

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.

Quachita Power, LLC

v.

Docket No. EL04-49-001

Entergy Louisiana, Inc. and  
Entergy Services, Inc.

ORDER DENYING REHEARING

(Issued July 19, 2007)

1. This order addresses a request for rehearing filed by Southern Company Services, Inc., on behalf of itself and Alabama Power Company, Georgia Power Company, Gulf Power Company, and Mississippi Power Company (collectively, Southern), of the Commission's February 28, 2007 Order issued in this proceeding.<sup>1</sup> In the February 28 Order, the Commission granted a complaint filed by Quachita Power, LLC (Quachita) against Entergy Services, Inc. and Entergy Louisiana, Inc. (collectively, Entergy) requesting that the Commission order Entergy to: (1) resume the payment of transmission credits owed to Quachita for its up front financing of Optional System Upgrades; (2) provide Quachita with transmission credits for its up front financing of Required System Upgrades; and (3) pay interest on amounts owed to Quachita for both Required and Optional System Upgrades. For the reasons discussed below, we will deny Southern's request for rehearing.

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<sup>1</sup> *Quachita Power, LLC v. Entergy Louisiana, Inc. and Entergy Services, Inc.*, 118 FERC ¶ 61,155 (2006) (February 28 Order).

## **I. Background**

2. Quachita's January 7, 2004 complaint concerned an Interconnection and Operating Agreement (IA) between Quachita and Entergy.<sup>2</sup> The IA governs the interconnection of Quachita's 816 MW power plant with Entergy's transmission system, which commenced operations in June 2002.

3. In its complaint, Quachita asserted that it paid Entergy for the full cost of construction of both Required and Optional System Upgrades, which are facilities located at or beyond the point where Quachita interconnects with Entergy's transmission system. Quachita argued that the IA was unjust and unreasonable and inconsistent with Commission interconnection pricing policy<sup>3</sup> to the extent that it did not provide transmission credits for Required System Upgrades and interest on amounts owed to Quachita for Required System Upgrades and Optional System Upgrades.<sup>4</sup>

4. Entergy filed an answer to Quachita's complaint and Southern filed a timely motion to intervene.

5. In the February 28 Order, the Commission granted Quachita's complaint and ordered Entergy to revise the IA to provide Quachita with: (1) transmission credits for

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<sup>2</sup> The IA was accepted pursuant to delegated authority in *Entergy Services, Inc.*, Docket No. ER00-2524-000 (July 12, 2000) (unpublished letter order).

<sup>3</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 No. 2003), *order on reh'g*, Order No. 2003-A, 69 Fed. Reg. 15,932 (Mar. 26, 2004), FERC Stats. & Regs., ¶ 31,160 (2004) (Order No. 2003-A), *order on reh'g*, Order No. 2003-B, 109 FERC ¶ 61,287 (2004) (Order No. 2003-B), *order on reh'g*, 111 FERC ¶ 61,401 (2005) (Order No. 2003-C), *see also Notice Clarifying Compliance Procedures*, 106 FERC ¶ 61,009 (2004), *aff'd*, *National Association of Regulatory Utility Commissioners v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007).

<sup>4</sup> IA at Article 8.3.1. In its complaint, Quachita also argued that Entergy's interruption of credit payments for Optional System Upgrades, due to Entergy's mistaken over-crediting to Quachita, was inconsistent with Commission interconnection policy. On February 23, 2005, Quachita filed a motion explaining that Entergy had now recouped the amounts that had been overpaid. Because payment of credits for Optional System Upgrades had already resumed, the Commission dismissed this part of Quachita's complaint as moot. *See* February 28 Order, 117 FERC ¶ 61,155 at P 14.

the Required System Upgrades and, (2) interest on amounts paid for both the Required and Optional System Upgrades.<sup>5</sup> So as to maximize refunds, the Commission set the refund effective date at the earliest date possible, *i.e.*, 60 days after the filing of Quachita's complaint, or March 7, 2004.<sup>6</sup>

6. The Commission directed Entergy to provide Quachita any transmission credits that would have accrued during the 15-month refund effective period, March 7, 2004, through and including June 7, 2005, with interest calculated in accordance with 18 C.F.R. § 35.19a(a)(2)(iii).<sup>7</sup> Further, the Commission required that Entergy revise the IA to provide that, to the extent that Quachita had not previously taken service for which credits either did accrue or would have accrued, Entergy must provide Quachita credits with interest on a prospective basis from the date of the order.<sup>8</sup> Entergy was also required to file a compliance report, within 15 days after making the required credits.

7. On March 30, 2007, Southern filed a request for rehearing of the February 28 Order.

## II. Rehearing Request

8. On rehearing, Southern argues that the February 28 Order violates the filed rate doctrine and prohibition against retroactive ratemaking. It asserts that, under section 206 of the Federal Power Act (FPA), the Commission can only order a rate to be modified prospectively. Southern states that the February 28 Order establishes a policy that would require, in many cases, transmission credits to be provided to a generator at a lower rate than previously paid for interconnection service already provided. In such cases, it asserts, the "interconnection rate" already paid under a Commission-accepted IA is retroactively reduced.<sup>9</sup>

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<sup>5</sup> February 28 Order, 117 FERC ¶ 61,155 at P 28 (*citing Duke Energy Hinds, LLC v. Entergy Services, Inc.*, 117 FERC ¶ 61,210 (2006) (*Duke Hinds III*)).

<sup>6</sup>*Id.* at P 30; 16 U.S.C. § 824e (2000).

<sup>7</sup> *Id.* at P 31. 18 C.F.R. § 35.19a(a)(2)(iii) (2006). We note that, in the February 28 Order, the Commission made a typographical error and inadvertently referenced 18 C.F.R. § 35.19(a)(2)(ii).

<sup>8</sup> *Id.*

<sup>9</sup> Southern Rehearing Request at 4.

9. Moreover, Southern points out that, under section 206 of the FPA, the Commission may only substitute reasonable rates “to be thereafter observed and in force.”<sup>10</sup> It asserts that the Commission does not have the authority to award a generator, like Quachita, cash refunds or credits for transmission delivery service as “reparations” for its alleged overpayment of the costs of interconnection, a service separate from transmission delivery service.<sup>11</sup> Southern argues that, even if refunds of interconnection costs under an IA are disguised as credits for future transmission service, the February 28 Order still violates the prohibition against retroactive ratemaking because providing credits for future service based on an interconnection rate previously paid is tantamount to retroactively reducing that rate.

10. Southern argues that the February 28 Order also violates the Commission’s cost causation principles. It states that, if generators like Quachita are not required to pay the charges set forth in their accepted IAs, the Commission’s fundamental principle that “those who cause the costs should bear the costs” would be violated.<sup>12</sup> Thus, Southern argues that the February 28 Order establishes a policy that creates an unreasonable and unanticipated financial burden for transmission providers and their customers, which inappropriately shifts cost responsibility away from the interconnecting generator that caused the costs to be incurred.

### **III. Commission Determination**

11. We will deny rehearing. On June 25, 2007, the Commission issued *Tenaska Alabama II Partners, L.P. v. Alabama Power Co.*,<sup>13</sup> which addresses the issues Southern raises here. To the extent that *Tenaska* disposes of these arguments, we find it to be controlling and will not discuss these issues further.

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<sup>10</sup> *Id.* at 5 (citing *City of Piqua v. FERC*, 610 F.2d 950, 954 (D.C. Cir. 1979); *Town of Concord, Norwood, and Wellesley, Massachusetts v. FERC*, 955 F.2d 67, 71 n.2 (D.C. Cir. 1992); and *Columbia Gas Transmission Corp. v. FERC*, 831 F.2d 1135, 1140 (D.C. Cir. 1987)).

<sup>11</sup> *Id.* at 6.

<sup>12</sup> Southern Rehearing Request at 10 (citing *City of College Station, Texas*, 97 FERC ¶ 61,152, at 61,667 (2001)).

<sup>13</sup> 119 FERC ¶ 61,315 (2007) (*Tenaska*).

12. Moreover, as we discussed in *Tenaska*, many of the issues raised by Southern were raised and denied in *Duke Hinds III* and, thus, the Commission incorporated and applied its findings in *Duke Hinds III*.<sup>14</sup> In *Tenaska*, we also discussed the arguments Southern raises on section 206, the filed rate doctrine, the rule against retroactive ratemaking,<sup>15</sup> and alleged harm to retail customers and cost causation principles.<sup>16</sup>

13. The February 28 Order does nothing more than implement the refund provisions of section 206 of the FPA, with its strict time limitation; our rule forbidding retroactive ratemaking is therefore never triggered. Quachita is allowed to receive transmission credits for the 15-month refund effective period that section 206 prescribes, *i.e.*, March 7, 2004, through and including June 7, 2005. It cannot, however, receive transmission credits, or interest on those credits, before March 7, 2004 or from June 7, 2005 to the date of the Commission's order, February 28, 2007.<sup>17</sup> Thus, to the extent that Quachita has taken and paid for transmission service outside the refund effective period and did not receive credits for those transmission service payments, the amount of its upfront payment for the Required and Optional System Upgrades that is eligible for reimbursement on a prospective basis must be reduced by the total amount of those payments.<sup>18</sup> Therefore, our order granted prospective rate relief only, thus ensuring that, for the refund effective period and after the date of our order, rates for transmission service under Entergy's tariff are just and reasonable.

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<sup>14</sup> 117 FERC ¶ 61,210 (2006).

<sup>15</sup> *Tenaska*, 119 FERC ¶ 61,315 at P 19-20 (*citing Duke Hinds III*, 117 FERC ¶ 61,210 at P 32-36).

<sup>16</sup> *Id.* at P 24 (*citing Entergy Services, Inc. v. FERC*, 319 F.3d 536, 544 (D.C. Cir. 2003); *Consumers Energy Co.*, 95 FERC ¶ 61,233, *order on reh'g*, 96 FERC ¶ 61,132, at 61,561 (2001); *Duke Hinds III*, 117 FERC ¶ 61,210 at P 21-26).

<sup>17</sup> *See Duke Hinds III*, 117 FERC ¶ 61,210 at P 32.

<sup>18</sup> February 28 Order, 117 FERC ¶ 61,155 at P 19.

The Commission orders:

Southern's request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.