

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Entergy Services, Inc.

Docket Nos. ER05-1432-004,
EL05-149-003,
and EL06-2-004

ORDER REJECTING REQUEST FOR REHEARING

(Issued June 28, 2006)

1. In an earlier October 14, 2005 Order,¹ the Commission granted Entergy Services, Inc.'s petition for a declaratory order on behalf of the Entergy Operating Companies² (collectively, Entergy) regarding Entergy's obligation to compensate third-party generators for Reactive Supply and Voltage Control from Generation Sources service (reactive power) within their specified power factor range (dead band). The October 14, 2005 Order also accepted Entergy's revisions to Schedule 2 under its Open Access Transmission Tariff (OATT or Tariff) to establish a zero rate for Entergy's charge to its transmission customers for Entergy's provision of reactive power within the dead band from its own or affiliated generating units. As relevant here, in the March 23, 2006 Order,³ the Commission denied timely requests for rehearing from Independent

¹ *Entergy Services, Inc.*, 113 FERC ¶ 61,040 (2005) (October 14, 2005 Order).

² Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc.

³ *Entergy Services, Inc.*, 114 FERC ¶ 61,303 (2006) (March 23, 2006 Order).

Generators⁴ and Occidental Chemical Corporation (Occidental). The NRG Companies⁵ seek rehearing of the Commission's March 23, 2006 Order. In this order, we reject the NRG Companies' rehearing request.

I. Background

2. On September 2, 2005, Entergy filed a petition for a declaratory order requesting that the Commission confirm that, if Entergy does not compensate its own or affiliated generators for reactive power within the generator's dead band, then Entergy need not, on a prospective basis, compensate an unaffiliated generator for reactive power within its dead band. Also, on September 2, 2005, Entergy submitted revised tariff sheets to Schedule 2 to, as relevant here, set to zero the rate currently charged by Entergy for reactive power from its own and affiliated generators. In the October 14, 2005 Order, the Commission agreed that, if Entergy did not compensate its own or affiliated generators for reactive power within the dead band, then Entergy need not compensate unaffiliated generators for reactive power within the dead band.⁶ The Commission also accepted the Entergy revisions to Schedule 2 of its Tariff to set to zero the rate paid to its own and affiliated generators for reactive power within the dead band.⁷

3. Independent Generators and Occidental filed requests for rehearing of the October 14, 2005 Order. The Commission denied rehearing.⁸

⁴ Calpine Corporation, Cottonwood Energy Company LP, KGen Power Management Inc., Suez Energy North America, Inc., and Union Power Partners, LP.

⁵ Bayou Cove Peaking Power LLC, Big Cajun I Peaking Power LLC, Louisiana Generating LLC, NRG Power Marketing, Inc., and NRG Sterlington Power LLC.

⁶ October 14, 2005 Order, 113 FERC ¶ 61,040 at P 22-24.

⁷ *Id.* at P 25, 27, 38-39. Separately, this order also established hearing procedures and a section 206 investigation to address the justness and reasonableness of Entergy's proposed pass-through of the third party reactive power charges. *Id.* at P 40-45.

⁸ March 23, 2006 Order, 114 FERC ¶ 61,303 at P 14-18.

4. The NRG Companies seek rehearing of the Commission's March 23, 2006 Order that denied rehearing. First, the NRG Companies claim that the Commission's March 23, 2006 Order violates the Federal Power Act (FPA) by improperly restricting the right of a generator to seek just and reasonable compensation for reactive power service it provides within the dead band. They, under section 205,⁹ claim that the Commission misconstrued Order 2003¹⁰ to restrict a generator's right to seek compensation for reactive power within its dead band, even if the transmission provider chooses not to compensate its own or affiliated generators. Second, they argue that the Commission, in the absence of an adequate factual record, incorrectly found that Entergy was not compensating its own or affiliated generators for reactive power.

II. Discussion

5. We reject the NRG Companies' rehearing request. The Commission does not allow rehearing of an order denying rehearing.¹¹ Any other result would lead to never-ending litigation as every response by the Commission to a party's arguments would allow yet another opportunity for rehearing.¹² Litigation before the Commission cannot be allowed to drag on indefinitely – at some point it must end. So, the Commission does not allow parties to seek rehearing of an order denying rehearing. And, as the District of

⁹ 16 U.S.C. § 824d (2000).

¹⁰ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2005), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005).

¹¹ *See, e.g., KeySpan-Ravenswood, LLC v. New York Independent System Operator, Inc.*, 112 FERC ¶ 61,153 (2005); *Southern Company Services, Inc.*, 111 FERC ¶ 61,329 (2005); *AES Warrior Run, Inc. v. Potomac Edison Company d/b/a Allegheny Power*, 106 FERC ¶ 61,181 (2004); *Southwestern Public Service Co.*, 65 FERC ¶ 61,088 at 61,533 (1993).

¹² *Accord, e.g., Canadian Association of Petroleum Producers v. FERC*, 254 F.3d 289, 296 (D.C. Cir. 2001) (rejecting the notion of “infinite regress” that would “serve no useful end”).

Columbia Circuit has put it, even “an improved rationale” would not justify a further request for rehearing.¹³

6. Rehearing of an order on rehearing lies only when the order on rehearing modifies the result reached in the original order in a manner that gives rise to a wholly new objection.¹⁴ Here, that is not the case. Here, the March 23, 2006 Order denied rehearing and affirmed the findings in the October 14, 2005 Order. There was no significant modification that would warrant a possibility of a second rehearing.¹⁵ In these circumstances, the second rehearing request was neither required nor appropriate, and so it will be rejected.

The Commission orders:

The NRG Companies’ request for rehearing of the March 23, 2006 Order denying rehearing in this proceeding is hereby rejected.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

¹³ See *Southern Natural Gas Co. v. FERC*, 877 F.2d 1066, 1073 (D.C. Cir. 1999) (*Southern*) (citing *Tennessee Gas Pipeline Co. v. FERC*, 871 F.2d 1099, 1109-10 (D.C. Cir. 1988)).

¹⁴ See *Southern*, 273 F.3d at 424. See *California Department of Water Resources v. FERC*, 306 F.3d 1121, 1125 (D.C. Cir. 2002); *Town of Norwood, Massachusetts v. FERC*, 906 F.2d 772, 775 (D.C. Cir. 1990).

¹⁵ See *Duke Power*, 114 FERC ¶ 61,148 (2006); *Gustavus Electric Co.*, 111 FERC ¶ 61, 424 (2005); *Symbiotics, L.L.C.*, 99 FERC ¶ 61,064 (2002); and *PacifiCorp*, 99 FERC ¶ 61,015 (2002). See also *Southern Natural Gas Co. v. FERC*, 877 F.2d 1066, 1073 (D.C. Cir. 1999), citing *Tennessee Gas Pipeline Co. v. FERC*, 871 F.2d 1099, 1109-10 (D.C. Cir. 1988).