98 FERC 61, 355
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, Linda Breathitt,
and Nora Mead Brownell.

Generator Coalition	Docket Nos.	EL02-46-000 and ER01-2201-000

v.

Entergy Services, Inc.

ORDER ON COMPLAINT AND ESTABLISHING HEARING PROCEDURES AND CONSOLIDATING DOCKETS

(Issued March 28, 2002)

On January 8, 2002, Generator Coalition [1] (Coalition or Complainants) filed a complaint alleging, among other things, that the Entergy Operating Companies' (Entergy) [2] rates and practices associated with its Generator Imbalance Agreement (GIA) are unjust and unreasonable and unduly discriminatory and

[1] Generator Coalition consists of: Calcasieu Power, LLC; Calpine Central, L.P.; Exelon Generation Company, LLC; Mirant Americas Energy Marketing, LP; Perryville Energy Partners, LLC; Wrightsville Power Facility, LLC; Mississippi Delta Energy Agency; Clarksdale Public Utilities Commission; Public Service Commission of Yazoo City; Occidental Chemical Corporation; PLC II LLC; Reliant Energy Power Generation, Inc.; TECO Power Services Corp.; Tenaska Frontier Partners, Ltd.; and Williams Energy Marketing & Trading Company.

[2] Entergy Services, Inc. is a service company affiliate of the Entergy Operating Companies and acts as their agent with respect to, among other things, the execution and administration of certain contracts and in proceedings at the Commission. The Entergy Operating Companies are: Entergy Arkansas, Inc.; Entergy Gulf States, Inc.; Entergy Louisiana, Inc.; Entergy Mississippi, Inc.; and Entergy New Orleans, Inc.

preferential. This order sets certain issues raised by that complaint for investigation and hearing and consolidates this proceeding with another proceeding containing similar issues of law and fact.[3] This order benefits customers by providing a forum where they can address the issues surrounding Entergy's GIA. This order also benefits consumers by ensuring that rates and practices surrounding generator imbalance service will be just and reasonable and not unduly preferential or prejudicial.

The Commission s Prior Order

On June 1, 2001, in Docket No. ER01-2201-000, Entergy filed changes to its GIA[4] proposing, among other things, to expand the scope of the GIA to apply to all generators that schedule electric energy over Entergy's transmission system. In our order of July 27, 2001,[5] we accepted and suspended Entergy's submittal, made it effective August 1, 2001, subject to refund, and established hearing procedures.

Complaint

On January 8, 2002, Coalition filed the complaint at issue here, alleging that Entergy: (a) overcharges for generation imbalance services by overstating its incremental cost for supplying balancing energy under its GIA;[6] (b) refuses to credit those generators that do not under-deliver electric energy (so-called non-offending generators) with the penalties that Entergy collects under the GIA;[7] (c) prevents unaffiliated generators from purchasing or self-supplying generation imbalance services, thus forcing

[3] This order is without prejudice to any ruling that might be made in the Standard Market Design Proceeding, Docket No. RM01-12-000.

[4] Entergy's Standard GIA was originally filed in 1999 in Docket No. ER99-3084-000, et. al. The proceeding resulted in a settlement that was approved by the Commission on March 17, 2000. Entergy Services, Inc., 90 FERC 61,272 (2000).

[5] Entergy Services, Inc., 96 FERC 61,148 (2001).

[6] Complaint at 2, 13-21. Coalition also requests that the Commission direct Entergy to post the incremental costs of all energy purchases and generation, with specific identification of: avoided costs payments to qualifying facilities; sales data; and top-of-the-hour system lambda (the hourly incremental cost of energy).

[7] Id. at 2, 20.

unaffiliated generators to pay inflated costs for balancing energy[8]; (d) violates Entergy's own Standards of Conduct by allowing its wholesale merchant arm to control numerous transmission-related functions (such as the declaration of "Low-Load Events"[9] and the determination of when Entergy s transmission system can accommodate Start-ups and Shut-downs)[10]; (e) refuses to include an appropriate Regional Transmission Organization (RTO) clause in its GIA making it clear that generators may, at their discretion, obtain generator imbalance services from an RTO-wide generator11 imbalance market that may be implemented in the future; and, (f) fails to explain or justify the criteria Entergy uses when it declares a "Low-Load Event."[12]

Coalition requests that the Commission require Entergy to modify its GIA as discussed below or, in the alternative, to set the issues for hearing and consolidate this docket with the ongoing proceedings in Docket No. ER01-2201-000.

Notice, Answers and Interventions

Notice of Coalition's complaint was published in the Federal Register, 67 Federal Register 2,429 (2002), with answers, protests or interventions due on or before January 28, 2002.

The Council of the City of New Orleans, Louisiana (New Orleans) filed a timely notice of intervention, raising no

[8] Id. at 2, 22-28. Coalition alleges that members cannot self-supply generation imbalance service or receive such service from a third party because: (1) Entergy's source and sink requirements preclude such transactions; (2) it is unclear whether those generators seeking to self-supply would have the right to use secondary points of receipt; and (3) unaffiliated generators, unlike Entergy's own generators, may have to identify secondary points of receipt.

[9] A "Low Load Event" is any period during which Entergy may be required to take a facility off-line due to low-load conditions, based on criteria such as load profiles and generating schedules, to maintain minimum stable operating levels consistent with prudent utility practice. Entergy GIA, Art. I I(K), Original Sheet No. 422.

[10] Complaint at 2, 31-36.

[11] Id. at 2, 30-31.

[12] Id. at 2-3, 28-30.

substantive issues. The following entities filed timely motions to intervene in this proceeding, raising no substantive issues: NRG Energy, Inc. (NRG), the Municipal Energy Agency of Mississippi (MEAM), Lafayette Utilities System (Lafayette), Louisiana Energy and Power Authority (LEPA), Arkansas Electric Cooperative Corporation (Arkansas Electric), PG&E National Energy Group Company (PG&E), Southern Company Services, Inc. (Southern)[13] and Conoco, Inc. (Conoco). Duke Energy North America, LLC (Duke Energy), International Paper Company (International Paper) and Dominion Virginia Power filed untimely motions to intervene, raising no substantive issues.

On January 28, 2002, Entergy filed an answer to the complaint. Entergy argues that the rates, terms and conditions of its GIA are just and reasonable. It contends, among other things, that the pricing provisions in the GIA include the actual cost of energy resources that Entergy uses to supply the schedules that the generators do not meet. According to Entergy, this includes the cost of advance purchases of electric energy that Entergy requires in order to ensure that energy is always available to supply generator imbalances.[14]

In response to Coalition's request that the Commission require Entergy to credit non-offending generators with the penalties that it collects under its GIA, Entergy maintains that: (a) the Commission has never required crediting with respect to generator imbalances; (b) balancing charges are not penalties, but merely reimburse Entergy for its costs; and (c) the proposed credit would diminish the incentives for generators to keep their schedules and generation in balance.[15]

Entergy also states that it does not prohibit generators from self-supplying imbalances. Entergy states that, under the GIA, generators can: (a) obtain imbalance service from third parties; (b) move to another control area or form their own control area; or (c) schedule less than their maximum output and provide their own reserves.

[13] Southern Company Services, Inc. is the service company affiliate of the Southern Operating Companies: Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, Savannah Electric and Power Company, and Southern Power Company.

[14] Answer at 14-15.

[15] Id. at 15-16.

Entergy agrees to include a provision in the GIA to allow generators to use RTO generator imbalance services in lieu of Entergy's GIA once there is an RTO generator imbalance market. Entergy proposes its own amendment to the GIA to ensure that generators can take advantage of such an energy imbalance market. Entergy also agrees to further define the phrase "Low-Load Event."[16]

Finally, Entergy maintains that it is in full compliance with the requirements of the separation of functions provisions of Order No. 889.[17]

Discussion

Preliminary Matters

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[18] the notice of intervention of New Orleans, and the timely, unopposed motions to intervene of NRG, Arkansas Electric, Lafayette, LEPA, MEAM, Conoco, Southern, and PG&E, serve to make them parties to this proceeding. We will grant Duke Energy's, International Paper's and Dominion Virginia Power's untimely, unopposed motions to intervene, given their interest in this proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay.

Overview

In this order, we address certain of the matters raised by complainants. As to other issues, however, we will institute an investigation and order a hearing.

[16] Id. at 23-26.

[17] See Open Access Same-Time Information System and Standards of Conduct, Order No. 889, 61 Fed. Reg. 21,737 (1996), FERC Stats. & Regs., Regulations Preambles, July 1996-December 2000, 31,035, at 31,590 (1996), order on reh'g, Order No. 889-A, 62 Fed. Reg. 12,484 (1997), FERC Stats. and Regs., Regulations Preambles, July 1996-December 2000 31,049 (1997), reh'g denied, Order No. 889-B, 81 FERC 61,253 (1997), aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC, 225 F. 3d 667 (D.C. Cir. 2000), aff'd sub nom. New York v. FERC, 122 S. Ct. 1012 (2002).

[18] 18 C.F.R. 385.214 (2001).

Summary Disposition

1. Posting of Hourly Incremental Cost Data

Coalition asks the Commission to require Entergy to post hourly incremental cost data and detailed contract information for the purpose of auditing the Entergy System Incremental Cost (ESIC).[19]

We have previously addressed the issue and instead required Entergy to verify ESIC information upon request.[20] We see no reason to depart from this approach. Accordingly, we will deny this aspect of the complaint.

2. Credits for Non-Offending Generators

Coalition requests that we direct Entergy to credit non-offending generators with the penalties that it collects under its GIA. In support of this request, Coalition cites Commission findings regarding the crediting of penalty revenues from: (1) energy imbalance service; (2) capacity deficiencies in PJM; and (3) penalties collected from gas pipelines.[21] Entergy responds that crediting here is neither required by Commission precedent nor proper for generation imbalance service.[22]

While we recently required crediting of revenues from energy imbalance service[23] (i.e., an imbalance resulting from a variance between actual and scheduled load), we will not require crediting of revenues from generator imbalance service (i.e., an imbalance resulting from a variance between actual and scheduled generation) and will not set this issue for hearing.

[19] Complaint at 15-19 and 21.

[20] See Entergy Services, Inc., 96 FERC ¶ 61,148 at 61,638 (2001) (Entergy).

[21] Complaint at 20.

[22] Answer at 15 and 16.

[23] See Carolina Power & Light Co., 97 FERC ¶ 61,048 at

61,278-79 (2001), reh'g pending (Carolina).

As stated in Order No. 888-A and other generation imbalance orders,[24] the Commission expects generators to be able to meet their schedules with precision. This expectation stands in contrast to the physical realities of energy imbalance where the amount of energy taken by load in an hour is variable and not subject to the control of either a wholesale seller or a wholesale requirements buyer. Given the differences between the two services, the Commission's decision in Carolina regarding crediting penalty revenues for energy imbalance service is not applicable here.

We agree with Entergy that the charges in the GIA that intervenors want to share with non-offending generators, compensate Entergy for its costs in providing this service, and thus are not penalties. Neither the allocation of penalty revenues in PJM's capacity credit market nor the allocation of penalty revenues in the gas pipeline industry is relevant to our treatment of charges for generator imbalance service.

3. Designation of Out-of-Balance Generators as Sinks

Complainants suggest that members should be able to designate "out-of-balance" generators as sinks. Entergy responds that designating an out-of-balance generator as a sink is unnecessary and inconsistent with electrical realities; moreover, the imbalance can be provided directly to the load, assuming transmission is available.[25]

We will deny complainants' suggestion to allow a generating unit to be designated as a sink. This is a collateral attack on our decision in Wisconsin and on our

[24] Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888-A, 62 Fed. Reg. 12,274 (March 14, 1997), FERC Stats. and Regs., Regulations Preambles, July 1996-December 2000 31,048 at 30,230 (1997), order on reh'g, Order No. 888-B, 81 FERC 61,248 (1997), order on reh'g, Order No. 888-C, 82 FERC 61,046 (1998), aff'd in relevant part sub nom. Transmission Access Policy Study Group, et al., v. FERC, 225 F. 3d 667 (D.C. Cir. 2000), aff'd sub nom. New York v. FERC, 122 S. Ct. 1012 (2002); Tampa Electric Company, 90 FERC 61,330 at 62,108 n.7 (2000); Niagara Mohawk Power Corporation, 86 FERC 61,009 at 61,026 n.11 (1999).

[25] Complaint at 23; Answer at 21.

previous acceptance of Entergy's source and sink requirements.[26]

Other Issues

Coalition proposes to modify language in the GIA to allow generators at their sole discretion to choose to take generator imbalance service from an RTO generator imbalance market.[27]

Entergy agrees to include a provision in its GIA to enable generators to use RTO imbalance service in lieu of Entergy's GIA, but Entergy states that it should be entitled to the same protections that other control area operators whose generation imbalance rate schedules were accepted for filing are afforded.[28]

We find no need to rule on Coalition's concerns regarding insertion of an RTO clause in the GIA at this time nor will we set this issue for hearing. Given the lack of a Commission-approved RTO that encompasses Entergy's control area at this time, we decline to prescribe or set for hearing specific tariff language for this issue. Moreover, Entergy in its answer agrees with the proposition that generators should have the right to use RTO arrangements for imbalance service.[29]

Issues Set for Hearing

Based on a review of the parties' pleadings, it appears that the GIA and the rates and practices under the GIA, aside from those matters summarily disposed of above, may be unjust and unreasonable, unduly discriminatory or preferential or otherwise unlawful. Accordingly, the Commission will institute an investigation of the GIA and the rates and practices under the GIA, under section 206 of the Federal Power Act.

In cases where, as here, the Commission institutes an investigation on complaint under section 206 of the Federal

[26] See Wisconsin Power & Light Company, 84 FERC ¶ 61,300 at 62,385 (1998) (Wisconsin); Entergy Services, Inc., 91 FERC ¶ 61,151 at 61,565-66, reh'g denied, 92 FERC ¶ 61,108 (2000).

[27] Complaint at 31.

[28] Answer at 24 and 25.

[29]

Id. at 24.

Power Act, section 206(b) requires that the Commission establish a refund effective date that is no earlier than 60 days after the filing of the complaint, but no later than five months subsequent to the expiration of the 60-day period. Consistent with our general policy of providing maximum protection to customers,[30] we will set the refund effective date as of the date 60 days after the date of the filing of the complaint, or March 9, 2002.

Section 206(b) also requires that, if no final decision is rendered by the refund effective date or by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to section 206, whichever is earlier, the Commission shall state the reasons why it has failed to do so and shall state the best estimate as to when it reasonably expects to make such a decision. Ordinarily, to implement that requirement, we would direct the presiding judge to provide a report to the Commission 15 days in advance of the refund effective date in the event the presiding judge has not by that date: (1) certified to the Commission a settlement which, if accepted, would dispose of the proceeding; or (2) issued an Initial Decision. The presiding judge's report would advise the Commission of the status of the investigation and provide his or her best estimate of the expected date of the certification of a settlement or the Initial Decision. This, in turn, would allow the Commission on or before the refund effective date to estimate the date when it expects to render its decision.

However, since we have established a refund effective date of 60 days after the filing of the complaint, i.e., March 9, 2002, we obviously cannot follow our usual procedure. Although we do not have the benefit of the presiding judge's report, based on our review of the record, we expect that, assuming the case does not settle, the presiding judge should be able to render a decision within thirteen months or by April 30, 2003. If the presiding judge is able to render an initial decision by that date, and assuming the case does not settle, we estimate that we will be able to issue our decision within approximately seven months of the filing of briefs on and opposing exceptions or by January 31, 2004.

Consolidation

[30] See, e.g., Seminole Electric Cooperative, Inc. v. Florida Power & Light Company, 65 FERC ¶ 61,413 at 63,139 (1993); Canal Electric Company, 46 FERC ¶ 61,153 at 61,539, reh'g denied, 47 FERC ¶ 61,275 (1989).

Because Docket Nos. ER01-2201-000 and EL02-46-000 share common issues of law and fact, we will consolidate them for purposes of hearing and investigation.

The Commission orders:

(A) Duke Energy's, International Paper's and Dominion Virginia Power's untimely motions to intervene are hereby granted.

(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 Section 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 in Docket No. EL02-46-000 into the reasonableness of the GIA and the rates and practices under the GIA, as discussed in the body of this order.

(C) Docket Nos. ER01-2201-000 and EL02-46-000 are hereby consolidated for purposes of hearing and decision. The presiding administrative law judge designated to preside in Docket No. ER01-2201-000 shall determine procedures best suited to accommodate consolidation of Docket No. EL02-46-000 with the pending proceeding.

(D) The refund effective date in Docket No. EL02-46-000 is March 9, 2002.

By the Commission. Commissioner Massey concurred with a separate statement attached.

(S E A L)

Linwood A. Watson, Jr.,
Deputy Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Generator Coalition

Docket Nos. EL02-46-000 and ER01-2201-000

v.

Entergy Services, Inc.

(Issued March 28, 2002)

MASSEY, Commissioner, concurring:

I will concur in today s order for many of the same reasons that informed my concurrence in an order two years ago that approved Entergy s Attachment M to its Open Access Transmission Tariff. Yet, there remains a stark difference between network access service and point-to-point service under Order No. 888 that causes me some concern. This difference is reflected in the source-and-sink requirements set out in Entergy s tariff.

The principle of comparability adopted in Order No. 888 requires that Entergy allow generators to self-supply generation imbalance service or receive such service from third party suppliers. In order to achieve this goal, a generator must be able to secure point-to-point transmission service necessary to transmit energy through Entergy s system to the out-of-balance generator. In their complaint, the Generator Coalition alleges that Entergy s source-and-sink requirements impede a generator s ability to self-supply generation imbalance service, because Entergy s tariff specifies that neither a generator nor a generator-only control area will be accepted as a valid sink. According to the Generator Coalition complaint, for a generator to self-supply its generation imbalances (or use a third-party supplier) it must be able to designate the out-of-balance generator as a sink. Because under Entergy's tariff sinks must be loads and not generators, and because Entergy does not designate its own generators as loads in using its point-to-point transmission service, the Commission previously approved Entergy s source-and-sink requirements as consistent with the principles of comparability.

Today s order rests on Commission precedent, including Order No. 888 s principle of comparability, in rejecting the Generator Coalition s allegations that the Entergy source-and-sink requirements impede the ability of a generator to self-supply its generation imbalances. The order cites Wisconsin Power & Light

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Company, where the Commission rejected a firm point-to-point transmission service agreement that would have listed a generation unit as the point of delivery, or sink. We

reject the complaint as a collateral attack on the Commission s decision in the Wisconsin Power order, and as a legal matter, this may be the correct call.

However, much has changed in the years since Order No. 888, and the Commission is in the process of establishing the essential elements of a standard market design that should put a finer point on comparability issues. As I read the Working Paper on Standard Market Design, the Network Access Service and the market operations envisioned would provide the needed flexibility to all market participants to meet their grid responsibilities efficiently and on a comparable basis. There would be a single transmission service that all generators would operate by, an imbalance market, and an independent operator that would administer both. In short, under the framework set out in the SMD paper, the problem in this case would not arise.

That is how I read it, and I am interested in commenters addressing this issue. Certainly, this interpretation would solve the issue raised by the Generator Coalition s complaint and is fully consistent with the principles of comparability.

I have some hesitancy in dismissing this issue because this problem should be solved. I want the Commission to solve it in the Standard Market Design Rulemaking.

With these thoughts in mind, I will concur in today s order.

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William L. Massey
Commissioner

1 84 FERC 61,300 (1998).