

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

Entergy Services, Inc.

Docket Nos. ER01-2201-004
ER01-2201-005
EL02-46-003
EL02-46-004

ORDER ON COMPLIANCE REFUND REPORTS

(Issued April 16, 2004)

1. This order addresses compliance refund reports submitted on August 14, 2003 (August 14 Refund Report) and September 8, 2003 (September 8 Refund Report) by Entergy Services, Inc. (Entergy), pursuant to Commission orders issued in this proceeding on January 31, 2003 (January 31 Letter Order)¹ and May 5, 2003 (May 5 Order).² Those orders pertain to certain revisions of Entergy's standard Generator Imbalance Agreement (GIA). As discussed below, we will accept for filing the August 14 Refund Report, conditionally accept for filing the September 8 Refund Report, and further direct a compliance filing.

2. This order benefits customers by helping to ensure that the refund process achieves just and reasonable rates.

Background

3. On June 1, 2001, in Docket No. ER01-2201-000, Entergy submitted proposed revisions to its GIA (June 1 filing). By order issued July 27, 2001, the Commission

¹ Entergy Services, Inc., 102 FERC ¶ 61,104 (2003).

² Entergy Services, Inc., 103 FERC ¶ 61,125, order denying reh'g, 104 FERC ¶ 61,061 (2003).

conditionally accepted for filing the June 1 filing, suspended it for a nominal period and made it effective August 1, 2001, subject to refund, and established hearing procedures.³

4. On January 8, 2002, in Docket No. EL02-46-000, the Generator Coalition⁴ filed a complaint against Entergy, alleging that the rates and practices associated with Entergy's GIA were unjust and unreasonable and unduly discriminatory and preferential. By order issued March 28, 2002, the Commission set for hearing certain issues in the complaint proceeding and consolidated the complaint proceeding with the GIA revisions proceeding.⁵

5. The parties subsequently executed a settlement agreement resolving all matters in the consolidated proceedings (Settlement Agreement), except for the issue, discussed below, of allocation of the output of qualifying facilities (QFs). In the January 31 Letter Order, the Commission approved the Settlement Agreement, directed Entergy to refund any amounts collected in excess of the settlement rates and file a report within 15 days thereafter.

6. With regard to QFs, the parties disputed whether it is appropriate for Entergy to allocate the generation output of a QF to first serve scheduled transactions and the remainder to serve unscheduled QF host load, with shortfalls to QF host loads served under all applicable rate schedules.

7. In the May 5 Order, the Commission found that Entergy's practice of allocating QF output to first serve scheduled transactions (schedules first policy) was unreasonable and unduly discriminatory. Accordingly, the Commission directed Entergy to refund, within 60 days of the date of the order, the charges that it collected under its schedules first policy and file a refund report within 30 days thereafter.

³ Entergy Services, Inc., 96 FERC ¶ 61,148 (2001).

⁴ The Generator Coalition includes: Calcasieu Power, LLC; Calpine Central, L.P.; Exelon Generation Company, LLC; Mirant Americas Energy Marketing, LP; Perryville Energy Partners, LLC; Wrightsville Power Facility, LLC; Mississippi Delta Energy Agency; the Clarksdale Public Utilities Commission; the Public Service Commission of Yazoo City; Occidental Chemical Corporation; PLC II, LLC; Reliant Energy Power Generation, Inc.; TECO Power Services, Corp.; Tenaska Frontier Partner, Ltd.; and Williams Energy Marketing & Trading Co.

⁵ Generator Coalition v. Entergy Services, Inc., 98 FERC ¶ 61,355 (2002).

August 14 Refund Report

8. Entergy submitted the August 14 Refund Report in order to comply with the January 31 Letter Order. The report addresses recalculations of all GIA bills that were inconsistent with the Settlement Agreement, not including refunds related to Entergy's schedules first policy.

Notice of the Filing and Responsive Pleadings

9. Notice of the August 14 Refund Report was published in the Federal Register,⁶ with comments, protests and interventions due on or before September 4, 2003. No interventions or protests were filed.

Discussion

10. We will accept for filing Entergy's August 14, 2003 Refund Report. We find that the report complies with the January 31 Letter Order, and indeed, no party has suggested otherwise.

September 8 Refund Report

11. Entergy submitted the September 8 Refund Report in order to comply with the May 5 Order.⁷ Entergy states that it refunded, with interest, amounts collected from August 1, 2001 through June 30, 2003 under its schedules first policy. Entergy states that, consistent with the May 5 Order, Entergy deemed the QF's output during the refund period to first serve the host load, with the remainder to serve the scheduled transaction. Entergy maintains that, as a result of this so-called "host loads first" allocation, any energy deficiencies would be satisfied under the GIA, and not under retail rates. Entergy contends that it calculated these deficient energy charges consistent with the GIA and that these charges were included on the Delivery Parties'⁸ July 2003 GIA bills, mailed on August 19, 2003. Entergy states that, as a starting point for recalculating deficient energy charges under the GIA, it used the recalculation of the GIA bills it performed in August 2003.

⁶ 68 Fed. Reg. 52,192 (2003).

⁷ The Commission had granted Entergy's request for an extension of time to make the QF-related refunds.

⁸ Entergy states that, under the GIA, the Delivering Party may be a different legal entity than the customer receiving the retail rate refund.

12. The first part of the refund report details the refunds to the QFs due in this proceeding (Attachment 1), and the second part summarizes the amounts owed to Entergy under the GIA as a result of the “host loads first” allocation (Attachment 2).

Notice of the Filing and Responsive Pleadings

13. Notice of the September 8 Refund Report was published in the Federal Register,⁹ with comments, protests and interventions due on or before October 9, 2003.

14. International Paper Company (International Paper) filed a timely protest. International Paper disputes the refund amount indicated in Attachment 1, which reflects that it is owed \$880,103.01 for amounts collected under Entergy’s schedules first policy. International Paper states that, although Entergy previously furnished International Paper with workpapers related to International Paper’s refund, the papers do not support Entergy’s stated calculations. International Paper calculates that it paid \$1,069,423.03 under Entergy’s schedules first policy. International Paper further disputes the validity of certain other aspects of the report, such as Entergy’s claim that International Paper owes it \$291,961.88 in Demand Charges. In any case, International Paper contends that Entergy improperly netted certain billings (totaling \$75,187.70) against the refund amount, resulting in a net refund check to International Paper in the amount of \$804,915.31. International Paper contends that the Commission should at least direct Entergy to refund International Paper the \$75,187.70, plus interest, which Entergy netted against the refund amount.

15. On October 24, 2003, Entergy filed an answer to International Paper’s protest. Attached to its answer are the workpapers that Entergy previously provided to International Paper (October 24 workpapers). Entergy further states that it properly determined the Demand Charges applicable to International Paper’s billing during the refund period. Finally, Entergy claims that, in accordance with Commission precedent,¹⁰ it properly netted International Paper’s current billings for the months of June and July 2003 against the total refund amounts for the refund period.

⁹ 68 Fed. Reg. 61,403 (2003).

¹⁰ Entergy cites: Cambridge Electric Co., 66 FERC ¶ 61,346 (1994); Ohio Edison Co., 2 FERC ¶ 61,017 (1978).

Discussion

16. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2003) prohibits answers to a protest unless ordered by the decisional authority. We will accept Entergy's answer because it has provided information that has assisted us in our decision-making process.

17. We will conditionally accept for filing the September 8 Refund Report. As an initial matter, we reject International Paper's argument that the October 24 workpapers do not support the calculations in the September 8 Refund Report. While International Paper generally claims that Entergy's calculations are incorrect and unsupported, International Paper fails to identify specific errors, and we find none. Moreover, International Paper did not submit any workpapers in support of its own calculation that it paid \$1,069,423.03 under Entergy's schedules first policy. (In any case, we note that International Paper calculates that it paid less than the amount indicated in the September 8 Refund Report.¹¹)

18. On the other hand, we reject Entergy's attempt to offset International Paper's refund amount by charges allegedly outstanding from June and July 2003. Aside from Entergy's assertion that it properly billed those charges and that International Paper failed to pay them, the parties have presented no other evidence on this issue. Moreover, while we have previously allowed offsets in cases where the refunds arose from the same rates, the same rate period, and the same rate issues as the liabilities giving rise to the offsets,¹² those criteria are not met here. Accordingly, we will direct Entergy to recalculate, without the disputed offset, the amounts collected from International Paper under the schedules first policy, and file a revised refund report.

19. Finally, as we explain below, we lack jurisdiction to address International Paper's argument that it should not be subject to a Demand Charge, because that Demand Charge is part of a retail tariff that is not on file with this Commission. International Paper, a QF

¹¹ International Paper states that its own calculations show that it paid Entergy \$1,069,423.03 under the "schedules first" pricing method. Entergy's calculations show that it billed International Paper \$1,144,610.73. The difference between these two numbers (\$75,187.70) is exactly equal to the unrelated number in Entergy's refund report, *i.e.*, the amount of current unpaid bills that International Paper claims Entergy improperly netted against its refund amounts.

¹² See *Illinois Power Co.*, 94 FERC ¶ 61,217 (2001); *Panhandle Eastern Pipe Line Co.*, 83 FERC ¶ 61,261 (1998); *Transcontinental Gas Pipe Line Corp.*, 46 FERC ¶ 61,333 (1989); *New England Power Co.*, 20 FERC ¶ 61,171 (1982); *Ohio Edison Co.*, 2 FERC ¶ 61,017 (1978).

host load, takes energy from Pine Bluff Energy Center (Pine Bluff), a third-party generator, behind the meter (i.e., before Pine Bluff's energy enters Entergy's transmission grid). As Entergy indicates in its answer, its billing process relies on a single bi-directional tie meter between Pine Bluff's generator and Entergy's transmission grid. When Pine Bluff generates adequate energy to meet its host load (in this case, International Paper's load) and any auxiliary power needs behind the meter, the meter reading will indicate zero inflow from or an outflow to Entergy's system. This means that Pine Bluff is generating enough or more than enough energy to meet all load behind the meter. When the meter indicates an energy inflow from Entergy's system, i.e., that energy is flowing from Entergy's system to Pine Bluff and its host load (again, International Paper), Pine Bluff's facility is not generating enough energy to meet its host load plus auxiliary needs. In this situation, Entergy assumes that the energy inflow provides retail service to International Paper. However, the Demand Charge is part of a retail tariff that is not on file with the Commission. Therefore, the issue of whether it is appropriate for International Paper to be assessed the Demand Charge is outside of our jurisdiction.¹³

20. We note that, when the meter indicates that the energy flow is from Pine Bluff to Entergy, but the amount is less than the amount Pine Bluff has scheduled to be delivered over Entergy's transmission system, the difference between the amount scheduled and the meter reading is an imbalance, which should be charged an imbalance service rate.

The Commission orders:

(A) Entergy's August 14 Refund Report is hereby accepted for filing.

(B) Entergy's September 8 Refund Report is hereby conditionally accepted for filing, subject to Ordering Paragraph (C) below.

¹³ 16 U.S.C. § 824 (2000). Furthermore, Entergy is not a member of an independent system operator (ISO) or a regional transmission organization (RTO) that has station power rules in its Commission-filed tariffs; accordingly, there are no station power rules on file that would apply here, and correspondingly our conclusion here would not apply to any ISO or RTO station power rules that are on file. See Midwest Independent Transmission System Operator, Inc., 106 FERC ¶ 61,073 (2004); KeySpan-Ravenswood, Inc. v. New York Independent System Operator, Inc., 101 FERC 61,230, (2002), reh'g pending; PJM Interconnection, LLC, 94 FERC ¶ 61,251, order denying reh'g and providing clarification, 95 FERC ¶ 61,333 (2001); and PJM Interconnection, LLC, 95 FERC ¶ 61,470 (2001).

(C) Entergy is hereby directed to, within 60 days of the date of this order, recalculate and reissue refunds to International Paper, with interest and without an offset, as discussed in the body of this order. Entergy must submit a refund report within 30 days of making such refunds.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.