

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION
103 FERC ¶ 61,375

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

Entergy Services, Inc.

Docket No. ER03-811-000

ORDER ACCEPTING GENERATOR IMBALANCE AGREEMENT,
ACCEPTING AND SUSPENDING INTERCONNECTION
AGREEMENT, AND ESTABLISHING HEARING PROCEDURES

(Issued June 30, 2003)

I. Summary

1. In this order, we accept Entergy Services, Inc.'s (Entergy) revised Interconnection and Operating Agreement (Amended IA)¹ and Generator Imbalance Agreement (GIA) between Entergy Louisiana, Inc. (Entergy Louisiana) and Occidental Chemical Corporation (Occidental) for filing. We suspend the IA for a nominal period, make it effective subject to refund, and establish hearing procedures. This order benefits customers by ensuring the safe and reliable interconnection of new generation at just and reasonable rates, terms and conditions, thus encouraging investment in new generation, and making markets more competitive.

II. Background

2. On May 26, 2000, in Docket No. ER00-2621-000, Entergy filed an unexecuted interconnection agreement (the Taft IA) to interconnect Occidental's 778 MW cogeneration facility (the Taft facility) to Entergy Louisiana's transmission system. Occidental filed a protest, arguing that Entergy had not justified its costs for upgrades and had not assured Occidental that it would provide credits.

¹The agreement is designated First Revised Service Agreement No. 240, superseding Entergy Operating Companies Original Service Agreement No. 240 under FERC Electric Tariff Second Revised Volume No. 3.

3. The Commission accepted the Taft IA for filing, suspended it for a nominal period, and set it for hearing and settlement judge procedures.² The Commission also directed Entergy to state which upgrades would receive credits and to make certain other changes.
4. Entergy then filed a proposed settlement (the Taft Settlement Agreement) in which it and Occidental agreed on the direct assignment to Occidental of Required System Upgrades and on Optional System Upgrades for which Occidental would receive transmission credits. The Taft Settlement Agreement included the "Principles for Waterford Breaker Upgrade Cost Allocation" (the Breaker Principles) covering Required System Upgrades in which Occidental and Entergy Louisiana agreed that Occidental would pay for the replacement of twenty-four 63 kilo-Ampere breakers at Entergy Louisiana's 230 kV Waterford Switchyard, needed to compensate for the additional fault current resulting from the interconnection of the Taft facility.³ The settlement was approved by letter order.⁴
5. On May 2, 2003, Entergy, acting as agent for Entergy Louisiana, filed the Amended IA and GIA. The Amended IA reflects a modification to the initial point of interconnection for Occidental's facility. Entergy and Occidental agree on this modification.
6. The Amended IA is under the Taft Settlement Agreement, described above. The Amended IA is unexecuted because, as explained below, the parties disagree over the inclusion in it of Section 23.8 of the Taft Settlement Agreement. Entergy has included Section 23.8 in the Amended IA at Occidental's request, but it objects to its inclusion. Entergy has updated the GIA to reflect the outcomes of Docket Nos. ER01-2201-000 and EL02-46-000.

III. Notice, Intervention, Protest and Answer

²Entergy Louisiana, Inc., 92 FERC ¶ 61,052 (2000).

³Third parties, other generators with interconnection agreements with Entergy, could be directly assigned the costs of the Waterford upgrades if they made use of any of the incremental capability not used by Occidental. These generators would pay a charge to Entergy, who would then credit it to Occidental.

⁴95 FERC ¶ 61,213 (2001).

7. Notice of Entergy's filing in the current docket (i.e. the IA and the GIA discussed above) was published in the Federal Register, 68 Fed. Reg. 25,599 (2003), with comments, interventions and protests due on or before May 23, 2003. On May 23, 2003, Occidental filed a motion to intervene and protest. No other protests or interventions were received. On June 9, 2003, Entergy filed an answer to Occidental's protest. On June 20, 2003, Occidental filed an answer to Entergy's answer.

IV. Discussion

A. Procedural Matters

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2002), Occidental's timely, unopposed motion to intervene in this docket makes it a party to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2002), prohibits an answer to a protest, unless otherwise permitted by the decisional authority. We are not persuaded to allow Entergy's answer to Occidental's protest and will, therefore, reject it. For the same reason we will reject Occidental's answer to Entergy's answer.

B. The GIA

9. Occidental has not protested the revised GIA. The revised GIA is identical to the settlement agreement GIA in Docket Nos. ER01-2201-000 and EL02-46-000, accepted for filing by Letter Order of January 31, 2003.⁵ Our review of the revised GIA indicates that it appears to be just and reasonable and not unduly preferential or prejudicial or otherwise unlawful. Accordingly, we will accept it for filing, without suspension or hearing, to become effective on May 3, 2003, as requested.

C. The Amended IA

1. Section 23.8

10. The parties disagree over the inclusion in the IA of Section 23.8, which states:

FERC-Approved Form Agreement. Notwithstanding anything in this Agreement to the contrary, in the event Company [Entergy] files a pro forma Interconnection and Operating Agreement which is accepted for filing by FERC,

⁵Entergy Services, Inc., 102 FERC ¶ 61,104 (2003).

Customer [Occidental] shall have the option, but not the obligation (unless otherwise provided under the terms of any applicable law or regulation) to execute such FERC-approved form in lieu of this Agreement with the express understanding that the effective date thereof shall remain unchanged from that specified in this Agreement.

11. The dispute between Entergy and Occidental involves whether Section 23.8 is moot, or whether Occidental can now execute Entergy's pro forma interconnection agreement in place of the Taft Settlement Agreement. If Occidental still has the option to execute Entergy's pro forma interconnection agreement, it would be eligible to receive transmission credits for the Required System Upgrades that it has paid for under the Breaker Principles. Also, in addition to the credits that the Taft Settlement Agreement specified, Occidental would receive transmission credits for the Optional System Upgrades.⁶

2. Position of the Parties

a. Entergy

12. Entergy contends that Section 23.8 of the Taft Settlement Agreement is moot and that Occidental's opportunity to choose the pro forma agreement over the settlement agreement has passed. According to Entergy, Section 23.8 originated in the initial interconnection agreement with Occidental that Entergy filed on May 26, 2000. During the negotiations over that initial agreement, Entergy had not yet received the Commission's approval of its pro forma agreement, which it had submitted on March 1, 2000, and which was then pending. The Commission then accepted the pro forma agreement for filing as modified. Entergy argues that the original Occidental interconnection agreement did not reflect all of the terms of the pro forma agreement and that the parties included Section 23.8 to provide Occidental with a one-time opportunity to choose to execute the pro forma agreement when the Commission initially accepted it for filing. Entergy states that the parties did not submit the Taft Settlement Agreement until March 7, 2001, almost one year after the Commission's order of May 18, 2000 accepting the pro forma agreement for filing. Occidental could have chosen at that point

⁶The amount of transmission credits at issue for the required upgrades is \$14,830,000. Occidental argues that the amount of the credits must also reflect interest from the date of its payments for the upgrades. Occidental also states that it is due \$5,725,000 for the optional system upgrades.

to execute the pro forma agreement, but instead decided to execute a revised version of its original interconnection agreement.

13. Entergy argues that Section 23.8 is moot due to Occidental's choice not to execute the pro forma agreement as part of the Taft Settlement Agreement. It maintains that Section 23.8 did not establish an ongoing right to apply future forms of the pro forma agreement to Occidental's interconnection agreement. Entergy says that Section 23.8 was "inadvertently included" in the filing of the Taft Settlement Agreement, because it was already moot at that point.

b. Occidental

14. Occidental argues that Section 23.8 is an integral provision of the Taft Settlement Agreement. It states that Section 23.8 does not include a time limit on Occidental's option to exercise the provision. Occidental argues that Entergy's claim that Section 23.8 was inadvertently included is unsupported. By seeking to exercise its options under Section 23.8, it is merely trying to implement the terms of the Settlement Agreement, it is not abrogating that agreement, as Entergy claims.

15. Occidental wishes to become a party to Entergy's pro forma interconnection agreement in its current, Commission-approved form. Under Section 23.8, the Amended IA would be effective March 6, 2001, the effective date of the Taft Settlement Agreement. It should thus receive credits against transmission service from the date that it initially took transmission service, with interest calculated from the date Occidental paid for the Upgrades. Occidental asks the Commission to enforce the Taft Settlement Agreement as written and direct Entergy to execute its current pro forma interconnection agreement with an effective date of March 6, 2001.

16. Occidental notes that the parties filed the Taft Settlement Agreement on March 7, 2001 and that the Commission approved it on May 16, 2001. Occidental also notes that on June 27, 2001, the Commission directed Entergy to modify its pro forma interconnection agreement to provide transmission credits for both Required System Upgrades and Optional System Upgrades.⁷ Occidental further notes that, on April 29, 2002, the Commission directed Entergy to modify its pro forma interconnection

⁷See Entergy Services, Inc., 95 FERC ¶ 61,437, reh'g denied 96 FERC ¶ 61,311 (2001), aff'd 319 F.3d 536 (D.C. Cir. 2003).

agreement to provide that transmission service credits for Optional System Upgrades would include interest.⁸

3. Commission Determination

17. The dispute between Entergy and Occidental involves whether Section 23.8 is moot, or whether Occidental can now execute Entergy's pro forma interconnection agreement in place of the Taft Settlement Agreement. The dispute over the inclusion in the Amended IA of Section 23.8 of the Taft Settlement Agreement is an issue of contract interpretation that we cannot resolve on the record before us, and is more appropriately addressed in the hearing ordered below. Our preliminary analysis of the IA indicates that it has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Therefore, we will accept the proposed IA for filing, suspend it for a nominal period, make it effective, subject to refund, from May 3, 2003, as requested⁹ and set it for hearing.

The Commission orders:

(A) The revised GIA is hereby accepted for filing, without hearing or suspension, to become effective on May 3, 2003, as requested.

(B) The Amended IA is hereby accepted for filing and suspended for a nominal period, effective May 3, 2003, as requested.

(C) 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 1), a public hearing shall be held in Docket No. ER03-811-000 into the justness and reasonableness of the IA.

(D) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a prehearing conference in this proceeding, to be held within approximately fifteen days of date on which the Chief Judge designates

⁸See Entergy Services, Inc., 99 FERC ¶ 61,127 at p. 61,545 (2002).

⁹See 18 C.F.R. § 35.3 (2002). See Central Hudson Gas & Electric Corporation, et al., 60 FERC ¶ 61,106 at 61,338-39, reh'g denied, 61 FERC ¶ 61,089 (1992).

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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 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,
Acting Secretary.