capacity is used to provide regulation service to its own units, they assert that Entergy has not proven that it is incurring costs solely due to IPP activities. They further assert that Entergy improperly included certain base load coal plants in the units whose output is increased or decreased to assure the power delivered matches demand on Entergy's system since they are not the type of units that deliver power at the margin. They also argue that it is unnecessary for Entergy to measure scheduling deviations every five minutes when the controlling NERC standards for system balance are based on a ten minute evaluation. They argue that the structure of the proposed charge is such that if a generator manages to avoid the GRS charge in an hour, it will nonetheless have to pay the GIA charge.

⁴ The parties filing protests are hereinafter collectively as the Protesting Parties.

⁵ The Non-Affiliate Generators include Tractebel Energy Marketing, Inc. and Cottonwood Energy Company, L.P.

12. The Protesting Parties also assert that Entergy has encouraged IPPs to provide startup and ramp down energy that is not scheduled, and hence part of the problem is of its own making. They argue that IPPs could provide the required generation service at less cost than Entergy's older units, that the IPPs replace Entergy units in the bid stack, and that Entergy does not propose to charge its own units even though all units providing power to the system can cause similar problems. They also argue that the charge includes a full rate of return rather than just the incremental costs to Entergy's units. They state that any over-deliveries are paid for at only 90 percent of avoided cost, often well below market, and that under-deliveries are charged at many times market price. They assert that the size of the charge could alone obstruct the marketability of their power. The Protesting Parties that are qualifying facilities (QFs) further assert that Entergy controls the delivery of their units directly and therefore they should not be subject to the proposed charge. For these reasons the Protesting Parties conclude that Entergy has not proven that the proposed GRS charge is just and reasonable, that the filing should be rejected, or at least suspended for five months.

13. The Protesting Parties also object to most of the other proposed changes to Entergy's GIA. They assert that there are no grounds for restricting over-deliveries to 120 percent of the scheduled amount as Entergy purchases such over-deliveries at a very low price. They state that the credit requirements that are being imposed are unduly burdensome and restrictive, that Entergy should not rely solely on credit ratings to determine what collateral is required, that Entergy is already protected by credit provisions elsewhere in its tariff, and that the imposition of any additional credit standards should be deferred until the Commission completes its more generic inquiry in Docket No. AD04-8-000.⁶ The Protesting Parties argue that the provision authorizing the SOC to cut schedules to maintain reliability contains no standards and as such grants Entergy too much discretion and ability to discriminate. They state that there would be no compensation for the hours that are eliminated. They also argue that the ten minute profile for generator testing is too rigid and that action should be deferred on Entergy's proposals for NERC tagging during startup and shut down periods pending further discussion among the parties.

14. Entergy's answer states that the protests do not effectively dispute the fact that a failure to deliver power in a manner consistent with an IPP's schedule is placing a regulation burden on Entergy's system. It asserts that despite the relatively low payment

⁶ On July 6, 2004, the Commission issued a notice in Docket No. AD04-8-000 establishing a technical conference on credit-related issues for electric transmission providers, independent system operators, and regional transmission organizations. The conference was held on July 13, 2004 to consider, among other things, whether the Commission should institute a generic rulemaking to consider credit-related issues for service provided by such entities.

for over-deliveries to its system, it continues to receive substantial amounts of power that are dumped on its system. Entergy argues that at times the rate it now pays for over-deliveries is actually more than the prevailing market rate for that hour. It claims these facts establish that additional penalties and controls are needed to assure that IPPs adhere to their schedules. Hence the need for the GSR charge, the restriction of over-deliveries to 120 percent of scheduled amounts, and the possible need of the SOC to cut scheduled deliveries to maintain system reliability. Entergy further asserts that the instant proceeding relates to scheduling issues, not its purchasing decisions, and to the extent the need for GRS services is reduced, so will the burden on its native load customers. Entergy further asserts that it in fact uses flexible contracts to purchase power, and the principal problem is the IPPs continue to sell more power than they can deliver under their ramping schedules.

15. Entergy also argues that levelized depreciation has been approved by the Commission for generation services in other proceedings as an economically efficient way of recovering costs. It claims that the use of levelized depreciation is appropriate here because it has never used any other type of depreciation for this particular service, and that the proposed GRS service is a form of ancillary service, the type of service for which levelized depreciation is appropriate. Entergy also states that the coal plants it included in the design of the charge are on automatic generation control, and as such respond directly to the changes in deliveries by other units attached to the system. Thus the costs of these plants are correctly included in the proposed GRS charge. It likewise asserts that testing periods, start-up periods and shut-down periods can require generation services based on the actual deliveries that occur during such activities and that they are properly subject to the charge.

16. Entergy states that its proposed creditworthiness standards are consistent with its current practices and are appropriately applied to firms incurring the GRS charge. It claims the proposed credit standards would be based on three month average charges and reflects the sums that Entergy might not be able to collect.⁷

17. Entergy asserts that it has sufficiently justified its proposal such that neither a five month suspension nor a technical conference is warranted. Entergy thus concludes that its filing should be accepted without modification, suspension or hearing. To the extent

⁷ Entergy states in its answer that it “has an unequivocal right to be protected against the risk of non-payment for all services at all times.” *See, e.g., Answer* at p. 32. Entergy is reminded that, in reviewing creditworthiness proposals, the Commission considers whether the proposal places an undue burden on uncreditworthy customers. *See, e.g., Entergy Services, Inc.*, 104 FERC ¶ 61,329, *order on reh’g*, 106 FERC ¶ 61,142 (2004).

there are any issues the Commission believes would justify further investigation, Entergy proposes that further proceedings include settlement procedures to allow the parties the opportunity to resolve their differences without the need for a full evidentiary hearing.

Discussion

Procedural Matters

18. 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 the proceeding. We will grant the Louisiana Commission's motion for late intervention given its interest in this proceeding, the early stage of this proceeding, and the absence of any prejudice or undue delay. 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 Entergy's answer because it has provided information that assisted us in our decision-making process.

Hearing Procedures

19. Entergy's filing to modify its GIA raises issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing ordered below. Our preliminary analysis indicates that the GIA 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 for filing the proposed revised tariff sheets, suspend them for five months, to be effective January 1, 2005, subject to refund, and establish hearing and settlement judge procedures.⁸

20. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. We note that in the past the parties have settled GIA matters. 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.⁹ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding;

⁸ See *West Texas Utilities Co.*, 18 FERC ¶ 61,189 (1982).

⁹ 18 C.F.R. § 385.603 (2003).

otherwise, the Chief Judge will select a judge for this purpose.¹⁰ 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.

21. Finally, we will deny Non-Affiliate Generators' request to consolidate this proceeding with the proceeding in Docket No. ER04-699-000. The Commission typically consolidates proceedings only for purposes of hearing and decision.¹¹ As we have not set Docket No. ER04-699-000 for hearing, there is no need to consolidate the proceeding at issue here, which we are setting for hearing, with the proceeding in Docket No. ER04-699-000.

The Commission orders:

(A) The revised tariff sheets submitted in the GIA Filing are hereby accepted for filing, suspended for five months, to become effective January 1, 2005, subject to refund, as discussed in the body of this order.

(B) 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 the justness and reasonableness of the proposals submitted in the GIA Filing. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2003), 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

¹⁰ 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 – click on Office of Administrative Law Judges).

¹¹ See, e.g., *New York Independent System Operator, Inc.*, 105 FERC ¶ 61,108 at 61,169 (2003).

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 in writing or by telephone within five (5) days of the date of this order.

(D) 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.

(E) 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 conference in these proceedings in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426. Such 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.

By the Commission. Commissioner Kelly not participating.

(S E A L)

Magalie R. Salas,
Secretary.