

101 FERC ¶ 61, 328
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Aquila Power Corporation

v.

Docket No. EL98-36-002

Entergy Services, Inc.,
Entergy Arkansas, Inc.
Entergy Louisiana, Inc.
Entergy Mississippi, Inc.
Entergy New Orleans, Inc.
Entergy Gulf States, Inc.

ORDER DENYING REHEARING

(Issued December 20, 2002)

1. This order denies a request for rehearing by Entergy Services, Inc., as agent for and on behalf of the Entergy Operating Companies (collectively, Entergy),¹ of the Commission's order issued in this proceeding on July 26, 2000,² which denied rehearing and granted clarification of an order issued in this proceeding on March 16, 2000.³

¹The Entergy Operating Companies are: Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc.

²Aquila Power Corp. v. Entergy Services, Inc., et al., 92 FERC ¶ 61,064 (2000) (July 26 Order).

³Aquila Power Corp. v. Entergy Services, Inc., et al., 90 FERC ¶ 61,260 (2000) (March 16 Order).

Background

2. On March 30, 1998, as amended on June 23, 1998, Aquila filed a complaint against Entergy alleging that Entergy had reserved all of the firm import capacity (2000 MW) at four key interfaces, even though Entergy did not designate any network resources to cover these reservations. Aquila complained that Entergy had denied Aquila's transmission requests on several occasions and on other occasions had improperly curtailed its transactions, causing Aquila to incur financial losses.

3. On May 11, 1998, Entergy filed a response (May 11 Response). Entergy did not dispute that it had reserved all of the capacity at the four interfaces, but argued that Aquila's complaint rested on a fundamental misunderstanding of Order Nos. 888 and 888-A.⁴ Entergy argued that, under those orders, a transmission provider may deny requests for transmission if that transmission provider's own reservations are based on the legitimate reliability needs of its bundled retail customers.

4. In the March 16 Order, the Commission found that Entergy violated Section 28.2 of the pro forma tariff and the comparability requirements of Order No. 888 by failing to designate the resources associated with Entergy's reservations of firm import capacity on behalf of its native load customers in the same manner as do network customers reserving firm capacity.⁵ Entergy was directed to discontinue violating the terms of the pro forma tariff, but the Commission declined to impose any penalties for the violations.⁶ However, Aquila and other interested persons were given 30 days to file comments in Docket No. ER91-591-000 (the proceeding to review Entergy's three-year market power study) on the issue of whether, given Entergy's actions, it still lacked market power (a

⁴Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 Fed. Reg. 21,540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996), order on reh'g, Order No. 888-A, 62 Fed. Reg. 12,274 (March 14, 1997), FERC Stats. & Regs. ¶ 31,048 (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, 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, 535 U.S. 1 (2002).

⁵90 FERC at 61,860.

⁶Id.

factor relied on by the Commission when it granted Entergy authority to charge market-based rates).⁷

5. On April 17, 2000, Entergy filed a request for rehearing and Aquila filed a request for clarification or, in the alternative, rehearing.

6. In the July 26 Order, the Commission denied Entergy's request for rehearing and granted Aquila's request for clarification. The Commission reaffirmed its finding that a power purchase made of behalf of both wholesale and retail native load customers must be designated pursuant to the open access transmission tariff, and also concluded that Entergy had not demonstrated that the power purchases associated with its firm transmission reservations would be made only on behalf of its retail customers.⁸ In addition, the Commission also clarified that, in the March 16 Order, the curtailments that the Commission did not deem improper "involved only the secondary path transactions entered into by Aquila after Entergy had denied Aquila's request for service,"⁹ not transactions where Entergy had refused to provide Aquila with transmission service over the Entergy/Union Electric interface.

7. On August 25, 2000, Entergy filed the instant request for rehearing, challenging:

(i) the Commission finding that Entergy did not meet the Order No. 888-B requirement of "demonstrat[ing] that power purchases associated with its firm transmission reservations would be made only on behalf of retail customers" and (ii) the Commission's clarification regarding its holding in the March 16 Order that the curtailments of Aquila's service were not improper.^{10]}

⁷Id. at 61,861.

⁸92 FERC at 61,191.

⁹Id. at 61,191.

¹⁰Request for Rehearing at 2 (citations omitted).

Discussion

Reservations for Retail Customers

8. On rehearing, Entergy argues that the Commission erred in stating that Entergy had not demonstrated that its firm transmission reservations were made on behalf of bundled native load customers. Entergy points out that its May 11 Response included an affidavit of James F. Kenney, which stated that:

The 2000 MW reservation of import capacity for the period in question was necessary to meet the immediate reliability needs of Entergy's native load customers. To verify this, my organization performed a standard loss of load analysis for the year 1997. The results showed that a 2000 MW reservation is the minimum necessary to satisfy a "one day in ten year" loss of load probability, which is a standard industry reliability criterion.^[11]

9. Entergy also maintains that it specifically addressed the finding in Order No. 888-B, when it stated that:

This case also does not involve the situation, addressed in Order No. 888-B, of "a single power purchase" made for both bundled and unbundled customers. Order No. 888-B, at 62,089 (emphasis in original). As indicated above, the 2,000 MW reservation at issue here was necessary to serve the reliability needs of Entergy's native load customers that are not subject to the unbundling requirement.^[12]

10. Finally, Entergy argues that, in 1997, it filed and the Commission accepted¹³ a service agreement designating 850 MW of off-system network resources. Thus, Entergy

¹¹May 11 Answer at 7, quoting Kenney Aff. at 2.

¹²May 11 Answer at 7-8 n.8 (emphasis in original).

¹³Entergy filed Docket No. ER97-4451-000 on September 2, 1997. It was accepted by letter order issued pursuant to delegated authority on October 22, 1997. On Sheet 1 of the Attachment to the Service Agreement for Network Integration Transmission Service, 850 MW is designated as Generation Purchased for the System.

maintains, at least 850 MW of the 2000 MW reservation "under any standard,"¹⁴ was properly reserved for native load customers and the Commission, therefore, erred in granting the complaint insofar as it alleged that the entire 2000 MW reservation was improper.

11. We will deny rehearing on this point. Entergy continues to ignore the Commission's basic directive in both the March 16 Order and the July 26 Order that, even for reservations of capacity for bundled retail native load customers, a utility is required to designate specific resources and load associated with these reservations.¹⁵ As we explained in the July 26 Order:

[W]e disagree with Entergy's argument that there is no distinction between "obtaining" service under the tariff and "designating" resources under the tariff because (in Entergy's view) the only way to "obtain" firm transmission services is to "designate" network resources. As we have previously held, a public utility, such as Entergy, can purchase power on behalf of its bundled retail native load customers and can use its transmission system to deliver that power without obtaining service under the tariff. [¹⁶]

12. Rather than comply with these orders, Entergy instead points to an affidavit it filed in its May 11 Response where it states that it has conducted a loss of load study which demonstrates that a 2000 MW reservation of import capacity was necessary to meet the reliability needs of Entergy's native load customers. However, neither in that May 11 Response nor in its request for rehearing has Entergy provided anything more than the conclusion of that study; not the study, the assumptions, or any other documentation underlying the study.¹⁷ Moreover, while Entergy is correct that the July

¹⁴Request for Rehearing at 6 (emphasis in original).

¹⁵See March 16 Order at 61,859; July 26 Order at 61,192..

¹⁶July 26 Order at 61,192 (citation omitted).

¹⁷Indeed, in an earlier filing, Entergy filed a loss of load study to support a 2900 MW reservation of import capacity that Entergy proposed to set aside for native load use and not make available to customers under its OATT. Upon review of the study and supporting documentation, the Commission found the study to be significantly flawed
(continued...)

26 Order also discussed the issue of whether Entergy had adequately demonstrated that power purchases associated with its firm transmission reservations would, in fact, be made only on behalf of retail native load customers, Entergy's obligation to specifically designate resources and load would have remained unaltered by such a demonstration. As we explained in the March 16 Order:

While Entergy is correct that Order Nos. 888 and 888-A allow transmission providers to reserve sufficient capacity to serve native loads reliably, that is not the issue here. Rather, the issue is whether, in reserving sufficient capacity to meet retail load requirements, Entergy must designate network resources in the same manner as do its OATT customers.^[18]

13. Regarding Entergy's claim that it did designate at least 850 MW of the reserved 2000 MW, we find that the filing of a service agreement in Docket No. ER97-4451-000 does not constitute such a designation. Sheet 1 of Attachment A, entitled "Generation Purchased for the System," merely lists the off-system utilities from whom generation will be purchased, *i.e.*, 300 MW from Duke Power, 250 MW from PECO, and 300 MW from TVA. Nowhere does this filing state, for example, whether this generation is being provided on a firm or non firm basis or over which interfaces the power is expected to flow.¹⁹ In fact, the service agreement indicates that the availability of these off-system resources, as well as Entergy's resources, will be subject to constraints on Entergy's transmission system.²⁰

¹⁷(...continued)

and required Entergy to recompute its ATC. See Entergy Operating Companies, 87 FERC ¶ 61,156 at 61,626-27 (1999) (Entergy).

¹⁸March 16 Order at 61,859.

¹⁹See, e.g., Order No. 888-A at 30,531-32, Pro Forma Tariff § 29.2(v) ("A description of Network Resources . . . , which shall include, for each Network Resource: . . . Description of purchased power designated as a Network Resource including source of supply, Control Area location, transmission arrangements and delivery point(s) to the Transmission Provider's Transmission System. . . ."); accord, Entergy OATT §§ 29.2, 30.1.

²⁰Id.; see also Entergy, 87 FERC at 61,626.

14. Accordingly, we will reject this argument, and reiterate Entergy's obligation to designate network resources and load on a comparable basis.

Clarification of March 16 Order

15. On rehearing, Entergy argues that, "because Aquila did not seek rehearing of any of the Commission's ultimate legal determinations in this case, there was no basis upon which to grant clarification of any subsidiary factual question."²¹ Entergy explains that, because the Commission decided not to order refunds, and Aquila did not seek rehearing or clarification of that decision, "the request for clarification pertained to a factual issue that was no longer before the Commission or relevant to any issue in the case."²² Entergy believes that Aquila sought this clarification so as to "clear[] the way for Aquila to commence civil litigation against Entergy," and requests that the Commission "reject Aquila's abuse of Commission process."²³

16. We will deny Entergy's request for rehearing of our clarification of the March 16 Order. Entergy has provided no precedent to support its claim that the Commission has no basis to grant a request for clarification of any "subsidiary" factual question when the party requesting such clarification has not challenged the "ultimate legal determination." Nor has Entergy persuaded us that there is any reason to limit the ability of any party to seek timely clarification of a Commission order that it believes is unclear. Moreover, we see no benefit to our enacting a policy that would limit our ability to clarify an order we believe to be unclear. Finally, the motive a party may have to seek clarification is irrelevant to whether that clarification should be granted.

²¹Request for Rehearing at 6.

²²Id. at 7.

²³Id. at 8.

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The Commission orders:

Entergy's request for rehearing is hereby denied.

By the Commission.

(S E A L)

Linwood A. Watson, Jr.,
Deputy Secretary.