

120 FERC ¶ 61,282  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Tenaska Frontier Partners, Ltd.

Docket Nos. EL05-21-000  
EL05-21-001

v.

Entergy Gulf States, Inc, and  
Entergy Services, Inc.

ORDER GRANTING MOTION FOR CANCELLATION OF HEARING AND  
TERMINATION OF PROCEEDING

(Issued September 27, 2007)

1. In this order, the Commission grants a motion filed by Entergy Services, Inc. to cancel the hearing scheduled for November 8, 2007 in this proceeding and terminate this proceeding.

**Background**

2. On November 8, 2004, Tenaska Frontier Partners, Ltd. (Tenaska) filed a complaint against Entergy Gulf States, Inc. and Entergy Services, Inc. (collectively, Entergy) requesting that the Commission reclassify certain facilities in its interconnection agreement (IA) with Entergy as Network Upgrades and order Entergy to provide transmission credits, plus interest, for the costs of these facilities. Tenaska argued that the IA contains provisions that explicitly permit it to unilaterally file for a change in rates at the Commission.

3. On May 17, 2007, the Commission issued an order<sup>1</sup> setting the complaint for hearing, under section 206 of the Federal Power Act (FPA).<sup>2</sup> The May 17 Order found that Tenaska's complaint raised an issue of material fact because, based on language in the IA, we could not determine the intent of Tenaska and Entergy with respect to their rights to make future modifications, unilateral or otherwise, to the IA (either in a FPA section 205<sup>3</sup> or section 206 filing).<sup>4</sup> Accordingly, the Commission directed a hearing to address the issue of the parties' intent with respect to their rights to modify the IA. We stated that we would address the merits of the other issues raised in Tenaska's complaint (*i.e.*, the appropriate classification of certain facilities and the appropriate cost allocation), once the issue being set for hearing had been resolved.

4. On June 8, 2007, Administrative Law Judge Bobbie J. McCartney issued an order adopting a procedural schedule, agreed to by the parties, which set the hearing to commence on November 8, 2007.

5. On July 13, 2007, Entergy filed a motion requesting that the Commission cancel the hearing, summarily dispose of the transmission credit issue in the Tenaska complaint, and terminate this proceeding. On July 27, 2007, Tenaska filed a motion requesting suspension of the proceeding until the Commission ruled on Entergy's motion. Also on July 27, 2007, Tenaska filed an answer to Entergy's motion. On July 30, 2007, the Chief Judge issued an order granting Tenaska's motion suspending the procedural schedule of this proceeding until the Commission rules on Entergy's motion. On August 13, 2007, Entergy filed an answer to Tenaska's answer.

6. Entergy argues that the Commission should dismiss Tenaska's complaint because Tenaska has extinguished any potential transmission credits that it could receive, even if it were to prevail in the hearing. Entergy explains that the Commission has recently issued a number of orders on transmission credit complaints pursuant to section 206 of

---

<sup>1</sup> *Tenaska Frontier Partners, Ltd. v. Entergy Gulf States, Inc. and Entergy Services, Inc.*, 119 FERC ¶ 61,157 (2007) (May 17 Order).

<sup>2</sup> 16 U.S.C. § 824e (2000).

<sup>3</sup> 16 U.S.C. § 824d (2000).

<sup>4</sup> May 17 Order at P 13. The IA contains the following provision:

Nothing contained here shall be construed as affecting in any way the right of Entergy or Tenaska to unilaterally make application to the [Commission] for a change in rates, terms or conditions of service under section 205 of the [FPA] . . . .”  
Tenaska IA, Article III.L.

the FPA.<sup>5</sup> In those orders, Entergy states that the Commission has consistently established four distinct refund periods, and barred transmission credits for periods 1 and 3 on the basis that ordering transmission credits for those periods would violate the filed rate doctrine. Entergy states that the amount of transmission service charges incurred for deliveries from Tenaska prior to the refund effective date of January 7, 2005 (*i.e.*, during period 1) completely eliminates any transmission credits that Tenaska would receive if it were to prevail on the issue set for hearing in the May 17 Order and if the Commission were to decide to revise the IA on the transmission credits issue, as requested by Tenaska.<sup>6</sup> Entergy argues that there is no need to proceed through the various steps of the proceeding when the ultimate outcome is already known. Accordingly, Entergy requests that the Commission dispose of Tenaska's complaint and terminate this proceeding.

7. Tenaska argues that Entergy ignores that there are two issues in the proceeding: (1) the threshold issue of the parties' right to unilaterally change the IA; and (2) Tenaska's right to transmission credits. Tenaska acknowledges that any eventual Commission determination in this case may result in a reduction in the amount of transmission credits that it might recover. However, Tenaska notes that various entities are seeking judicial review of Commission orders on transmission crediting and that if they prevail on appeal, then Tenaska could be entitled to refunds. Finally, Tenaska states dismissing the complaint would leave unresolved the issue of the parties' intent to revise the IA, an issue that is of material importance to the overall contractual relationship of the parties for the remaining term of the IA.

---

<sup>5</sup> Entergy July 2007 Motion at 4 (*citing Union Power Partners, L.P.*, 118 FERC ¶ 61,134, at P 15-16, *order on reh'g*, 119 FERC ¶ 61,328, at P 11-13 (2007) (*Union Power*); *Tenaska Alabama II Partners, L.P.*, 118 FERC ¶ 61,037, at P 24-25, *order on reh'g*, 119 FERC ¶ 61,315, at P 31-32 (2007) (*Tenaska Alabama*); *Mirant Las Vegas, LLC v. Nevada Power Co.*, 118 FERC ¶ 61,034, at P 19-20, *order on reh'g*, 120 FERC ¶ 61,002, at P 10-12 (2007) (*Mirant Las Vegas*); *ExxonMobil Corp. v. Entergy Servs., Inc.*, 118 FERC ¶ 61,032, at P 16-17, *order on reh'g*, 119 FERC ¶ 61,261, at P 20-22 (2007) (*ExxonMobil*)).

<sup>6</sup> Specifically, Entergy states that, during period 1, from the beginning of commercial operation of the Tenaska generator up to, but not including, the refund effective date (*i.e.*, from August 2000 to January 6, 2005), Tenaska incurred approximately \$7 million in transmission service charges, which is greater than Tenaska's total claim for transmission credits of \$3,240,849, plus interest.

## **Discussion**

### **A. Procedural Matters**

8. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept Entergy's August 13, 2007 answer and will, therefore, reject it.

### **B. Commission Determination**

9. We will grant Entergy's motion and terminate this proceeding. In previous cases involving transmission credits for network upgrades, the Commission announced its policy regarding interconnection facility cost allocation and transmission credits,<sup>7</sup> and determined that any credits which accrued prior to the refund effective date (no earlier than 60 days after the generator filed a complaint) were ineligible for recovery in transmission rates, due to the filed rate doctrine and the rule against retroactive ratemaking.<sup>8</sup>

10. When we issued the May 17 Order, we were not aware of the amount of transmission service Tenaska had taken from Entergy prior to filing its complaint, and how the cost of the upgrades compared with the amount of transmission service that Tenaska had taken. However, in its motion to dismiss, Entergy informs us that, before Tenaska even filed its complaint, Tenaska had paid transmission service charges that were substantially greater than the amount that it paid for the facilities at issue in this

---

<sup>7</sup> See May 17 Order at P 16 (citing *Duke Energy Hinds, LLC v. Entergy Services, Inc.*, 102 FERC ¶ 61,068, at P 21 (2003), *order on reh'g*, 117 FERC ¶ 61,210 (2006) (*Duke Hinds III*)).

<sup>8</sup> See *Duke Hinds III*, 117 FERC ¶ 61,210 at P 32-33. For example, in *Duke Hinds III*, the Commission explained:

Thus, as a hypothetical (which does not include interest), if Duke's total outlay for network facility upgrades was \$5 million, and it took \$1 million worth of transmission services prior to the refund effective date, Duke is eligible to receive total transmission credits of \$4 million (\$5 million in network facility upgrade outlay minus \$1 million in transmission charges). *Id.* at P 34.

proceeding.<sup>9</sup> Had we had this information before issuing the May 17 Order, we would have dismissed Tenaska's complaint as moot, rather than set it for hearing.

11. The complaint is no less moot now. In the May 17 Order, we recognized that, before we could address the merits of the complaint, we needed to make the threshold determination as to the parties' intent with respect to their rights to make future modifications to the IA. Only if Tenaska prevailed on that threshold question could we then address Tenaska's entitlement to credits. However, even if Tenaska were to prevail on the contract interpretation issue at the hearing, we could not provide Tenaska with any transmission credits because by the refund effective date (January 7, 2005) all credits had been extinguished. In such circumstances, it would be a waste of limited resources to continue this proceeding, and we will dismiss Tenaska's complaint.<sup>10</sup>

12. Finally, we disagree with Tenaska's claim that our action here deprives Tenaska of due process rights. There is no ripe dispute currently before us. Tenaska speculates that its position regarding the eligibility for recovery of credits prior to the refund effective date may prevail on appeal in related cases. Should such an event occur, Tenaska may file a complaint at that time.<sup>11</sup>

---

<sup>9</sup> As noted above, Tenaska states that the actual costs of the facilities at issue were \$3,240,849. Tenaska filed its complaint on November 8, 2004. According to Entergy, during period 1, which ran from August 2000 (Tenaska's commercial operation date) through January 6, 2005 (the refund effective date), Tenaska took approximately \$7 million of transmission service, which is about \$3.7 million more in transmission service than Tenaska had paid for the facilities at issue. In sum, the amount of transmission service used by Tenaska far exceeds its claim for transmission credits. Tenaska does not challenge Entergy's figures.

<sup>10</sup> See, e.g., *Sierra Pacific Power Co.*, 90 FERC ¶ 61,288, at 61,967-68 (2000).

<sup>11</sup> Indeed, if judicial review determines that a generator is entitled to receive all transmission credits accrued from the date of commercial operation (*i.e.*, including period 1), the date at which Tenaska files its complaint becomes irrelevant. Tenaska had already taken transmission service greater than the full amount of credits to which it could be entitled by the time it filed the instant complaint. Thus, whether it filed a complaint on November 8, 2004, or after the completion of the appeal process in related cases (which would be relevant only for a 15 month refund effective period and prospectively from the date of the Commission order, but irrelevant here) would have no bearing on Tenaska's ability to obtain transmission credits for network upgrades.

The Commission orders:

(A) Entergy's motion to cancel the hearing scheduled for November 8, 2007 in this proceeding and terminate this proceeding is hereby granted.

(B) Tenaska's complaint is hereby dismissed.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Acting Deputy Secretary