

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. EL04-51-001

v.

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

ORDER DENYING REHEARING

(Issued September 21, 2004)

1. In an order issued on May 10, 2004,<sup>1</sup> the Commission denied InterGen Services, Inc.'s (InterGen) complaint protesting Entergy Services, Inc.'s and Entergy Gulf States, Inc.'s (collectively, Entergy) refusal to allow InterGen to receive credits against its transmission bills for transmission service taken anywhere on the system.<sup>2</sup> This order denies the request for rehearing of the May Order.

**Background**

2. InterGen has a 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 the costs of all network

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<sup>1</sup> *InterGen Services, Inc. on behalf of Cottonwood Energy Company, LP v. Entergy Services, Inc. and Entergy Gulf States, Inc.*, 107 FERC ¶ 61,143 (2004) (May Order).

<sup>2</sup> InterGen Services, Inc. filed the complaint on behalf of Cottonwood Energy Company, LP.

upgrades that it has financed up front to interconnect the Cottonwood Facility to Entergy's transmission system.<sup>3</sup> As executed, the Cottonwood IA expressly stated that transmission credits associated with the Cottonwood facility will be provided only for transmission service sourced from that facility.<sup>4</sup>

3. On January 9, 2004, InterGen filed a complaint against Entergy alleging that Entergy is refusing to abide by the Commission's policy requiring transmission providers to give a generator credits against the generator's bill for transmission service taken anywhere on the system (that is, service for other generation facilities the generator owns). This is sometimes called "flexible use of credits." InterGen stated that in *Duke Orleans I*,<sup>5</sup> the Commission clarified that a generator could use its transmission credits against any transmission service it takes anywhere on the transmission system,

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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> Section 8.3.1 of the Cottonwood IA provides in relevant part:

**Credits for System Upgrades** ... For each kW produced from the [Cottonwood] Facility and delivered onto the [Entergy] Transmission System under a transmission service agreement under the Entergy Transmission Tariff, [Entergy] shall credit [Cottonwood] in an amount equal to the equivalent Point-to-Point transmission service rate, on a dollar-for-dollar basis applied to [Cottonwood's] total monthly bill for services, until such time as the cost of the Required System Upgrades and Optional System Upgrades (that have been previously paid by [Cottonwood]), has been fully offset, after which time such offset or credit shall no longer apply.

<sup>5</sup> *Entergy Services, Inc.*, 101 FERC ¶ 61,289 (2002) (*Duke Orleans I*), *order on reh'g*, 105 FERC ¶ 61,105 (2003).

regardless of whether the service relates to the particular generating facility at issue.<sup>6</sup> InterGen maintained that the Commission further reaffirmed this policy in Order No. 2003.<sup>7</sup>

4. In the May Order, the Commission denied InterGen's complaint because, although we had stated in *Duke Orleans I* that an interconnection customer could receive credits unrelated to service from the interconnected generating facility at issue, we had later determined that we cannot allow such flexible use of credits. We did so because the flexible use of credits tends to insulate the interconnection customer from the consequences of its siting decision, as the interconnection customer would not be made to bear an appropriate level of risk that the network upgrades will become unnecessary if its facility becomes commercially infeasible.<sup>8</sup> To help ensure that interconnection customers make efficient and cost-effective siting decisions, credits should be given only for transmission service that has the interconnected facility as the source of the power to be transmitted. We further found 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.

5. On June 9, 2004, InterGen filed a timely request for rehearing of the May Order. InterGen argues that the May Order was an incorrect and unsupported reversal of the policy established in *Duke Orleans I*. According to InterGen, the Commission failed to explain how the flexible use of transmission credits could lead to the inefficient siting of generation in this case. InterGen contends that since the Cottonwood facility has already been constructed and is operational, application of the flexible transmission crediting policy can have no effect on where the Cottonwood facility is sited. Moreover, InterGen argues, there is little chance that it will cease to use the Cottonwood facility, since it is already selling power from there.

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<sup>6</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) and *Colton Power, L.P. and City of Colton v. Southern California Edison*, 101 FERC ¶ 61,150 at P 15 (2002).

<sup>7</sup> *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, 69 Fed. Reg. 15,932 (March 5, 2004), FERC Stats. & Regs. ¶ 31,160 (2004), *reh'g pending*.

<sup>8</sup> May Order at P 17 and n.12; *see also* Order No. 2003-A at P 614-15.

6. InterGen also repeats arguments made in its request for rehearing of Order No. 2003-A; it says that flexible use of transmission credits does not promote inefficient siting of generation. It argues that network upgrade costs have little effect on an interconnection customer's siting decisions because they are typically unknown when those decisions are made. When siting decisions are made, InterGen argues, an interconnection customer must consider multiple factors, including access to markets, fuel and water supplies, and potential transmission constraints. An interconnection customer has little incentive to site inefficiently, since it has to pay for the initial network upgrade costs, which can only be recovered after the project becomes commercially operational. InterGen states that a generation facility is a multi-hundred million dollar investment and that the addition of network upgrade costs, when compared to the total investment costs, will not shift the risk of poor siting decisions to others. Moreover, the amount of network upgrades needed is directly related to the condition in which a transmission provider maintains its transmission system, and it is inappropriate to shift the costs of constrained system conditions to new interconnection customers.

7. On June 24, 2004, Entergy filed a motion for leave to answer and answer.

### **Discussion**

8. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2004), prohibits an answer to a request for rehearing. We will accordingly reject Entergy's answer to InterGen's request for rehearing.

9. We reaffirm our denial of InterGen's complaint. The Cottonwood IA has stated from the outset that transmission credits will be provided only against transmission service taken from the Cottonwood facility. Accordingly, InterGen has the burden under section 206 to show that that provision is unjust and unreasonable. We have determined in this case (for reasons fully discussed in Order No. 2003-A) that it would be inappropriate to allow credits against transmission taken from elsewhere on the system because doing so would tend to insulate the interconnection customer from the consequences of its siting decision; the interconnection customer would not be made to bear an appropriate level of risk that the network upgrades will become unnecessary if its facility becomes commercially infeasible. Thus, InterGen has not sustained its section 206 burden to show that the Cottonwood IA crediting provision at issue here is unjust and unreasonable.

10. We reject InterGen's argument that the transmission crediting policy should not apply to the Cottonwood facility simply because that facility was built before we adopted the policy limiting transmission credits to service from the relevant generating facility. InterGen clearly was not dissuaded from building its facility because of this provision. Moreover, InterGen has not explained why it should be treated more favorably than other

generators. It complains that we applied our policy without examining the specific facts of its case; however, the purpose of a rulemaking, or any generic policy, is to apply it even-handedly to all who are subject to it. Here, it is reasonable for the Commission to apply its transmission crediting policy even-handedly to all generators, including InterGen.

11. When assessing the marketability of its proposed generation, one of the cost items that a generator takes into account is an estimate of its interconnection costs. As long as the generator's power is competitive in the markets it sells in, it should be able to sell power and offset any associated transmission charges with the credits it receives. The transmission provider is required to provide credits along with interest so that the interconnection customer will be made whole as long as its generating facility is economically viable. As InterGen itself states, there is little chance that it will cease to use its facility. By the same logic, there is little chance that InterGen will not receive in full the network upgrade costs that it has paid for.

12. Finally, we reject InterGen's argument that the transmission crediting policy articulated in Order No 2003-A does not promote the efficient siting of generation, for the reasons discussed in Order No. 2003-A. As we stated in Order No. 2003-A, since the interconnection customer must pay up front for network upgrades, limiting transmission credits to service from the relevant generating facility gives the generator an important incentive to make efficient siting decisions.<sup>9</sup> We recognized that a number of the factors that influence siting decisions are beyond the control of both the interconnection customer and the Commission; however, we remain convinced that limiting transmission credits to service from the relevant generating facility provides some incentive to site efficiently while not being unduly burdensome to generators.

The Commission orders:

InterGen's request for rehearing of the May Order is hereby denied.

By the Commission.

( S E A L )

Linda Mitry,  
Acting Secretary.

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<sup>9</sup> Order No. 2003-A at P 627.