

99 FERC ¶ 61, 095
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Entergy Gulf States, Inc.

Docket Nos. ER02-324-001
and ER02-324-002

ORDER DENYING REHEARING AND ACCEPTING COMPLIANCE FILING

(Issued April 25, 2002)

1. On January 11, 2002, the Commission issued an Order Accepting Interconnection Agreement Subject to Conditions (January 11 order)¹ in which the Commission accepted for filing an unexecuted Interconnection and Operating Agreement (IA) between Entergy Gulf States, Inc. (Entergy) and Amelia Energy Center, LP (Calpine).² The January 11 order, among other things, directed Entergy to provide transmission credits with interest for all network facilities, which it defined as all facilities at or beyond the point where Calpine, the transmission customer, connects to Entergy's transmission grid. The order also required Entergy to delete proposed transmission credit conversion language that would subject the credits to conversion to financial-type transmission rights if the Commission approves a mechanism to facilitate a participant-funded expansion plan.

2. On February 11, 2002, Entergy submitted its filing in compliance with the Commission's January 11 order. Concurrently, Entergy filed a request for rehearing of the order, asking the Commission to consider its rehearing request together with its compliance filing.

¹Entergy Gulf States, Inc., 98 FERC ¶ 61, 014 (2002).

²Amelia Energy Center, L.P. is a subsidiary of Calpine Corporation. Calpine Corporation develops, owns, and operates independent power facilities throughout the United States.

3. As discussed below, the Commission denies Entergy's request for rehearing of the January 11 order and accepts for filing Entergy's compliance filing. This order reaffirms that network facilities include all facilities at or beyond the point where the customer or generator connects to the grid without regard to the purpose of the upgrade. Denial of rehearing in this matter will allow Calpine to recover transmission credits for upgrades to the network necessary to accommodate the interconnection and will ultimately benefit customers through increased power supply and improved reliability.

Background

4. The January 11 order accepted for filing a proposed unexecuted interconnection agreement. The proposed IA was filed unexecuted because Calpine objected to the IA's direct assignment to it of cost responsibility, without eligibility for transmission credits, of certain facilities required for the physical interconnection of Calpine's generating facilities to Entergy's transmission system at Entergy's Amelia Bulk switchyard, a network facility, in Jefferson County, TX. At issue were: (1) a new switching station consisting of two breaker-and-a-half bays for the two new 230kV lines and the existing Helbig and Cypress 230kV lines; (2) installation of a new 230kV breaker for the existing China 230kV line; and (3) relocation of three existing 69kV overhead lines to eliminate construction conflicts. Calpine argued that the facilities in question were system upgrades that would increase system reliability and provide benefits to the entire grid. Entergy disagreed, stating that these facilities will provide only for the direct, physical interconnection of Calpine's facility with Entergy's transmission system.

5. The January 11 order stated that network facilities include all facilities at or beyond the point where the customer or generator connects to the grid. In addition, the January 11 order found that the facilities at issue were integrated transmission facilities and were properly classified as network facilities without regard to the purpose of upgrading them (e.g. to relieve overloads, to remedy stability and short circuit problems, to maintain reliability, or to provide protection and service restoration). The Commission stated that the fact that the facilities were being replaced or upgraded to accommodate the interconnection did not transform them into non-network facilities. Accordingly, the Commission found that the interconnection facilities in question are network facilities for which Entergy was directed to provide transmission credits with interest.

6. On February 11, 2002, Entergy filed a compliance filing under protest pursuant to the January 11 order and a request for rehearing of the January 11 order. Notice of Entergy's compliance filing was published in the Federal Register, 67 Fed. Reg. 8,533 (2002), with comments, protests, or motions to intervene due on or before March 4, 2002. On March 13, 2002, Calpine filed a motion to answer Entergy's request for

rehearing. On March 28, 2002, Entergy filed a response to Calpine's answer. While answers generally are not permitted pursuant to Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,³ we find good cause to allow Calpine's answer and Entergy's response, as they aid in our understanding and resolution of the issues.

Discussion

A. Request for Rehearing

7. First, Entergy contends that the Commission erred in the conclusion that all interconnection facilities "at or beyond" the point where the generator connects to the grid are network facilities. Second, Entergy seeks rehearing of our requirement that it remove the transmission credit conversion provisions, which provided for eventual financial-type transmission rights in lieu of transmission service credits associated with system upgrades. Finally, Entergy also challenges the requirement to provide interest on transmission credits for system upgrades.

1. Whether Costs are for Network Facilities

Entergy's Position

8. Entergy first argues that the Commission failed to analyze the upgrades and provided no explanation as to how these costs, particularly those involving the relocation of existing facilities, benefit Entergy's other transmission customers. Entergy next claims that the Commission's reliance on PSCO and Consumers is misplaced because PSCO involved the treatment of radial lines and Consumers involved whether certain network upgrades (short-circuit and stability) require credits, while this case involves the point of demarcation between interconnection and network facilities.⁴ Entergy also contends that the Commission's treatment of Entergy's facilities as network facilities virtually eliminates the existence of interconnection facilities. Entergy alleges that the Commission's holding that all facilities "at or beyond" the point of interconnection are network facilities is a new holding because, traditionally, facilities "at" the point where the customer connects to the grid were treated as direct assignment interconnection

³18 C.F.R. § 385.213 (a)(2) (2001).

⁴Public Service Company of Colorado, 59 FERC ¶ 61,311 (1992), reh'g denied, 62 FERC ¶ 61,013 (1993) (PSCO) and Consumers Energy Company, 95 FERC ¶ 61,233, order on reh'g, 96 FERC ¶ 61,132 (2001) (Consumers).

facilities, while network facilities were all those facilities beyond the point of connection to the grid.

Calpine's Position

9. Calpine states that the Commission's long-standing policy with respect to the pricing of transmission upgrades is clear and that the Commission's decision here was consistent with that policy. Calpine argues that the Commission correctly considers the transmission grid to be a single unified facility that benefits all users. It says that, historically, transmission owners embraced the Commission's policy of rolling in the cost of all network upgrades, and that when transmission owners began requiring interconnecting generators to pay for transmission upgrades prior to taking delivery service, the Commission instituted its "crediting" policy to ensure that customers are not charged twice for the same service.

10. Calpine disagrees with Entergy's claim that the Commission has misapplied PSCO and Consumers. The Commission's straightforward approach is that network upgrades are not directly assignable; network upgrades that would not have occurred "but for" a particular customer may be priced at the higher of a rolled in or incremental cost-based rate; and if the interconnection occurs prior to delivery service, transmission credits are required for the cost of any network upgrades paid by the interconnecting generator. In addition, Calpine challenges Entergy's contention that certain construction-related costs (relocating certain transmission lines to perform the upgrade) should be treated differently. Calpine also notes that transmission owners cannot justify any special rate treatment because they incur these types of construction-related costs routinely when upgrading the transmission grid.

11. Finally, Calpine challenges Entergy's contention that the Commission's pricing policies for transmission upgrades result in subsidies. Calpine argues that, as a captive ratepayer on Entergy's system, it should not have to pay both the cost of grid expansion and the rolled-in transmission rate, which would occur if the Commission granted Entergy's rehearing request.

Commission Decision

12. As noted in the January 11 order, Calpine will own and directly bear the cost of all facilities, including two 230 kV radial lines, up to the point of connection with Entergy's transmission system at the existing Amelia 230 kV substation. Entergy will tap into the Amelia substation, install new 230 kV circuit breakers, and reconfigure or relocate related 230 kV and 69 kV facilities.

13. In PSCO, the Commission described what was even then its long-standing holding that the transmission grid is a single piece of equipment whose use can be priced on either an average or incremental investment cost basis, but not by way of direct assignment. The Commission has reasoned that, even if a customer causes the addition of a grid facility (that is, the facility would not be needed "but for" that customer's request for service), the addition is a system expansion used by and benefitting all users due to the integrated nature of the grid. This is true without regard to the purpose of the system upgrade. Therefore, all costs incurred on the network (e.g. to relieve overloads, to remedy stability and short-circuit problems, to maintain reliability, to provide protection and service violation, or to reconfigure or relocate existing facilities) are subject to the prohibition on direct assignment.

14. In Consumers, the Commission underscored that costs related to network facilities were always and continue to be impermissible for direct assignment. The Entergy facilities at issue are network facilities today and, consistent with PSCO and Consumers, the fact that these existing facilities are being reconfigured, relocated or upgraded, does not somehow transform them into non-network facilities.

15. Entergy's argument that facilities "at" the point where the customer connects to the grid have always been directly assigned and that network facilities are those beyond that point is specious. Entergy cites our decision in Carolina Power & Light Company, 93 FERC ¶ 61,032, at 61,074 (2000) (CP&L) for the proposition that facilities at the point of interconnection were directly assigned to an interconnecting generator, and that only facilities beyond that point were network facilities. However, that case did not address the question at issue here; it merely stated that CP&L's proposal to require interconnection customers to pay⁵ for network upgrades that are necessary to accommodate an interconnection request was reasonable. It said nothing about what facilities constituted network facilities. Thus, CP&L is not germane to the issue under consideration here.

16. Our standard in PSCO is quite clear on the fundamental point that the network cannot be dismembered or directly assigned, and our use of the phrase "at or beyond" is simply another way of describing that standard, not a departure from it. The network

⁵That is, the customer paid for the network facilities, but received credits for that amount once it took the delivery component of transmission service.

begins at the point where the customer connects to the grid, not somewhere beyond that point. It is illogical to contend that the network somehow begins beyond where the customer connects to that very network. Entergy makes much of the fact that we referred to network facilities as all those "from" the point where the customer connects to the grid in Consumers, while referring to them, for the first time, as facilities "at or beyond" that point in Entergy. While we fail to see a meaningful distinction between these phrases, we cannot construe either of them to indicate that we have, through the choice of one prepositional phrase over another, overturned 30 years of precedent and are now or have ever directly assigned the costs of the network at its borders. Contrary to Entergy's contentions, PSCO, Consumers, and Entergy hold that the components of the network cannot be dismembered or directly assigned, and there is no reasonable basis in those orders to conclude otherwise. In an effort to describe our PSCO standard, we have used various words and phrases interchangeably over time. However, in order to eliminate future confusion, we will consistently adopt the language from our January 11 order.

17. Entergy also claims that the Commission's January 11 order essentially eliminates the difference between Interconnection Facilities and Network Facilities and thus is inconsistent with the Commission's Interconnection Advanced Notice of Proposed Rulemaking.⁶ That is incorrect. This proceeding involves the Commission's determination that facilities at or beyond the point of interconnection are network facilities and that those prior to that point are interconnection facilities. The ANOPR did not propose any change to the Commission's pricing policies. In addition, it is not true that our policy has essentially eliminated Interconnection Facilities; in fact, Calpine has not only paid for but will own two 230 kV radial lines and related facilities up to the point of interconnection.

18. Entergy also contends that the Commission should have set for hearing the question of the proper classification of the facilities at issue, citing various cases, including Commonwealth Edison Co., 97 FERC ¶ 61,123 (2001). However, in Commonwealth Edison, we set the filings for hearing to determine "whether the costs at issue are for enhancements to network resources [since] it is unclear as to the precise location of the point at which the generator connects to the grid and thus whether the costs are for enhancements on the network side of that point." (Emphasis added; Commonwealth Edison at 61,590). That is not the case here. The point of

⁶Standardizing Generator Interconnection Agreements and Procedures, FERC Stats. and Regs. ¶ 35,540 (October 25, 2001); Notice of Proposed Rulemaking, ___FERC ¶ __ (2002).

interconnection in this proceeding is not in dispute, as it was in the Commonwealth Edison case.

19. Another case cited by Entergy is Appalachian Power Co., 97 FERC ¶ 61,199 (2001), where we did set for hearing whether certain facilities that needed to be upgraded to accommodate the interconnection should be treated as system upgrades or directly assigned. That order contained neither a description stating that the facilities being upgraded were already network facilities nor any discussion of where the facilities in question were located. To the extent that Appalachian is factually similar to this case, a hearing was unnecessary. The existence of some cases in which the issue of whether facilities were network upgrades was set for hearing does not undermine the validity of thirty years of precedent which clearly states that the network is a single piece of machinery.

2. Interest on Transmission Credits

Entergy's Position

20. Entergy states that the January 11 Order's requirement that Entergy provide interest on Calpine's transmission credits is unexplained and provides an additional ratepayer subsidy for the benefit of interconnecting generators. Entergy argues that the Commission has failed to explain any rationale for its current "interim" policy requiring the provision of such interest and has, therefore, abrogated the Interconnection ANOPR⁷ rulemaking process, which is currently under way. Entergy argues that, if the Commission requires interest, the Commission should clarify that all interest costs may be included in rates, and permit the automatic recovery of all such interest costs without the need for a rate filing. Entergy also contends that this proposal is consistent with the Commission's view that the network upgrades benefit all customers.

Calpine's Position

21. Calpine agrees that the interest payments that are implicit in the Commission's crediting policies should be recovered under Entergy's OATT. However, Calpine does not agree that this cost should be afforded a rate treatment different than any other cost. For example, if Entergy had financed the costs of upgrades itself and incurred advanced

⁷Standardizing Generator Interconnection Agreements and Procedures, Docket No. RM02-1-000, Advance Notice of Proposed Rulemaking, 97 FERC ¶ 61,099 (2001); Notice of Proposed Rulemaking, ___ FERC ¶ _____ (2002).

funds used during construction, those costs would be recovered through a normal rate filing.

Commission's Decision

22. The Commission continues to evaluate its interconnection policies in the Interconnection ANOPR. However, as we clearly stated in American Electric Power Service Corporation (AEP)⁸, until the conclusion of the proceedings in Docket No. RM02-1-000, our policy is to require transmission providers to pay interest in connection with system upgrades, and all agreements must reflect that policy. We stated in AEP that we were requiring the addition of interest in connection with system upgrades because failure to adjust credits to reflect interest would impose on generators potentially significant financing costs, and imposing these costs on the generator would be inconsistent with the treatment accorded all other construction costs for system upgrades – that is, all ratepayers bear the underlying construction costs on a rolled-in basis.⁹ We did not make that policy subject to the outcome of the Interconnection ANOPR; on the contrary, we explained that until the conclusion of the generic proceeding we will require interest to be paid.¹⁰ We have applied this policy in a number of cases since the AEP order requiring transmission providers to include interest on credits.¹¹ Therefore, we deny rehearing on this issue.

23. We also deny Entergy's request to permit the automatic recovery of all such interest costs without the need for a rate filing. Interest costs eventually may be reflected in the transmission provider's transmission rates and charged to all transmission customers under its OATT.

⁸ 97 FERC ¶ 61,098 (2001) .

⁹Id., at 61,530-61,532.

¹⁰See AEP, 97 FERC at 61,530-31; accord, Midwest Independent Transmission System Operator, Inc., 97 FERC ¶ 61,136 at 61,622 (2001) ("until the Generic Proceeding is complete, such credits should include interest").

¹¹ Florida Power & Light Company 97 FERC ¶ 61,311 (2001), reh'g denied, 98 FERC ¶ 61,325 (2002); Pacificorp, 98 FERC ¶ 61,224 (2002); Florida Power & Light Company, 98 FERC ¶ 61,891 (2002); Nevada Power Company, 97 FERC ¶ 61,227 at 62,035 (2001).

3. Conversion of Credits Provision

Entergy's Position

24. Entergy contends that the January 11 order should not have required it to remove the conversion of transmission credit provision from Appendix B of the Calpine Interconnection Agreement.¹² Entergy asserts that the credit conversion provision is necessary to facilitate the eventual integration of Entergy's transmission system into an RTO and that its deletion forestalls the development of market-based transmission planning and expansion in the Southeast, and provides preferential treatment to Calpine. Entergy contends that the inclusion of the conversion language did not violate its commitment to explain material differences between the basic terms and conditions of an IA and the pro forma IA because Entergy included this language in Appendix B of the Calpine IA and not in the basic terms and conditions.

25. Entergy states that the language at issue simply provides that in the event Entergy, at some time in the future, has in place a participant-funded expansion plan (PFEP) that is approved by the Commission and applied to all generators in its control area, Plum Point will be subject to such a PFEP on a comparable basis. Entergy explains that the conversion of credit provision attempts to bridge the gap between the currently effective transmission investment structure (featuring the crediting and roll-in of transmission system improvements) and the participant-funded transmission expansion approach that is likely to develop with Entergy's participation in the proposed SeTrans Regional Transmission Organization (SeTrans RTO). According to Entergy, the proposed language simply puts parties on notice that if a PFEP is adopted by the Commission, their credits will convert to the financial rights created by their investment.

Commission Decision

¹²Appendix B of the IA contains the following proposed Conversion of Credits provision: "...transmission service credits are subject to conversion to financial-type transmission rights at such a time as the FERC approves a mechanism to facilitate a participant-funded expansion plan (PFEP), or some other plan in which the Entergy transmission system participates...." The financial-type transmission rights given in lieu of transmission service credits would be those directly associated with the system upgrades paid for by the customer pursuant to the IA.

26. We required deletion of this provision because Entergy had agreed to identify any material differences between the pro forma IA non-rate terms and conditions and any individual IA submitted for filing, and violated that promise by not identifying this provision. Entergy should have identified and explained the proposed provision in its original filing as required by the May 18 order.¹³ We required deletion of this provision, not further explanation.¹⁴ Therefore, Entergy's request for rehearing on this issue is denied.

B. Compliance Filing

As previously noted, on February 11, 2002, Entergy submitted its filing in compliance with our January 11 order. Upon review of that filing, we find that it satisfactorily complies with our January 11 order and we will accept it.

The Commission orders:

(A) The request for rehearing of the January 11 order in this proceeding is hereby denied.

(B) Entergy's compliance filing is accepted, as discussed in the body of this order.

By the Commission.

(S E A L)

Linwood A. Watson, Jr.,
Deputy Secretary.

¹³See Entergy Services, Inc., 91 FERC ¶ 61,149 (2000) (May 18 order).

¹⁴See Entergy Arkansas, Inc., Docket No. ER02-1151-000, _____FERC ¶ _____(Issued April __, 2002), where we reject a similar provision on the merits.