

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

KGen Hot Spring LLC

Docket No. ER05-1394-000

ORDER ACCEPTING AND SUSPENDING PROPOSED RATE SCHEDULE AND
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued October 20, 2005)

1. On August 25, 2005, KGen Hot Spring LLC (Hot Spring)¹ filed a proposed rate schedule (KGen Hot Spring LLC Rate Schedule FERC No. 1) specifying its cost-based revenue requirement for providing Reactive Support and Voltage Control from Generation Sources Service (reactive power) from its natural gas-fired, combined cycle electric generation facility (Facility) located in Hot Spring County, Arkansas. Hot Spring requests that the Commission grant any necessary waivers and accept the proposed rate schedule effective August 26, 2005. As discussed below, we waive the notice period and accept the proposed rate schedule for filing, suspend it for a nominal period, to become effective August 26, 2005, through October 31, 2005, subject to refund and conditions, and establish hearing and settlement judge procedures.

¹ Hot Spring states that it is a Delaware limited partnership created solely for the purpose of owning the Facility. Hot Spring is wholly-owned by KGen Power LLC, which in turn is wholly owned by KGen LLC. Hot Spring is authorized to make wholesale sales of power at market-based rates. See *Duke Energy Hot Spring, LLC*, Letter Order, Docket No. ER02-694-000 (issued February 28, 2002).

I. The Instant Filing

2. Hot Spring states that it owns and operates an approximately 620 MW natural gas-fired, combined-cycle generation facility located in Hot Spring County, Arkansas, in Entergy Arkansas, Inc.'s (Entergy Arkansas) control area. It states that the Facility has never been owned by an investor-owned vertically integrated utility; nor have the Facility's costs been included in the rate base of a load-serving entity. Hot Spring states that its obligation to provide reactive power to Entergy Arkansas and its right to receive compensation for such service is set forth in section 4.7 of the Interconnection and Operating Agreement (IOA) by and between Duke Energy Hot Spring, LLC and Entergy Arkansas. Hot Spring states that Order No. 2003-A² further establishes its right to receive compensation for reactive power because Entergy-owned generation receives payment for reactive power.

3. The proposed reactive power rate schedule sets forth a cost-based annual revenue requirement of \$1,111,844.19, which equates to a monthly charge of \$92,653.68. The revenue requirement is broken into three components: (1) fixed costs attributable to reactive power production capability (Fixed Capability Component); (2) increased generator and step-up transformer heating losses that result from the production of reactive power (Heating Losses Component); and (3) lost opportunity costs in the event the Facility is directed to modify its energy output to produce additional reactive power (Lost Opportunity Cost Component).

4. Hot Spring states that because it is a non-utility generator not generally subject to traditional rate regulation, and what it terms as the relatively small revenue requirements proposed in its filing, it has sought to avoid any potential issues regarding return on equity in this filing by incorporating in its annual carrying cost, a conservative return on equity based on a proxy of a Commission-accepted percentage reflected in an Entergy Services, Inc.'s filing on behalf of the Entergy Corporation operating companies, including Entergy Arkansas, the transmission owner with which the Facility is interconnected.

² Order No. 2003-A, 69 Fed. Reg. 15,932 (Mar. 26, 2004), FERC Stats. & Regs., ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, 70 Fed. Reg. 265 (Jan. 4, 2005), FERC Stats & Regs. ¶ 31,171 at P 56 (2004), *order on reh'g*, Order No. 2003-C, 70 Fed. Reg. 37,661 (June 30, 2005), FERC Stats. & Regs. ¶ 31,190 (2005).

5. Hot Spring requests waiver of the Commission's 60-day prior notice requirement so that its proposed rate schedule may become effective on August 26, 2005. Hot Spring also requests waiver of the detailed cost of service requirements set forth in Part 35, many of which it claims are not applicable to a charge for Reactive Service, and of various other regulations in Part 35.

II. Notice of Filing, Interventions and Protests

6. Notice of Hot Spring's filing was published in the *Federal Register*, 70 Fed. Reg. 52,999 (2005) with comments, interventions, and protests due on or before September 15, 2005. On September 15, 2005, Entergy filed a motion to intervene and protest.

7. In its protest, Entergy argues that Hot Spring's proposed reactive power charges are contrary to the terms of the IOA between Hot Spring and Entergy Arkansas. Entergy states that section 4.7.1 of the IOA sets forth the interconnection customer's obligation to supply reactive power within the established dead band. Entergy argues that Hot Spring is only obligated to provide reactive power if its facilities are operating and then only within the power factor range required by the IOA and Good Utility Practice. Entergy states that if Hot Spring is not operating, it is not obligated to provide reactive power. Entergy also states that section 4.7.1 provides for use-based compensation for reactive power, compensation only when Hot Spring actually provides the service, and not the rate design proposed by Hot Spring. Entergy also argues that the IOA allows Hot Spring to file a market-based rate schedule for reactive power but that Hot Spring has submitted an "alleged" cost-based rate, which is not allowed by the IOA. According to Entergy, the IOA allows Hot Spring to request compensation for reactive power produced outside the dead band if such is requested by Entergy to alleviate an emergency.

8. Entergy also argues that Hot Spring's proposed imposition of a reactive power charge is unjustified and contrary to the Commission's self-supply policies, that the specific reactive power charges that Hot Spring seeks to impose are not supported by its filing, and that the Commission should find that the filing is deficient. If the Commission should find that the filing is not deficient, Entergy requests that the Commission deny Hot Spring's requested waiver of the prior notice requirements, suspend the proposed rate for the maximum period and set it for hearing.

9 On September 30, 2005, Hot Spring filed a response to Entergy's protest.

III. Discussion

A. Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely unopposed motion to intervene filed by Entergy serves to make 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) (2005), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept Hot Spring's answer and will, therefore, reject it.

11. Hot Spring requests waiver of the Commission's notice requirements so that its proposed reactive power rate schedule may become effective on August 26, 2005, which is the day after the date of filing. For good cause shown under the circumstances of this case and as discussed in Hot Spring's filing, we will grant waiver of the notice requirement and accept the filing, subject to refund and to the outcome of the hearing and settlement judge procedures, effective August 26, 2005, as proposed. For good cause, we will also grant Hot Spring's request for waiver of the detailed cost of service requirements of Part 35 of the Commission's Regulations. Hot Spring is a non-utility generator not generally subject to traditional rate regulation. However, Hot Spring is on notice that it bears the burden of proving that its proposed charges are just and reasonable based on the materials included in its filing.

B. Suspension and Hearing

12. The proposed rate schedule submitted by Hot Spring raises issues of material fact that cannot be resolved on the record before us, and are more appropriately addressed in the hearing and settlement judge procedures ordered below.

13. The Commission's preliminary analysis of Hot Spring's filing indicates that it has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Accordingly, we will accept Hot Spring's proposed rate schedule for filing, find that under the circumstances of this case, the filing warrants a shortened suspension period and, therefore, suspend it for a nominal period, to become effective August 26, 2005, subject to refund, and set it for hearing and settlement judge procedures as ordered below.

14. In an order issued on October 14, 2005 in Docket No. ER05-1432-000, we accepted a proposal filed by Entergy to set to zero the charge currently levied by Entergy for the provision of reactive power from its own generating units, effective November 1, 2005.³ In that order we also granted in Docket No. EL05-149-000 an associated petition for declaratory order by Entergy that, if Entergy does not compensate its own or affiliated generators for reactive power service provided to transmission customers within the generators' specific power factor range (or "dead band"), then Entergy need not on a prospective basis compensate a non-affiliate generator for maintaining reactive power within its dead band under Order No. 2003. As a consequence, effective November 1, 2005, Hot Spring and other reactive power generators will no longer be permitted to charge Entergy for costs related to within the band reactive power provided to Entergy. This means that the hearing established herein will only determine Hot Spring's reactive power revenue requirements for the period August 26, 2005 through October 31, 2005. Consistent with our October 14, 2005 Order issued in Docket No. EL05-149-000, *et al.*,⁴ effective November 1, 2005, the charges proposed in the instant filing will become unjust and unreasonable 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 the date of this order, Hot Spring must file to remove the subject rate schedule from its tariff effective November 1, 2005. This action is without prejudice to Hot Spring filing under section 205 of the FPA to implement a rate schedule and revenue requirement for outside the band reactive power to be effective on or after November 1, 2005.

15. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to rule 603 of the Commission's Rules of Practice and Procedure.⁵ If the parties desire, they may, by mutual agreement, request a specific judge in the proceeding. Otherwise, the Chief

³ *Entergy Services, Inc.*, 113 FERC ¶ 61,040 (2005).

⁴ *See also, KGen Hinds LLC*, 113 FERC ¶ 61,041 (2005).

⁵ 18 C.F.R. § 385.603 (2005).

Judge will select a judge for this purpose.⁶ The settlement judge shall report to the Chief Judge and Commission within sixty days of the date of this order concerning the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for the commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) Waiver of the 60-day notice requirement is granted and the proposed rate schedule is hereby accepted for filing, and suspended for a nominal period, to become effective August 26, 2005, through October 31, 2005, subject to refund, and subject to the conditions of this order, as discussed in the body of this order.

(B) 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 sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of the proposed rate schedule. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2005), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge by telephone within five (5) days of the date of this order.

⁶ If the parties decide to request a specific judge, they must make their request to the Chief Judge by telephone at 202-502-8500 within five days of this order. The Commission's website contains a listing of Commission judges and a summary of their background and experience (www.ferc.gov-click on Office of Administrative Judges).

(D) Within sixty (60) days of the date of this order, the settlement judge shall file a report with the Chief Judge and with the Commission on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Chief Judge and the Commission of the parties' progress towards settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a pre-hearing conference in these proceedings in a hearing room of the Commission, 888 First Street, N.E., Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.