

UNITED STATES OF AMERICA 97 FERC ¶ 61,117
FEDERAL ENERGY REGULATORY COMMISSION

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

Cinergy Services, Inc.

Docket No. ER01-3022-000

ORDER ACCEPTING AND SUSPENDING
INTERCONNECTION AGREEMENT, GRANTING WAIVER,
AND ESTABLISHING HEARING AND SETTLEMENT PROCEDURES

(Issued October 26, 2001)

On September 7, 2001, Cinergy Services, Inc. (Cinergy)¹ filed an unexecuted interconnection agreement (IA) between itself and Sugar Creek Energy LLC (Sugar Creek).² In this order, we accept the IA for filing, subject to refund, and suspend it. We establish hearing and settlement procedures, which we hold in abeyance to permit the parties to continue their negotiations. Last, we grant a waiver of the 60-day prior notice requirement and permit an effective date of September 8, 2001. Our actions will foster a new power generating plant coming on-line.

BACKGROUND

The IA governs interconnection of Sugar Creek's 565 megawatt generating station, located in Vigo County, Indiana, with PSI's transmission system. It also specifies the parties' continuing responsibilities and obligations.

Cinergy requests us to accept the IA, effective September 6, 2001, and to assign it for settlement procedures. Stating that it and Sugar Creek continue to negotiate in good

¹Cinergy is acting as agent for its affiliated utility operating company, PSI Energy, Inc. (PSI).

²The Commission intends, in the near future, to evaluate the importance of standardizing generation interconnection procedures.

faith, Cinergy further requests that the settlement procedures be held in abeyance to allow the parties to finalize their negotiations.

NOTICE OF FILING AND INTERVENTION

Notice of Cinergy's filing was published in the Federal Register, 66 Fed. Reg. 48,450 (2001), with comments, protests, and interventions due on or before September 28, 2001.

Mirant Americas Energy Marketing, LP (Mirant),³ and Sugar Creek (together, Mirant Parties) jointly filed a timely motion to intervene, with comments. The Mirant Parties confirm that Cinergy and Sugar Creek continue good faith negotiations towards a mutually acceptable IA. Mirant Parties identify several issues as still remaining in dispute. These are: (1) compensation to Sugar Creek for its provision of real and reactive power during an abnormal or out-of-limit operating condition, and during emergency conditions, under a tariff that Sugar Creek intends to file; (2) restriction of Cinergy's ability to terminate the IA at the end of its 30-year term; (3) restrictions on Cinergy's rights to assign the IA; (4) Sugar Creek's subrogation rights; and (5) liability limitations.

DISCUSSION

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, the Mirant Parties' unopposed, timely intervention serves to make them parties to this proceeding.

In addition to the disputed terms identified by Mirant Parties, the unexecuted IA lacks cost and other data to support its terms. We cannot find that the IA is just and reasonable; it may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Therefore, although we will accept the unexecuted IA for filing, suspend it for a nominal period, and grant waiver of the prior notice requirement to make

³Mirant is the power marketing affiliate of Mirant Sugar Creek Ventures, Inc. and Mirant Sugar Creek Holdings, Inc., which jointly own Sugar Creek and which are themselves wholly-owned subsidiaries of Mirant Corporation, formerly Southern Energy.

it effective September 8, 2001,⁴ subject to refund, we will also set the IA for hearing under section 205 of the FPA.

Although we are setting these issues for a trial-type evidentiary hearing, we are hopeful that Cinergy and Sugar Creek will negotiate an executed interconnection agreement, and that Cinergy will file this agreement together with necessary supporting data. Accordingly, we will hold the evidentiary hearing in abeyance while the parties try to achieve settlement. Furthermore, although we will provide for a settlement judge to assist the parties in arriving at a settlement,⁵ we will also hold these formal settlement procedures in abeyance for 60 days while the parties continue to negotiate informally. We will require the parties to report the status of their negotiations within 60 days of the date of this order.

While we are setting this proceeding for hearing and settlement judge procedures, there is one further matter we wish to address: interest on the monies paid by Sugar Creek for network upgrades that Sugar Creek ultimately will receive back through transmission credits. Traditionally, we have not required that the credits include interest on the monies paid; the credits reflect only the principal. This is a matter we intend to explore as part of a generic proceeding on interconnection pricing that we intend to initiate in the near future. In the interim, though, until that proceeding reaches a final conclusion, we find that the transmission credits should include interest on the monies paid.⁶

⁴ Because Cinergy filed the IA before commencement of service, we will grant waiver of the 60-day notice requirement. However, we will make the effective date one day after filing, September 8, 2001. See Central Hudson Gas & Electric Corporation, 60 FERC ¶ 61,106 at 61,339, reh'g denied, 61 FERC ¶ 61,089 (1992).

⁵ If the parties desire to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 219-2500 within five days of when we lift the suspension of the settlement procedures. The Commission's website contains a list of Commission Judges and a summary of their background and experience. (www.ferc.fed.us -- click on Office of Administrative Law Judges.)

⁶ See American Electric Power Service Corporation, 97 FERC ¶ ____ at ____, slip op. at 3-4 (2001) (being issued concurrently).

The Commission orders:

(A) The unexecuted IA is hereby accepted for filing and suspended for a nominal period, to become effective on September 8, 2001, subject to refund.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred on 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 unexecuted IA. As discussed in the body of this order, we will hold the hearing in abeyance to give the parties time to continue their informal negotiations.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2000), the Chief Administrative Law Judge is hereby authorized to appoint a settlement judge. 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. As discussed in the body of this order, we will hold the settlement judge procedures in abeyance for 60 days to give the parties time to conclude their informal negotiations.

(D) Within 60 days of the date of this order, the parties shall file a report with the Chief Judge on the status of their informal negotiations. Based on this report, the Chief Judge shall provide the parties with additional time to continue their efforts or order commencement of settlement judge procedures or, if appropriate, the formal hearing process by assigning the case to a settlement judge or, if appropriate, a presiding judge. If informal negotiation efforts continue, the parties shall file a report at least every 30 days thereafter, informing the Chief Judge of the parties' progress toward settlement.

(E) If the informal negotiations and any settlement judge procedures fail, and a formal hearing is to be held, a presiding judge to be designated by the Chief Judge shall convene a conference in this proceeding to be held within approximately 15 days of the date 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. 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 Breathitt dissented in part with a separate statement attached.

(S E A L)

David P. Boergers,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Cinergy Services, Inc.

Docket No. ER01-3022-000

Breathitt, Commissioner, dissenting in part:

(Issued October 26, 2001)

In an order issued on October 25, 2001, in American Electric Power Service Corporation, Docket No. ER01-2163-001, I issued a dissent on the Commission's new policy to require interest on transmission credits. For the reasons I articulated in AEP, I dissent on this aspect of today's order.

Linda K. Breathitt
Commissioner