

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Cottonwood Energy Company LP

Docket No. ER05-483-000

ORDER ACCEPTING AND SUSPENDING FILING, AND ESTABLISHING  
HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued March 23, 2005)

1. On January 24, 2005, Cottonwood Energy Company LP (Cottonwood)<sup>1</sup> filed a proposed rate schedule under which it specifies its rates for providing cost-based Reactive Support and Voltage Control from Generation Sources Service (reactive power service) from its natural gas-fired combined cycle electric generation facility located in Deweyville, Texas. Cottonwood requests that the Commission accept the proposed rate schedule for filing and requests an effective date of February 1, 2005. As discussed below, we accept the proposed rate schedule for filing and suspend it for a nominal period, to become effective on February 1, 2005, subject to refund, and establish hearing and settlement judge procedures. This order benefits customers by ensuring a timely inquiry into whether the proposed rate schedule is just and reasonable.

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<sup>1</sup> Cottonwood is a Delaware limited partnership created for the sole purpose of owning a natural gas-fired combined cycle electric generator facility located in Deweyville, Texas. Cottonwood is owned by its General Partner, Cottonwood Generating Partners I, LLC, and its Limited Partners, Cottonwood Limited Partners II, LLC, and Cottonwood Limited Partners III, LLC. The Cottonwood Partners are wholly-owned subsidiaries of Cottonwood Development, LLC, which is in turn wholly-owned by Mayflower Limited Partnership. Mayflower is a subsidiary of InterGen (North America) Inc. Cottonwood is authorized by the Commission to make wholesale sales of power at market-based rates, *see Cottonwood Energy Company, LLP*, Docket No. ER01-506-000 (January 30, 2001)(unpublished letter order).

## **Background**

2. Cottonwood owns and operates an approximately 1,233 MW gas-fired combined cycle electric generation facility (Cottonwood Facility) located in Deweyville, Texas, in the Entergy Gulf States, Inc. control area. The Cottonwood Facility is interconnected to the Entergy transmission grid. It commenced commercial operation in August 2003. The Cottonwood Facility has never been owned by an investor-owned, vertically integrated utility. Cottonwood's obligation to provide reactive power service to Entergy Gulf States, Inc. and its right to receive compensation for such service is set forth in section 4.7 of the Amended and Restated Interconnection Agreement by and between Cottonwood and Entergy Gulf States, Inc.

## **The Instant Filing**

3. The proposed rate schedule sets forth a cost-based rate that represents Cottonwood's revenue requirements for reactive power service. The revenue requirements are broken into three components: (1) fixed costs attributable to reactive power production capability (Fixed Capability Component); (2) increased generator and step-up transformer heating losses that result from production of reactive power (Heating Losses); and (3) lost opportunity costs in the event the Facility is directed to modify its energy output to produce additional reactive power (Lost Opportunity Cost Component).

4. Cottonwood states that, because it is a non-utility generator not generally subject to traditional rate regulation, and given what it terms as the relatively small revenue requirement proposed in this filing, it has sought to avoid any potential issues regarding return on equity in this filing, and has incorporated in its annual carrying cost a conservative return on equity based on a proxy of a Commission-accepted percentage reflected in a filing on behalf of the Entergy Corporation operating companies, including Entergy Gulf States, Inc., the transmission owner with which Cottonwood is connected.

5. Cottonwood requests waiver of the Commission's prior notice requirement so that its proposed rate schedule may become effective on February 1, 2005. Cottonwood also requests waiver of the detailed cost of service requirements set forth in Part 35 of the Commission's regulations, 18 C.F.R. Part 35 (2004), many of which it claims are not applicable to a charge for reactive power service.

**Notice of Filing, Interventions and Protests**

6. Notice of Cottonwood's filing was published in the *Federal Register*, 70 Fed. Reg. 5,993 (2005), with interventions and protests due on or before February 14, 2005. Dynegy Power Marketing, Inc. and Union Power Partners, LP filed timely motions to intervene. Entergy Services, Inc. (Entergy)<sup>2</sup> filed a timely motion to intervene and protest. Cottonwood filed an answer to Entergy's protest.

7. Entergy contends that Cottonwood is attempting to change the terms of its interconnection agreement with Entergy after-the-fact and impose a charge that did not exist before. It maintains that Cottonwood seeks to be compensated, not for a specific service requested or required by Entergy, but for merely complying with Cottonwood's obligation to operate its facility in accordance with Good Utility Practice. Instead, Entergy argues that any reactive power costs charged by Cottonwood should only apply in those instances in which Entergy requests Cottonwood to supply MVAR support outside the normal operating range in order to maintain system security as provided for in the Interconnection Agreement.

8. In addition, Entergy argues that Cottonwood's filing lacks sufficient evidentiary support. It posits that Cottonwood has failed to justify the revenue requirement reflected in the filing. Due to the lack of cost support provided with Cottonwood's filing, Entergy maintains it is difficult to determine whether the proposed weighted average allocation factor for the Combustion and Steam Turbine Generator equipment is reasonable. Entergy further objects to Cottonwood's heating loss calculation because it appears to assume that, if the facility is operating, it is operating at a 0.85 power factor. It argues that this assumption is not reasonable because the facility may not always operate at that power factor.

**Discussion****Procedural Matters**

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

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<sup>2</sup> Entergy is a service company affiliate of Entergy Gulf States, Inc., one of the Entergy Operating Companies. Entergy typically serves as the Entergy Operating Companies' agent with respect to the execution and administration of certain contracts, and in proceedings at the Commission.

10. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept Cottonwood's answer and will, therefore, reject it.

### **Revenue Requirement and Rate Design**

11. The proposed rate schedule submitted by Cottonwood raises issues of material fact that cannot be resolved on the record before us, and are more appropriately addressed in the hearing and settlement judge procedures ordered below.<sup>3</sup>

12. The Commission's preliminary analysis of Cottonwood's filing indicates that it has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Accordingly, we will accept Cottonwood's proposed rate schedule for filing, suspend it for a nominal period, to become effective on February 1, 2005, subject to refund, and set it for hearing and settlement judge procedures as ordered below. We deny Cottonwood's request for waiver of the full cost of service requirements set forth in Part 35 of the Commission's regulations and require Cottonwood to file cost of service data as part of its case-in-chief.

13. 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. 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.<sup>4</sup> If the parties desire, they may, by mutual agreement, request a specific judge as a settlement judge in the proceeding;

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<sup>3</sup> Among the issues that should be considered are: (1) whether Cottonwood's \$3.4 million annual revenue requirement for reactive power service is excessive given the amount of reactive power produced and the costs Cottonwood incurs to produce it; (2) whether the methodology used to develop the revenue requirement is appropriate given the type of facility at issue; and (3) whether any compensation Cottonwood is to receive for reactive power services should instead be pursuant to section 4.7 of the Interconnection Agreement

We note that the Commission is also addressing issues regarding reactive power service in Docket No. AD05-1-000.

<sup>4</sup> 18 C.F.R. § 385.603 (2004).

otherwise the Chief Judge will select a judge for this purpose.<sup>5</sup> 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 the commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) The proposed rate schedule is hereby accepted for filing, and suspended for a nominal period, to become effective on February 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 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 proposed rate schedule. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering 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 (2004), 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 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 by telephone within five (5) days of the date of this order.

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<sup>5</sup> If the parties decide to request a specific judge, they must make their request to the Chief Judge by telephone at 202-502-8500 within five days of the date of this order. The Commission's website contains a listing of Commission judges and a summary of their background and experience ([www.ferc.gov](http://www.ferc.gov) - click on Office of Administrative Law Judges).

(D) Within sixty (60) days of the date of this order, the settlement judge shall file a report with the Chief Judge and with the Commission 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 30 days thereafter, informing the Chief Judge and the Commission of the parties' progress toward settlement.

(E) If settlement judge procedures fail, and a trial-type evidentiary hearing is to be held, a presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a pre-hearing conference in this proceeding, to be held within approximately fifteen (15) days of the date on which the Chief Judge designates the presiding judge, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, D.C. 20426. Such conference shall be held for the purpose of establishing a procedural schedule, including a date for the submission of Cottonwood's case-in-chief. The presiding administrative law 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.

( S E A L )

Linda Mitry,  
Deputy Secretary.