

UNITED STATES OF AMERICA 117 FERC ¶ 63, 004  
FEDERAL ENERGY REGULATORY COMMISSION

KGen Hinds LLC	Docket No. ER05-1358-001
KGen Hot Spring LLC	Docket No. ER05-1394-001
Hot Spring Power Company, LP	Docket No. ER05-1419-001
Cottonwood Energy Company LP	Docket No. ER05-483-004
Union Power Partners, L.P.	Docket No. ER05-977-004

PARTIAL INITIAL DECISION

(Issued October 5, 2006)

APPEARANCES

*Neil L. Levy, Esq.* and *Bruce L. Richardson, Esq.* on behalf of KGen Hinds LLC, KGen Hot Spring LLC, Hot Spring Power Company, LP, Cottonwood Energy Company, LP, and Union Power Partners, L.P.

*Andrea J. Weinstein, Esq.* and *Richard Armstrong, Esq.* on behalf of Entergy Services, Inc.

*Anja M. Clark, Esq.* on behalf of the Federal Energy Regulatory Commission Trial Staff.

**BOBBIE J. McCARTNEY, Presiding Administrative Law Judge**

## I. INTRODUCTION

1. On July 10, 2006, Independent Generators<sup>1</sup> and Entergy Services, Inc.<sup>2</sup> filed motions for summary disposition in the above-captioned proceedings on the sole issue of whether the Independent Generators have independent contractual authorization to obtain compensation for reactive power provided within their specified power factor range or dead band.<sup>3</sup> Independent Generators and Entergy also submitted a Joint Factual Background, Procedural History and Statement of the Issue (Joint Background) in this proceeding on that date, which have been adopted without modification and are set forth below. The parties filed answers to the motions for summary disposition on August 7, 2006. The undersigned conducted oral argument on the pleadings on August 29, 2006.

## II. BACKGROUND/PROCEDURAL HISTORY

### a. Overview

2. In various orders, the Commission clarified that if a transmission owner compensates its own generating units for providing reactive power, the transmission owner must also compensate non-affiliated generators for providing reactive power services. Cottonwood and Union Power were the first of the Independent Generators to file rate schedules that would permit them to charge Entergy a cost-based rate for providing reactive power services to Entergy. By mid-2005, the Commission had accepted, suspended, and set for hearing Cottonwood's and Union Power's reactive power rate schedules. In August 2005, Hinds, Hot Spring, and Hot Spring Power filed reactive power rate schedules seeking compensation from Entergy for reactive service.

3. On September 2, 2005, before the Commission issued an order on Hinds', Hot Spring's, and Hot Spring Power's reactive power rate schedule filings, Entergy filed a

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<sup>1</sup> KGen Hinds LLC (Hinds), KGen Hot Spring LLC (Hot Spring), Hot Spring Power Company, LP (Hot Spring Power), Cottonwood Energy Company LP (Cottonwood), and Union Power Partners, L.P. (Union Power) (collectively, Independent Generators).

<sup>2</sup> Entergy Services, Inc. and its affiliated Operating Companies (collectively, Entergy).

<sup>3</sup> The power factor range, or dead band, specified in Order No. 2003 and the *pro forma* Large Generator Interconnection Agreement (LGIA) is 0.95 leading and 0.95 lagging. See Standardization of Generator Interconnection Agreements and Procedures, 109 FERC ¶ 61,287 at P 109 (2004) (Order No. 2003-B) *citing* LGIA article 9.6.1. The dead bands in the IOAs at issue in this proceeding are narrower (*i.e.*, 0.97 leading and 0.95 lagging).

Petition for Declaratory Order in Docket No. EL05-149-000 requesting that the Commission clarify that if Entergy did not compensate its own generating units for providing reactive power services, then Entergy would not have to compensate non-affiliated generators for providing reactive power services. On the same day, in Docket No. ER05-1432-000, Entergy filed to eliminate the reactive power rates in Schedule 2 of its Open Access Transmission Tariff (OATT). On October 14, 2005, the Commission granted Entergy's position for Declaratory Order and accepted Entergy's reactive power rates that had been set to zero. *See Entergy Servs., Inc.*, 113 FERC ¶ 61,040 (2005). Entergy's reduced reactive rates went into effect November 1, 2005.

4. The impact of the Commission's decision was that after November 1, 2005, non-affiliated generators could not recover reactive service charges from Entergy (except for Cottonwood and Union Power because the Commission had previously accepted their rate schedules). Thus, Entergy and the various Independent Generators set out to negotiate the payments for the period between (i) the effective date of the rate schedules assigned by the Commission and (ii) October 31, 2005 (this being referred to as the "locked-in period"). All of the Independent Generators have reached settlement with Entergy on this issue for the locked-in period.

5. In order to prevent Cottonwood and Union Power from being able to continue to recover reactive service charges after November 1, 2005, Entergy filed Section 206 complaints against Cottonwood and Union Power on October 28, 2005, in Docket Nos. EL06-13-000 and EL06-14-000, respectively.

6. Meanwhile, each of the Independent Generators argue to the Commission that Section 4.7.1 of their individual Interconnection Agreements gave them a separate, independent right to recover reactive service payments regardless of whether Entergy compensated its own generating units. In a series of orders issued on April 10, 2006, the Commission stated that the Independent Generators were permitted to raise in their respective service rate schedule proceedings the issue of whether they had independent contractual authorizations to obtain compensation for their generation of within-the-bandwidth reactive power. *See Entergy Servs., Inc. v. Cottonwood Energy Co. LP*, 115 FERC ¶ 61,031 at P 20 (2006); *Entergy Servs., Inc. v. Union Power Partners, L.P.* 115 FERC ¶ 61,030 at P 20 (2006); *KGen Hinds LLC*, 115 FERC ¶ 61,028 at P 8 (2006); *KGen Hot Spring LLC*, 115 FERC ¶ 61,029 at P 8 (2006); *Hot Spring Power Co., LP*, 115 FERC ¶ 61,027 at P 8 (2006). *See also Entergy Servs., Inc.* 113 FERC ¶ 61,040 at n.17.

7. Because Section 4.7.1 of each of the Interconnection Agreements are similar, all of the parties agreed to consolidate their cases for purposes of resolving this single issue, and it is this issue that is now the subject of these consolidated proceedings.

b. Factual Background

*KGen Hinds LLC*

8. The original Interconnection Agreement between Hinds and Entergy Mississippi, Inc. was filed on October 6, 2004. On December 1, 2000, the Commission accepted the agreement for filing. *See Entergy Operating Companies*, Letter Order, Docket No. ER01-61-000 (issued Dec. 1, 2000). On November 26, 2001, Entergy filed a revised Interconnection Agreement with the Commission in Docket No. ER02-405-000. The Commission conditionally accepted the revised Interconnection Agreement on March 15, 2002, and directed Entergy to revise the Interconnection Agreement to reflect changes identified in the order. *See Entergy Servs., Inc.*, 98 FERC ¶ 61,290 (2002). On April 15, 2002, Entergy submitted its compliance filing of a revised Interconnection Agreement. By order dated January 28, 2003, the Commission accepted the compliance filing subject to further revision. *See Duke Energy Hinds, LLC v. Entergy Servs. Inc.*, 102 FERC ¶ 61,068 (2003). On February 27, 2003, Entergy submitted another compliance filing, which the Commission noticed on March 4, 2003.

9. On August 17, 2005, Hinds filed a cost-based rate schedule specifying rates for providing Reactive Support and Voltage Control from Generation Sources Service in Docket No. ER05-1358-000. On September 7, 2005, Entergy filed a Motion to Intervene and Protest to Hinds' filing. On September 22, 2005, Hinds filed an Answer to Entergy's Protest.

10. On October 14, 2005, the Commission issued an order accepting and suspending the rate schedule. *See KGen Hinds LLC*, 113 FERC ¶ 61,041 (2005). The Commission also held the hearing in abeyance and directed that a settlement judge be appointed. Finally, the Commission stated: "effective November 1, 2005, the charges proposed in the instant filing will become unjust and reasonable because they would recover within the band costs that Hinds is not permitted to recover on or after that date. Accordingly, within 15 days of this order, Hinds must file to remove the subject rate schedule from its tariff effective November 1, 2005." *Id.* at P 14. Hinds sought rehearing of the Commission's October 14<sup>th</sup> Order.

11. On March 6, 2006, Hinds and Entergy submitted an offer of settlement to dispose of all outstanding issues between them as related to the pre-November 1, 2005 locked-in period.

12. On April 10, 2006, the Commission issued an order granting rehearing of the October 14<sup>th</sup> Order. The Commission held: "Accordingly, in the hearing established in this proceeding, KGen Hinds may raise the issue of whether it has independent contractual authorization to obtain compensation for its generation of within the band

reactive power. The direction to remove its reactive power rate schedule effective November 1, 2005, is rescinded and it may recommence the collection of such charges effective as of the date of this order, subject to refund.” *KGen Hinds LLC*, 115 FERC ¶ 61,028 at P 8 (2006). The Commission also stated: “Because of the similarity of issues, for purposes of administrative efficiency, the Chief Administrative Law Judge may consolidate the hearing in the Docket No. ER05-1358-000 proceeding with other pending proceedings in Docket Nos. ER05-1394-000, ER05-1419-000, ER05-483-000, and ER05-977-000 involving the same issue of independent contractual authorization of independent generators for compensation from Entergy for the provision of within the band reactive power.”

13. On May 8, 2006, the Commission accepted the partial settlement agreement for the locked-in period. *See KGen Hinds LLC et al.*, 115 FERC ¶ 61,152 (2006).

#### *KGen Hot Spring LLC*

14. The original Interconnection Agreement between Hot Spring and Entergy Arkansas, Inc. was filed on May 2, 2001. On June 7, 2001, the Commission accepted the agreement for filing. *See Entergy Operating Companies*, Letter Order, Docket No. ER01-1941-000 (issued June 7, 2001). In response to the Commission’s January 28, 2003 Order in *Duke Energy Hinds, LLC et al. v. Entergy Servs., Inc. et al.*, 102 FERC ¶ 61,068 (2003), Entergy, on February 27, 2003, filed with the Commission the current Interconnection Agreement.

15. On August 25, 2005, Hot Spring filed a cost-based rate schedule specifying rates for providing Reactive Support and Voltage Control from Generation Sources Service in Docket No. ER05-1394-000. On September 15, 2005, Entergy filed a Motion to Intervene and Protest to Hot Spring’s filing. On September 30, 2005, Hot Spring filed an Answer to Entergy’s Protest.

16. On October 20, 2005, the Commission issued an order accepting and suspending the rate schedule. *See KGen Hot Spring LLC*, 113 FERC ¶ 61,071 (2005). The Commission also held the hearing in abeyance and directed that a settlement judge be appointed. Finally, the Commission stated: “effective November 1, 2005, the charges proposed in the instant filing will become unjust and reasonable because they would recover within the band costs that Hot Spring is not permitted to recover on or after that date. Accordingly, within 15 days of this order, Hot Spring must file to remove the subject rate schedule from its tariff effective November 1, 2005.” *Id.* at P 14. Hot Spring sought rehearing of the Commission’s October 20<sup>th</sup> Order.

17. On March 6, 2006, Hot Spring and Entergy submitted an offer of settlement to dispose of all outstanding issues between them as related to the pre-November 1, 2005

locked-in period.

18. On April 10, 2006, the Commission issued an order granting rehearing of the October 20<sup>th</sup> Order. Specifically, the Commission held: “Accordingly, in the hearing established in this proceeding, KGen Hot Spring may raise the issue of whether it has independent contractual authorization to obtain compensation for its generation of within the band reactive power. The direction to remove its reactive power rate schedule effective November 1, 2005, is rescinded and it may recommence the collection of such charges effective as of the date of this order, subject to refund.” *KGen Hot Spring LLC*, 115 FERC ¶ 61,029 at P 8 (2006). The Commission also stated: “Because of the similarity of issues, for purposes of administrative efficiency, the Chief Administrative Law Judge may consolidate the hearing in this Docket No. ER05-1394-000 proceeding with other pending proceedings in Docket Nos. ER05-1358-000, ER05-1419-000, ER05-483-000, and ER05-977-000 involving the same issue of independent contractual authorization of independent generators for compensation from Entergy for the provision of within the band reactive power.”

19. On May 8, 2006, the Commission accepted the partial settlement agreement for the locked-in period. *See KGen Hinds LLC et al.*, 115 FERC ¶ 61,152 (2006).

#### *Hot Spring Power Company, LP*

20. The Interconnection Agreement between Hot Spring Power and Entergy Arkansas, Inc. was filed on February 14, 2002. On March 15, 2002, the Commission accepted the agreement for filing. *See Entergy Servs., Inc.*, Letter Order, Docket No. ER02-1023-000 (issued Mar. 15, 2002).

21. On August 31, 2005, Hot Spring Power filed a cost-based rate schedule specifying rates for providing Reactive Support and Voltage Control from Generation Sources Service in Docket No. ER05-1419-000. On September 21, 2005, Entergy filed a Motion to Intervene and Protest to Hot Spring Power’s filing. On October 6, 2005, Hot Spring Power filed an Answer to Entergy’s Protest.

22. On October 25, 2005, the Commission issued an order accepting and suspending the rate schedule. *See Hot Spring Power Company, LP*, 113 FERC ¶ 61,088 (2005). The Commission also held the hearing in abeyance and directed that a settlement judge be appointed. Finally, the Commission stated: “effective November 1, 2005, the charges proposed in the instant filing will become unjust and reasonable because they would recover within the band costs that Hot Spring Power is not permitted to recover on or after that date. Accordingly, within 15 days of this order, Hot Spring Power must file to remove the subject rate schedule from its tariff effective November 1, 2005.” *Id.* at P 14. Hot Spring Power sought rehearing of the Commission’s October 25<sup>th</sup> Order.

23. On March 16, 2006, Hot Spring Power and Entergy submitted an offer of settlement to dispose of all outstanding issues between them as related to the pre-November 1, 2005 locked-in period.

24. On April 10, 2006, the Commission issued an order granting rehearing, holding: “Accordingly, in the hearing established in this proceeding, Hot Spring Power may raise the issue of whether it has independent contractual authorization to obtain compensation for its generation of within the band reactive power. The direction to remove its reactive power rate schedule effective November 1, 2005, is rescinded and it may recommence the collection of such charges effective as of the date of this order, subject to refund.” *Hot Spring Power Company, LP*, 115 FERC ¶ 61,027 at P 8 (2006). The Commission also stated: “Because of the similarity of issues, for purposes of administrative efficiency, the Chief Administrative Law Judge may consolidate the hearing in the Docket No. ER05-1419-000 proceeding with other pending proceedings in Docket Nos. ER05-1358-000, ER05-1394-000, ER05-483-000, and ER05-977-000 involving the same issue of independent contractual authorization of independent generators for compensation from Entergy for the provision of within the band reactive power.”

25. On May 5, 2006, the Commission accepted the partial settlement agreement for the locked-in period. *See Hot Spring Power Company, LP*, 115 FERC ¶ 61,150 (2006).

#### *Cottonwood Energy Company LP*

26. The original Interconnection Agreement between Cottonwood and Entergy Gulf States, Inc. was filed on December 1, 2000. On January 8, 2001, the Commission accepted the agreement for filing. *See Entergy Operating Companies*, Letter Order, Docket No. ER01-550-000 (issued Jan. 8, 2001). On April 2, 2002, Entergy filed a second unexecuted Interconnection Agreement with the Commission in Docket No. ER02-1472-000. The Commission conditionally accepted the second Interconnection Agreement on May 31, 2002, and directed Entergy to make a compliance filing. *See Entergy Gulf States, Inc.*, 99 FERC ¶ 61,234 (2002). On February 28, 2003, Entergy filed the unexecuted version of an Interconnection Agreement in Docket No. ER02-1472-004 under protest. Although Cottonwood filed a protest to the compliance filing on March 21, 2003, neither its nor Entergy’s protest involve Section 4.7 of the Interconnection Agreement. To date, the Commission has neither acted upon the compliance filing nor the Cottonwood protest.

27. On January 24, 2005, Cottonwood filed a cost-based rate schedule specifying rates for providing Reactive Support and Voltage Control from Generation Sources Service in Docket No. ER05-483-000. On February 14, 2005, Entergy filed a Motion to Intervene and Protest to Cottonwood’s filing. On March 1, 2005, Cottonwood filed an Answer to

Entergy's Protest, and on March 9, 2005, Entergy filed an Answer to Cottonwood's March 1<sup>st</sup> Answer. Cottonwood filed an Answer to Entergy's March 9<sup>th</sup> Answer on March 17, 2005.

28. On March 23, 2005, the Commission issued an order accepting and suspending the rate schedule. *See Cottonwood Energy Company LP*, 110 FERC ¶ 61,303 (2005). The Commission also held the hearing in abeyance and directed that a settlement judge be appointed.

29. On September 20, 2005, the Commission issued an order clarifying "that parties are not precluded from developing a record on the issue of how Cottonwood is to be compensated for providing reactive power, including whether the compensation should be under the proposed rate schedule or section 4.7 of the Interconnection Agreement." *See Cottonwood Energy Co., L.P.*, 112 FERC ¶ 61,317 at P 9 (2005).

30. On October 28, 2005, Entergy filed a complaint against Cottonwood in Docket No. EL06-13-000, requesting that the Commission issue an order prohibiting Cottonwood from charging Entergy for reactive power, effective November 1, 2005, when such power is within a specified dead band. On November 17, 2005, Cottonwood filed an answer to Entergy's complaint. On December 2, 2005, Entergy filed an answer to Cottonwood's November 17<sup>th</sup> answer.

31. On April 10, 2006, the Commission denied Entergy's complaint against Cottonwood as premature, holding that the hearing in Docket No. ER05-483-000 "include[s] the issue of whether Cottonwood has an independent contractual right to compensation for within the band reactive power service as proposed." *See Entergy Servs., Inc. v. Cottonwood Energy Company LP*, 115 FERC ¶ 61,031 at P 20 (2006). The Commission also stated: "Because of the similarity of issues, for purposes of administrative efficiency, the Chief Administrative Law Judge may consolidate the hearing in the Docket No. ER05-483-000 proceeding with other pending proceedings in Docket Nos. ER05-1358-000, ER05-1394-000, ER05-1419-000, and ER05-977-000 involving the same issue of independent contractual authorization of independent generators for compensation from Entergy for the provision of within the band reactive power." *Id.* at P 22.

32. On May 19, 2006, Cottonwood and Entergy submitted an offer of settlement to dispose of all outstanding issues between them as related to the pre-November 1, 2005 locked-in period. A Commission decision on the settlement is pending.

*Union Power Partners, L.P.*

33. The original Interconnection Agreement between Union Power and Entergy

Arkansas, Inc. was filed on April 6, 2000. On May 10, 2000, the Commission accepted the agreement for filing. *See Entergy Arkansas, Inc.*, Letter Order, Docket No. ER00-2133-000 (issued May 10, 2000). On September 29, 2000, Entergy filed a revised Interconnection Agreement with the Commission in Docket No. ER00-3782-000. The Commission accepted the revised Interconnection Agreement on November 20, 2000. *See Entergy Servs., Inc.*, Letter Order, Docket No. ER00-3782-000 (issued Nov. 20, 2000). The Interconnection Agreement was subsequently re-filed with the Commission on March 1, 2001. On April 26, 2001, the Commission accepted the Interconnection Agreement for filing. *See Entergy Servs., Inc.*, Letter Order, Docket No. ER01-1367-000 (issued Apr. 26, 2001).

34. On May 17, 2005, Union Power filed a cost-based rate schedule specifying rates for providing Reactive Support and Voltage Control from Generation Sources Service in Docket No. ER05-977-000. On June 7, 2005, Entergy filed a Motion to Intervene and Protest to Union Power's filing. On June 23, 2005, Union Power filed an Answer to Entergy's Protest.

35. On July 15, 2005, the Commission issued an order accepting and suspending the rate schedule. *See Union Power Partners, L.P.*, 112 FERC ¶ 61,065 (2005). The Commission also held the hearing in abeyance and directed that a settlement judge be appointed.

36. On October 28, 2005, Entergy filed a complaint against Union Power in Docket No. EL06-14-000, requesting that the Commission issue an order prohibiting Union Power from charging Entergy for reactive power, effective November 1, 2005, when such power is within a specified dead band. On November 17, 2005, Union Power filed an answer to Entergy's complaint. On December 2, 2005, Entergy filed an answer to Union Power's November 17<sup>th</sup> answer.

37. On December 15, 2005, the Commission issued an order on rehearing, in Docket No. ER05-977-001, requiring Union Power to file to change its fixed charge rate. *See Union Power Partners, L.P.*, 113 FERC ¶ 61,272 (2005). On January 13, 2006, Union Power filed its revised reactive service rate schedule in accordance with the Commission's December 15<sup>th</sup> Order. On January 30, 2006, Union Power and Entergy submitted an offer of settlement to dispose of all outstanding issues between them as related to the pre-November 1, 2005 locked-in period. On February 14, 2006, the Commission issued a letter order accepting Union Power's revised rate schedule filed on January 13, 2006. *See Union Power Partners, L.P.*, Letter Order, Docket No. ER05-977-002 (issued Feb. 14, 2006).

38. On April 10, 2006, the Commission denied Entergy's complaint against Union Power as premature, holding that the hearing in Docket No. ER05-977-000 "include[s]

the issue of whether Union Power has an independent contractual right to compensation for within the band reactive power service.” *See Entergy Servs., Inc. v. Union Power Partners, L.P.*, 115 FERC ¶ 61,030 at P 20 (2006). The Commission also stated: “Because of the similarity of issues, for purposes of administrative efficiency, the Chief Administrative Law Judge may consolidate the hearing in the Docket No. ER05-977-000 proceeding with other pending proceedings in Docket Nos. ER05-1358-000, ER05-1394-000, ER05-1419-000, and ER05-483-000 involving the same issue of independent contractual authorization of independent generators for compensation from Entergy for the provision of within the band reactive power.” *Id.* at P 22.

39. On April 21, 2006, the Commission accepted the partial settlement agreement for the locked-in period. *See Union Power Partners, L.P.*, 115 FERC ¶ 61,091 (2006).

### c. Recent Procedural History

40. Following the April 10<sup>th</sup> Orders, the Chief Judge requested input on whether the five captioned dockets should be consolidated. *See* “Order of Chief Judge Requesting Input on Whether Proceedings Should be Consolidated,” issued April 21, 2006.

41. The parties conducted a telephone conference on April 24, 2006, where they agreed that the contractual authorization issue did not require a hearing, and agreed to consolidate the proceedings in order for the parties to file motions for summary disposition on the issue. The Chief Judge designated the undersigned to consider the motions for summary disposition and issue a Partial Initial Decision on the motions, if appropriate. *See* “Order of Chief Judge Consolidating Proceedings for Purposes of Considering Motions for Summary Disposition and Designation of Presiding Administrative Law Judge,” issued April 25, 2006 (April 25, 2006 Order).

42. On May 17, 2006, the undersigned issued an order requiring that motions for summary disposition be filed on or before July 10, 2006, and that answers be filed on August 7, 2006. The undersigned conducted oral argument on the pleadings on August 29, 2006.

## III. ISSUE ANALYSIS

43. As set forth in the April 25, 2006 Order, the sole issue before the undersigned for summary disposition is “whether [the Independent Generators] have independent contractual authorization to obtain compensation for their generation of reactive power within their specified power factor range (within the band).” For the reasons discussed more fully herein below, the answer must be no. While the undersigned concurs with the position of the Independent Generators that Section 4.7.1 provides them with independent contractual authorization to file a separate reactive service rate schedule with the

Commission, the language of Section 4.7.1 is clear that they are only entitled to obtain such compensation as may be approved by the Commission and such approval has not been forthcoming from the Commission based on established precedent.

#### **a. The Standards for Summary Disposition**

44. Rules 217 and 504<sup>4</sup> of the Commission's Rules of Practice and Procedure permit the Commission or the Presiding Administrative Law Judge to summarily dispose of all or part of a case where there is "no genuine issue of fact material to the decision." The Commission has stated that summary disposition is proper under the following conditions:

- (1) the proponent must have been afforded a reasonable opportunity to present arguments and factual support (written and oral) and that evidence must be viewed in its most favorable light; and
- (2) the Commission must find that a hearing is unnecessary and would not affect the ultimate disposition of an issue because there are no material facts in dispute or because the facts presented by the proponent have been accepted in reaching the decision.<sup>5</sup>

45. The parties have stipulated and agreed that there is no genuine issue of material fact and that this issue should be addressed by the undersigned by summary disposition.

#### **b. Relevant Contractual Provisions**

46. When interpreting a contract, "the plain and unambiguous meaning of the instrument is controlling."<sup>6</sup> Because both the Independent Generators and Entergy agree that the IOA language is clear,<sup>7</sup> there is no need to rely on extrinsic evidence in this case. The parties have affirmed that the only contract provision relevant to this inquiry is Section 4.7.1 of the Interconnection Agreements.<sup>8</sup> Section 4.7.1 of four of the five

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<sup>4</sup> 18 C.F.R. §§ 385.217 (b) and 385.504 (b) (9) (2006).

<sup>5</sup> See *Coastal States Marketing, Inc. v. Texas-New Mexico Pipeline Co.*, 25 FERC ¶ 61,164 at 61,452 (1983).

<sup>6</sup> Independent Generators' Motion at 3.

<sup>7</sup> In Section II.4 of their Motion, the Independent Generators argue that the undersigned should construe the language in Section 4.7.1 against the drafter, Entergy. Independent Generators' Motion at 10. As both Entergy and the Independent Generators believe the contract is not ambiguous, Entergy submits that the policy of construing against the drafter contained in the Restatement (Second) of Contracts § 206 is not applicable to the situation here. Entergy's Answer at 6, n. 9.

<sup>8</sup> See Oral Argument Tr. at 14-15.

Interconnection Agreements at issue provides the following:<sup>9</sup>

Customer will supply reactive power to the [Entergy] Transmission System in accordance with Good Utility Practice. ... In the event the Customer supplies reactive power to the [Entergy] Transmission System, [Entergy] will pass through to the Customer amounts [Entergy] receives or is allocated for the provision of such reactive power under the Entergy Transmission Tariff.

At such time as FERC or another regulatory agency with jurisdiction over the sale or provision of reactive power at market-based rates ***accepts*** a tariff, rate schedule, or market mechanism for reactive power services

or ***otherwise permits Customer to charge [Entergy]*** and/or other users for reactive power services provided by Customer,

or in the event of any other change in law or regulation ***that permits Customer to assess*** market-based charges

or ***otherwise seek reimbursement*** for its provision of reactive power services,

Customer ***shall be entitled to compensation*** for reactive power services *at market-based rates* from its customer using the reactive power services, which may include [Entergy], ***in accordance with the terms and conditions of such tariff, rate schedule, market mechanism, or other legal or regulatory scheme***. In such event, the compensation provisions of this Section 4.7.1 shall no longer apply to the Parties.

47. Union Power's Interconnection Agreement contains a slightly different version of Section 4.7.1, with minor changes to the last paragraph as described herein below;<sup>10</sup> however, the parties are in full agreement that the differences are not material for purposes of ascertaining the general intent of Section 4.7.1.<sup>11</sup>

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<sup>9</sup> Please note that spacing, indentions and italics have been added by the undersigned to facilitate analysis.

<sup>10</sup> Although Section 4.7.1 of Union Power's Interconnection Agreement is slightly different from the other Interconnection Agreements at issue, as discussed in the Independent Generators' Motion at 7-9, Entergy characterized these changes as minor differences.

<sup>11</sup> See Independent Generators' Motion at 7-9; Entergy Answer at 14.

Customer *shall be entitled to compensation* for reactive power services at *market-based or tariff rates* from its customer using the reactive power services, which may include [Entergy], *only in accordance with the terms and conditions of such tariff, rate schedule, market mechanism, or other legal or regulatory scheme.*

48. The parties acknowledge that there is no dispute regarding the pass-through provision of Section 4.7.1, and for the period from the execution of the IOAs through November 1, 2005, the pass-through provision governed compensation to the Independent Generators under the IOAs for reactive power provided within the dead band. However, Entergy-owned generators no longer receive compensation for reactive power under Schedule 2 as of November 1, 2005, effectively mooting the pass-through provision and giving rise to the question of whether Section 4.7.1 provides for any other means of compensation for reactive power provided within the dead band.

**c. Section 4.7.1 Provides Independent Generators With an Independent Contractual Right to Seek Commission Approval of a Rate Schedule for Reactive Power.**

49. Section 4.7.1 does provide for another means of compensation for reactive power provided within the dead band besides the pass-through provision. Entergy has conceded that Section 4.7.1 provides the Independent Generators with an independent contractual right to file a Section 205 rate schedule with the Commission seeking compensation for reactive power provided within the dead band; however, Entergy maintains that “[n]othing in the IOAs, and in particular, nothing in Section 4.7.1 provides the Independent Generators the explicit right to file a proposed reactive power tariff based on the *AEP* methodology that trumps the Commission’s precedent and the principles of comparability.”<sup>12</sup> That is, Entergy argues that merely making a Section 205 filing does not entitle the Independent Generators to compensation under Section 4.7.1; rather, Section 4.7.1 specifically requires Commission *approval* of any such rate schedule or tariff and none is forthcoming here based on application of established Commission precedent on this issue. Independent Generators maintain that Section 4.7.1 provides them with a broad based right to seek Commission approval of a rate schedule for compensation for reactive power provided within the band without limitation to a market-based rate methodology and that they are entitled to such compensation utilizing the *AEP* methodology.<sup>13</sup>

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<sup>12</sup> Entergy Motion at 3.

<sup>13</sup> Oral Argument Tr. at 13.

50. Independent Generators are correct in asserting that Section 4.7.1 provides them with a broad based right to seek Commission approval of a rate schedule for reactive power provided within the band without limitation to whether such a filing is based on a market-based or cost-based rate methodology. The slightly different version of Section 4.7.1 found in Union Power's Interconnection Agreement clearly supports a finding that the "*at market-based rates*" language was not intended to limit the filing rights of Independent Generators. Furthermore, the parties are in agreement that the differences, which now include a specific reference to market-based *or* tariff rates, are not material for purposes of ascertaining the general intent of Section 4.7.1.<sup>14</sup> Indeed, during the oral argument held on August 29, 2006 before the undersigned regarding this issue, Entergy affirmed that the heart of their argument is simply that while Section 4.7.1 may provide an independent contractual right to file a rate schedule with the Commission seeking compensation for reactive power provided within the band, entitlement to any such compensation must be based on Commission approval of the filed rate schedule and that nothing in Section 4.7.1 waives Entergy's rights to challenge the justness and reasonableness of such a filing or "trumps the Commission's precedent and the principles of comparability"<sup>15</sup> as a defense to such a filing.<sup>16</sup>

51. On this last point, the undersigned must agree with Entergy. While Section 4.7.1 of the Independent Generators' respective Interconnection Agreements provide them with the separate, independent contractual right to seek compensation for providing reactive power services at market-based or tariff rates, those same IOAs specifically provide that the "*Customer shall be entitled to compensation for reactive power services... in accordance with the terms and conditions of such tariff, rate schedule, market mechanism, or other legal or regulatory scheme.*" The fact that the Commission must approve "*...the terms and conditions of such tariff, rate schedule, market mechanism, or other legal or regulatory scheme*" before the Independent Generators can obtain compensation for reactive power provided within the dead band is a matter of statute under the Federal Power Act, as well as a matter of contract language under 4.7.1.

52. Thus, it is clear that having the contractual right *to seek* compensation for reactive power provided within the dead band is not the same as having the contractual right *to obtain* compensation for reactive power provided within the band. The Federal Power Act requires that the Commission determine the justness and reasonableness of the reactive power rate schedule, and Section 4.7.1 specifically provides that entitlement to compensation will be "*...[a]t such time as FERC ... permits Customer to charge [Entergy] and/or other users for reactive power services provided by Customer...in accordance with the terms and conditions of such tariff, rate schedule, market*

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<sup>14</sup> See Independent Generators' Motion at 7-9; Entergy Answer at 14.

<sup>15</sup> Entergy Motion at 3.

<sup>16</sup> Oral Argument Tr. at 22-23.

*mechanism, or other legal or regulatory scheme.”*

53. The Independent Generators are correct in observing that the Commission has held “[t]o the extent that certain protestors argue that they have an independent contractual right to compensation, they are free to pursue their claims in proceedings focused on their individual contracts; in fact, there are already pending proceedings involving most of these protestors.”<sup>17</sup> But here, neither Section 4.7.1 nor any other contract language that the Independent Generators can point to in their IOAs provide for an independent contractual right to obtain compensation other than the pass-through provision or by means of a FERC approved rate schedule or tariff. Thus, while Section 4.7.1 does not limit in any way the Independent Generators’ right to file a rate schedule with the Commission seeking to recover compensation for reactive power provided within the band, neither does Section 4.7.1 limit in any way Entergy’s right to defend against such a filing, including any defense arising out of the Commission’s comparability precedent which Entergy has cited at length in its Motion For Summary Disposition. Indeed, the Independent Generators concede this point:<sup>18</sup>

PRESIDING JUDGE: Do the Independent Generators contend that 4.7.1 serves as a waiver in any way to Entergy's right to argue defenses to a rate schedule for compensation for reactive service within the band?

MR. LEVY: No, your Honor. We filed those rate schedules under 4.7.1 as well as under the comparability provisions of Order 2003 and never argued in those cases that Entergy was precluded from challenging those rates and in fact challenged those rates in all five cases.

#### **d. Commission Precedent Precludes Recovery For Reactive Power Provided Within The Dead Band**

54. The proper framework for analyzing the question of whether the Independent Generators have established an entitlement to compensation for reactive power provided within the dead band for the period after November 1, 2005, is the Commission’s October 14, 2005 Order in Docket Nos. EL05-149, ER05-1432 and EL06-2.<sup>19</sup>

55. In the October 14, 2005 Order, the Commission granted a Petition for Declaratory

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<sup>17</sup> *Entergy Servs., Inc.*, 113 FERC ¶ 61,040 at n. 17 (2005) (October 14, 2005 Order), *order denying reh’g*, 114 FERC ¶ 61,303 (2006).

<sup>18</sup> Oral Argument Tr. at 24.

<sup>19</sup> See October 14, 2005 Order, 113 FERC ¶ 61,040.

Order filed by Entergy and affirmed that if Entergy does not compensate its own or affiliated generators for reactive power provided within the dead band, then Entergy need not compensate a non-affiliated generator for providing reactive power within the dead band on a prospective basis.<sup>20</sup> In the same order, the Commission accepted Entergy's proposal to set to zero the charge levied by Entergy for the provision of reactive power within the dead band from its own generating units effective as of November 1, 2005.<sup>21</sup> Immediately thereafter, in three separate orders issued on October 14, 2005, October 20, 2005 and October 25, 2005, the Commission ruled that on a prospective basis, certain of the Independent Generators (KGen Hinds, KGen Hot Spring and Hot Spring) were no longer allowed to charge Entergy for reactive power effective November 1, 2005.<sup>22</sup> In a series of orders issued on April 10, 2006, the Commission stated that the Independent Generators were permitted to raise in their respective service rate schedule proceedings the issue of whether they had independent contractual authorizations to obtain compensation for their generation of within-the-bandwidth reactive power.<sup>23</sup> However, because Section 4.7.1 merely provides an independent contractual right to seek FERC approval for market-based or tariff rates for reactive power provided within the dead band, and does not serve to waive any of Entergy's defenses to such a rate filing, substantive resolution of the issue of the Independent Generators' entitlement to compensation must be determined based on established Commission precedent.

56. In Order No. 2003,<sup>24</sup> the Commission concluded that an interconnection customer should not be compensated for reactive power when operating within its established power factor range.<sup>25</sup> Under Order No. 2003, the required power factor range is 0.95 leading (consuming) and 0.95 lagging (supplying), but the transmission provider may

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<sup>20</sup> *Id.* at P 1.

<sup>21</sup> *Id.*

<sup>22</sup> See *KGen Hinds LLC*, 113 FERC ¶ 61,041 at P 14 (2005); *KGen Hot Spring LLC*, 113 FERC ¶ 61,071 at P 14 (2005); *Hot Spring Power Co., LP*, 113 FERC ¶ 61,088 at P 14 (2005).

<sup>23</sup> See *Entergy Servs., Inc. v. Cottonwood Energy Co. LP*, 115 FERC ¶ 61,031 at P 20 (2006); *Entergy Servs., Inc. v. Union Power Partners, L.P.*, 115 FERC ¶ 61,030 at P 20 (2006); *KGen Hinds LLC*, 115 FERC ¶ 61,028 at P 8 (2006); *KGen Hot Spring LLC*, 115 FERC ¶ 61,029 at P 8 (2006); *Hot Spring Power Co., LP*, 115 FERC ¶ 61,027 at P 8 (2006). See also *Entergy Servs., Inc.*, 113 FERC ¶ 61,040 at n.17.

<sup>24</sup> *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 104 FERC ¶ 61,103 (2003) (Order No. 2003), *order on reh'g*, Order No. 2003-A, 106 FERC ¶ 61,220 (2004) (Order No. 2003-A), *order on reh'g*, 109 FERC ¶ 61,287 (2004) (Order No. 2003-B), *order on reh'g*, Order No. 2003-C, 111 FERC ¶ 61,401 (2005) (Order No. 2003-C).

<sup>25</sup> Order No. 2003, 104 FERC ¶ 61,103 at P 546.

establish a different power factor range.<sup>26</sup> The power factor range, or dead band, specified in the IOAs at issue in these proceedings is narrower (*i.e.*, 0.97 leading and 0.95 lagging). While the Commission determined that the transmission provider must compensate the interconnection customer for reactive power during an emergency where the interconnection customer provides reactive power outside the power factor range, that is not an issue in this proceeding. The Commission has explained that, unlike reactive power supplied outside the dead band, which is a compensable ancillary service for transmitting power across the grid to serve load,<sup>27</sup> reactive power provided within the dead band is an industry standard that is required to permit the interconnection customer to deliver its power to the grid in accordance with good utility practice (*i.e.*, without degrading the reliable operation of the transmission grid) and is, therefore, not compensable.<sup>28</sup> In the Commission's words:

[o]ne concept deals with reactive power as an ancillary service for transmitting power across the grid to serve load. This is different from the second concept, which involves requiring load and generation to operate within a dead band specified under good utility practices. . . . The reactive power needed to deliver the generation output to a load located off the transmission provider's system must be supplied at the right points across the entire transmission system in order to maintain acceptable voltage levels. [A generator that] is not supplying the transmission provider with reactive power for moving the power to serve load. . . . is [merely] meeting its obligation as a generator to maintain the appropriate power factor in order to maintain voltage levels for energy entering the grid during normal operations.<sup>29</sup>

57. Given these two subsets of reactive power, the Commission has consistently stated that "a generator need not be compensated for providing reactive power within its design

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<sup>26</sup> *Id.* at P 542.

<sup>27</sup> *See Arizona Pub. Serv. Co.*, 95 FERC ¶ 61,128 at 61,409 (2001).

<sup>28</sup> *See id.*

<sup>29</sup> *Id.* (footnotes omitted). The power factor range, or dead band, specified in the IA at issue in the *Arizona Public Service Co.* proceeding was 0.95 leading and 0.95 lagging. *See id.* This is the same power factor range specified in Order No. 2003 and the *pro forma* Large Generator Interconnection Agreement (LGIA). *See* Order No. 2003-B, 109 FERC ¶ 61,287 at P 109 (2004) *citing* LGIA article 9.6.1. As mentioned, the dead bands in the IOAs at issue in these proceedings are narrower (*i.e.*, 0.97 leading and 0.95 lagging).

limitations”<sup>30</sup> and specifically rejected requests for compensation in such circumstances.<sup>31</sup>

58. In Order No. 2003-A, the Commission clarified that if a transmission provider pays its own or its affiliated generators for reactive power within the established range, it must also pay the interconnection customer.<sup>32</sup> Thus, the only exception to the general rule regarding no-compensation for reactive power provided within the dead band, other than as may be separately contracted between parties, is triggered by Commission concern regarding the potential for undue discrimination. Accordingly, in *METC II* the Commission stated that transmission providers must compensate an independent generator to the same degree that the transmission provider compensates an affiliate.<sup>33</sup> However, in the instant proceeding the Independent Generators do not dispute that as a result of the Commission’s order on the Petition for Declaratory Order filed by Entergy, effective as of November 1, 2005, they do not have a right to receive reactive service compensation based on comparability.

#### IV. SUMMARY AND CONCLUSION

59. The Independent Generators do not dispute that as a result of the Commission’s October 14, 2005 Order, effective as of November 1, 2005, they do not have a right to receive reactive service compensation based on comparability. However, the Independent Generators maintain that Section 4.7.1 gives them the right to file a separate reactive service rate schedule with the Commission and that they are entitled to obtain compensation in accordance with such rate schedule.<sup>34</sup> This contention fails to acknowledge, however, that both the contract language of Section 4.7.1 and Section 205 of the Federal Power Act require Commission *approval* of the rate schedule. However, the Independent Generators have acknowledged that merely filing a rate schedule with the Commission does not constitute Commission *approval* of the rate schedule and that challenges to the rate schedule must be fully adjudicated before the Commission. Neither

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<sup>30</sup> *Michigan Elec. Transmission Co.*, 96 FERC ¶ 61,214 at 61,906 (*METC I*), *order on reh’g*, 97 FERC ¶ 61,187 (2001) (*METC II*); *see also Consumers Energy Co.*, 94 FERC ¶ 61,230 at 61,834 (finding reasonable that, “as a condition of interconnecting to the Transmission Provider’s system, [the IA] requires the generator to provide equipment, at its own cost, to meet its reactive power obligations as provided for in [the IA].”), *clarified*, 95 FERC ¶ 61,131 (2001).

<sup>31</sup> *See, e.g., METC II*, 97 FERC ¶ 61,187 at 61,852.

<sup>32</sup> Order No. 2003-A, 106 FERC ¶ 61,220 at P 416.

<sup>33</sup> *METC II*, 97 FERC ¶ 61,187 at 61,852-53 (directing transmission providers to compensate independent generators for maintaining reactive power to the same degree, terms and conditions that it compensates its affiliate for maintaining reactive power).

<sup>34</sup> Independent Generators’ Motion at 4-5.

Section 4.7.1, nor any other contract language that the Independent Generators can point to in the their IOAs, provide for an independent contractual right to obtain compensation for reactive power provided within the dead band other than the pass-through provision of Section 4.7.1 or by means of a FERC approved rate schedule or tariff.<sup>35</sup> Because Section 4.7.1 merely provides an independent contractual right to seek FERC approval for market-based or tariff rates for reactive power provided within the dead band, and does not serve to waive any of Entergy's defenses to such a rate filing, substantive resolution of the issue of the Independent Generators' entitlement to compensation must be determined based on established Commission precedent.<sup>36</sup> That precedent clearly provides that reactive power provided within the dead band is an industry standard that is required to permit the interconnection customer to deliver its power to the grid in accordance with good utility practice (*i.e.*, without degrading the reliable operation of the transmission grid) and is, therefore, not compensable.<sup>37</sup>

60. The Commission has recently reaffirmed its precedent on reactive power provided within the dead band in the order issued in *Calpine Oneta Power, L.P.* on September 26, 2006.<sup>38</sup> The Commission has again emphasized that, absent comparability concerns,<sup>39</sup> an interconnecting generator should *not* be compensated for reactive power when operating *within* the established power factor range, since it is *only* meeting its obligation.<sup>40</sup> Generators interconnected to a transmission provider's system need only be compensated where the transmission provider directs the generator to operate *outside* the established power factor range.<sup>41</sup> It is the determination of the undersigned that nothing in Section

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<sup>35</sup> All five Interconnection Agreements predate Order No 2003-A, 106 FERC ¶ 61,220. See Joint Background, *supra*, at P 8, 14, 20, 26, 33.

<sup>36</sup> See Order No. 2003, 104 FERC ¶ 61,103 at P 546; *Arizona Pub. Serv. Co.*, 95 FERC ¶ 61,128 at 61,409.

<sup>37</sup> *Id.*

<sup>38</sup> *Calpine Oneta Power, L.P.*, 116 FERC ¶ 61,282 (2006) (*Calpine Oneta*).

<sup>39</sup> See *e.g.*, *METC II*, 97 FERC ¶ 61,187 at 61,852-53 (2001) ("the need to treat all generation interconnection customers comparably underlies the need for a *pro forma*. To that end, it is hardly consistent to allow an affiliate to have different and/or superior terms and conditions for interconnection than non-affiliates . . . [W]e direct Michigan Electric to compensate Generators for providing reactive power to the same degree that it will compensate its affiliate, Consumers, for providing reactive power"). See also Order No. 2003-A, 106 FERC 61,220 at P 416 (comparability of compensation); *accord* Order No. 2003-B, 109 FERC ¶ 61,287 at P 113, 119; October 14, 2005 Order, 113 FERC ¶ 61,040 at P 22-24, 38-39.

<sup>40</sup> *Calpine Oneta*, 116 FERC ¶ 61,282 at P 26, *citing Consumers Energy Co.*, 93 FERC ¶ 61,339 at 62,154, *order on reh'g*, 94 FERC ¶ 61,230 at 61,834 (2001); Order No. 2003, 104 FERC ¶ 61,103 at P 546 (emphasis added).

<sup>41</sup> *Id.* *citing METC II*, 97 FERC ¶ 61,187 at 61,852 ("[T]o the extent that reactive

4.7.1 or elsewhere in the IOAs would provide for a different result. Consequently, the undersigned finds and concludes that the Independent Generators do not have independent contractual authorization to obtain compensation for their generation of reactive power within their specified power factor range (within the band).

**SO ORDERED.**

**Bobbie J. McCartney**  
**Presiding Administrative Law Judge**

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power is provided as an ancillary service, and thus outside reactive design limitation, Generators would be entitled to compensation.”); *see also Detroit Edison Co.*, 95 FERC ¶ 61,145 at 62,538 (2001) (“A generator is required to supply reactive power in order to operate the facility in a safe and reliable manner and in accordance with good utility practice. If, however, a transmission provider requests a generator to increase or decrease reactive power output, the generator must be compensated by the transmission provider.”).