

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

InterGen Services, Inc., on behalf of Cottonwood  
Energy Company, LP

Docket No. EL04-51-000

v.

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

ORDER DENYING COMPLAINT

(Issued May 10, 2004)

1. In this order, we deny InterGen Services, Inc.'s (InterGen)<sup>1</sup> complaint protesting Entergy Services, Inc.'s and Entergy Gulf States, Inc.'s (collectively, Entergy) refusal to allow InterGen to receive credits against transmission service taken elsewhere on the system. This order benefits customers because it ensures that the terms, conditions, and rates for interconnection service are just and reasonable and thus encourages more competitive markets.

**I. Background**

2. InterGen owns and operates a 1,235 MW<sup>2</sup> generation facility (Cottonwood Facility) in Deweyville, Texas that is interconnected to Entergy's transmission system. InterGen states that under the Interconnection and Operating Agreement (Cottonwood IA) between InterGen and Entergy, InterGen is entitled to transmission credits to recover

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<sup>1</sup> InterGen Services, Inc. filed the complaint on behalf of Cottonwood Energy Company, LP.

<sup>2</sup> In its answer, Entergy notes that the IA authorizes the interconnection of a 1200 MW facility.

the costs of all network upgrades that it has financed up front to interconnect the Cottonwood Facility to Entergy's transmission system.<sup>3</sup>

3. On January 9, 2004, InterGen filed a complaint against Entergy alleging that Entergy is refusing to abide by the Commission's policy regarding the flexible use of transmission credits. InterGen states that in Duke Orleans I,<sup>4</sup> the Commission clarified that a generator (or its assignee) can use its transmission credits for any transmission service it takes anywhere on the transmission system, regardless of whether the service relates to the particular generator at issue.<sup>5</sup> InterGen maintains that the Commission further reaffirmed this policy in Order No. 2003.<sup>6</sup>

## **II. Notice of Filings and Responsive Pleadings**

4. Notice of InterGen's filing was published in the Federal Register, 69 Fed. Reg. 2,710 (2004), with interventions or protests due on or before February 2, 2004. Louisiana Public Service Commission (Louisiana Commission) filed a notice of intervention. Wrightsville Power Facility, L.L.C. and Duke Energy North America, LLC filed motions to intervene. PacifiCorp and Reliant Resources, Inc. (Reliant) filed motions to intervene and comments. Southern Company Services, Inc. (Southern) filed a motion to intervene and protest. On February 2, 2004, Entergy filed an answer (February answer). On

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<sup>3</sup> The Cottonwood IA is pending rehearing before the Commission. See Pacific Gas and Electric Co., et al., 102 FERC ¶ 61,070 (2003), reh'g pending and Wrightsville Power Facility, LLC v. Entergy Arkansas, Inc., et al., 102 FERC ¶ 61,212 (2003), reh'g pending (directing Entergy to modify its IA to be consistent with the Commission's policies on network upgrades and transmission credits).

<sup>4</sup> Entergy Services, Inc., 101 FERC ¶ 61,289 (2002) (Duke Orleans I), order on reh'g, 105 FERC ¶ 61,105 (2003) (Duke Orleans II).

<sup>5</sup> InterGen also argues that Duke Orleans I was based on a series of prior cases and cites Arizona Public Service, Inc., 97 FERC ¶ 61,170 at 61,801 (2001) (Arizona Public Service) and Colton Power, L.P. and City of Colton v. Southern California Edison, 101 FERC ¶ 61,150 at P 15 (2002) (Colton Power).

<sup>6</sup> Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs., Regulations Preambles ¶ 31,146 (2003) (Order No. 2003), order on reh'g, Order No. 2003-A, 69 Fed. Reg. 15,932 (March 5, 2004), FERC Stats. & Regs., Regulations Preambles ¶ 31,160 (2003) (Order No. 2003-A), reh'g pending.

February 17, 2004, InterGen filed a response to Entergy's answer. On March 9, 2004, Entergy filed an answer in response to InterGen's response.

5. Reliant filed comments in support of InterGen's complaint.

6. PacifiCorp urges the Commission to deny the complaint. PacifiCorp argues that allowing an interconnection customer to use its transmission credits against any service it purchases from a transmission provider is discriminatory, poor policy and likely to result in cost shifting away from the interconnection customer and toward a utility's ratepayers or shareholders.

7. Southern argues that the Commission should deny the complaint because the Cottonwood IA expressly provides that the transmission credits associated with the Cottonwood Facility may only be used for transmission service sourced from that facility. Accordingly, Southern argues, granting InterGen's complaint would require a retroactive modification to the terms of the Cottonwood IA. Moreover, Southern argues, allowing a generator to use transmission credits for service anywhere on a transmission provider's system would be inconsistent with Commission policy.<sup>7</sup> Southern further points out that the policies of Order No. 2003 do not apply in the present case, since Order No. 2003 applies only to new interconnection agreements entered into after January 20, 2004. Finally, Southern argues that granting InterGen's complaint would violate the Commission's "or" pricing policy.

8. In its February answer, Entergy responds that it is acting in accordance with the Cottonwood IA and the Commission's policies. Entergy says that InterGen's complaint seeks to have the Commission abrogate the IA in order to take advantage of a subsequently-developed Commission policy that provides for a more flexible use of transmission credits than originally permitted in the Cottonwood IA.

9. Entergy argues that InterGen's complaint is inconsistent with Commission precedent. Entergy states that the Commission's precedent on transmission crediting prior to Order No. 2003 required some relationship between the transmission service being credited and the facility that earned the credits. According to Entergy, InterGen's reliance on Duke Orleans I is misplaced because the Commission's holding in that case was narrow and applied only the interconnection agreement at issue. Moreover, Entergy

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<sup>7</sup> Citing American Electric Power Service Corp., 96 FERC ¶ 61,136 at 61,567 (2001). Southern argues that InterGen's position that the Duke Orleans I case is controlling is unavailing because that order did not establish an industry-wide policy.

asserts, regardless of the scope of Duke Orleans I, the Commission later determined that order to be moot, since the interconnection customer withdrew the interconnection agreement at issue.<sup>8</sup>

10. Additionally, Entergy argues, the Arizona Public Service and Colton Power cases relied on by InterGen are inapposite. Entergy asserts that Arizona Public Service and Colton Power dealt with transmission providers restricting the use of credits to instances when the generating facility was producing power. Entergy maintains that the Cottonwood IA does not impose any such restriction – rather, the Cottonwood IA allows InterGen to apply its credit against all transmission reservations from the Cottonwood facility, whether or not the facility is operational.<sup>9</sup>

11. Entergy further argues that Order No. 2003 is inapplicable to the Cottonwood IA because Order No. 2003 expressly provides that it does not apply to existing, previously Commission-accepted interconnection agreements, such as the Cottonwood IA.

12. Finally, Entergy argues that application of InterGen’s requested crediting mechanism to the Cottonwood IA is inconsistent with the public interest and the Commission’s “or” pricing policy.

### **III. Discussion**

#### **A. Procedural Matters**

13. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

14. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2003), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. Because InterGen’s response and Entergy’s March 9, 2004 answer do not aid our decision in this case, we are not persuaded to accept them.

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<sup>8</sup> See Entergy Services, Inc., 105 FERC 61,105 (2003).

<sup>9</sup> Section 8.3.1 of the Cottonwood IA provides that transmission credits will be provided in return for “each kW produced from the [Cottonwood] Facility and delivered unto the [Entergy] Transmission System under a transmission service agreement under the Entergy Transmission Tariff.

**B. Analysis**

15. Section 23.4 of the Cottonwood IA permits a party to unilaterally file an amendment to the contract under either section 205 or 206 of the Federal Power Act.<sup>10</sup> Since the parties specifically preserved the rights of both parties, either party can have the agreement reviewed by the Commission based on the just and reasonable standard under section 206.<sup>11</sup> Therefore, the Commission's review of InterGen's request to require flexible use of its transmission credits is based on the just and reasonable standard.

16. The purpose of the up front payment for network upgrades is to provide a source of funds for the network upgrades and an incentive for interconnection customers to make efficient siting decisions. The purpose of transmission credits is to reimburse the generator for the up front payment. We note that the up front payment is not a rate for service, and is not the means for a transmission provider to recover its costs. Transmission providers recover the costs for network upgrades through their right to charge for transmission service at the higher of an embedded cost or incremental rate.

17. Allowing an interconnection customer to receive credits unrelated to service from the generating facility at issue would tend to insulate the interconnection customer from the consequences of its siting decision because the interconnection customer would not be made to bear an appropriate level of risk that the network upgrades may be rendered unnecessary should its facility become commercially infeasible. For example, under a flexible transmission crediting plan, an interconnection customer can force a transmission provider to expand the grid and then cease to use the generation facility, but still be fully repaid in credits against transmission service for its other generation facilities. While all customers do benefit from upgrades to the transmission network, they do not benefit equally from upgrades that may be required for a particular interconnection. Allowing

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<sup>10</sup> Supra note 1.

<sup>11</sup> Duke Energy Hinds, LLC, et al., 102 FERC ¶ 61,068 (2003) reh'g pending.

interconnection customers to transfer transmission credits in the manner requested by InterGen tends to shift the risk from the interconnection customer to other transmission customers.<sup>12</sup>

18. We note that credits must be made available whenever the interconnection customer is incurring charges for transmission service related to the generating facility at issue. Whether or not the generating facility is dispatched is immaterial; the incurrence of transmission charges is the determining factor. If the generator pays for reserving transmission service, it can receive credits against those payments. This ensures that the transmission customer will have an opportunity to receive transmission credits for the full amount of its up front payments.

19. Therefore, in order to promote efficient and cost effective siting decisions, we find limiting the use of transmission credits to transmission service taken from the facility that generated the credits to be just and reasonable. Consequently, InterGen's proposal to utilize transmission credits received from the network upgrades at the Cottonwood Facility for any transmission service InterGen takes on Entergy's transmission grid is unjust and unreasonable. Accordingly, InterGen's complaint is denied.

The Commission orders:

InterGen's complaint is hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Linda Mitry,  
Acting Secretary.

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<sup>12</sup> We recognize that some prior Commission orders have required that transmission credits be made against transmission service the generator takes anywhere on the system. However, the Commission rethought this policy in the course of our interconnection rulemaking, as explained in Order No. 2003-A, ¶614. Order No. 2003-A does not apply to this case (since neither it nor Order No. 2000 is retroactive). However, in light of the arguments raised in this case, as well as in Order No. 2003, we have decided that allowing a generator to receive credits against transmission service from another generating facility would undermine its incentive to make efficient siting decisions.

