

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Hot Spring Power Company, LP

Docket No. ER05-1419-001

ORDER ON REHEARING

(Issued April 10, 2006)

1. On November 9, 2005, Hot Spring Power Company, LP (Hot Spring Power) filed a request for rehearing of the Commission's October 25, 2005 "Order Accepting and Suspending Proposed Rate Schedule and Establishing Hearing and Settlement Judge Procedures."¹ For the reasons discussed below, the Commission will grant the request for rehearing and permit Hot Spring Power to raise the issue of whether it has independent contractual authorization for compensation for its generation of reactive power within its specified power factor range (within the band) in the hearing established in this proceeding.

I. Background

2. On August 31, 2005, Hot Spring Power filed a proposed rate schedule (Hot Spring Power LP Rate Schedule FERC No. 2) specifying its cost-based revenue requirement for providing Reactive Support and Voltage Control from Generation Sources Service (reactive power) from its natural gas-fired, combined cycle electric generation facility located in Malvern, Arkansas. Entergy Services, Inc. (Entergy) filed a protest to the filing. In the October 25, 2005 Order, the Commission accepted Hot Spring Power's proposed rate schedule for filing, suspended it for a nominal period, to become

¹ *Hot Spring Power Company LP*, 113 FERC ¶ 61,088 (2005) (October 25, 2005 Order).

effective for the period September 1, 2005, through October 31, 2005, subject to refund, and set the issues raised by the filing for hearing and settlement judge procedures. The Commission explained that the basis for the termination of Hot Spring Power's authority to charge for reactive power within the band effective November 1, 2005, was an order issued October 14, 2005, approving Entergy's proposal to terminate its own charges for reactive power effective November 1, 2005.²

3. In the October 14, 2005 *Entergy* Order, the Commission accepted Entergy's proposal in Docket No. ER05-1432-000 to reduce to zero, effective November 1, 2005, its charge for the provision of reactive power from its own or affiliated generating units. In that order, the Commission also granted Entergy's associated petition for declaratory order in Docket No. EL05-149-000, ruling that, if Entergy does not compensate its own or affiliated generators for reactive power service provided to transmission customers within the generators' specified power factor range, then Entergy need not on a prospective basis compensate a non-affiliate generator for maintaining reactive power within the band under Order No. 2003.³ As a consequence, in the October 25, 2005 Order the Commission held that, effective November 1, 2005, Hot Spring Power and other reactive power generators would no longer be permitted to charge Entergy for costs related to within the band reactive power provided to Entergy. The Commission concluded that the hearing established in the October 25, 2005 Order will only determine Hot Spring Power's reactive power revenue requirements for the period September 1, 2005, through October 31, 2005.⁴ Accordingly, the Commission

² *Entergy Services, Inc.*, 113 FERC ¶ 61,040 (2005) (October 14, 2005 *Entergy* Order).

³ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs. ¶ 31,146 at P 21 (2003), *order on reh'g*, Order No. 2003-A, 69 Fed. Reg. 15,932 (March 26, 2004), FERC Stats. & Regs. ¶ 31,160 (2004), *order on reh'g*, 109 FERC 61,287 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (June 30, 2005).

⁴ The Commission stated that its action was without prejudice to Hot Spring Power filing under section 205 of the FPA to implement a rate schedule and revenue requirement for outside of the band reactive power to be effective on or after November 1, 2005. 113 FERC ¶ 61,088 at P14.

directed Hot Spring Power to remove the subject rate schedule from its tariff effective November 1, 2005.⁵

Request for Rehearing

4. Hot Spring Power argues that the Commission erred in not setting for hearing whether Hot Spring Power has an independent contractual right to compensation for reactive power service. Hot Spring Power contends that in those proceedings where the Commission has been confronted with the issue of whether an interconnection agreement provides an independent right to compensation for reactive power service, the Commission has included that issue among the issues set for hearing. It asserts that the Commission adhered to this policy in the October 14, 2005 *Entergy* Order where it stated: “To the extent that certain protestors argue that they have an independent contractual right to compensation, they are free to pursue their claims in proceedings focused on their individual contracts; in fact, there are already pending proceedings involving most of these protestors.”⁶ Consequently, Hot Spring Power maintains that the Commission’s decision in the October 25, 2005 Order appears to preclude Hot Spring Power from arguing that contractual provisions in its interconnection agreement entitle it to continue recovering Reactive Service Rate Schedule charges beyond November 1, 2005, regardless of whether Entergy compensates itself. Hot Spring Power posits that by requiring it to cancel its Reactive Service Rate Schedule, the Commission has prejudged the issue without affording Hot Spring Power appropriate due process. Accordingly, it requests that the Commission grant rehearing and rescind the requirement that Hot Spring Power file to cancel its rate schedule in advance of the evidentiary hearing that the Commission has directed to be held in this proceeding.

5. Hot Spring Power further contends that the Commission erred in applying its ruling that Hot Spring Power’s Reactive Service Rate Schedule could not apply on or after November 1, 2005, in light of the fact Entergy’s filing in Docket No. ER05-1432-000 did not seek to terminate compensation for non-affiliated generators with Reactive

⁵ On November 9, 2005, in Docket No. ER05-1419-002, Hot Spring Power submitted a “Conditional Notice of Cancellation” of the rate schedule under protest. That filing is pending. In addition, on March 16, 2006, Hot Spring Power and Entergy filed an uncontested settlement of the Docket No. ER05-1419-000 hearing proceeding for the locked-in period of the case, but the rehearing issues are not settled.

⁶ 113 FERC ¶ 61,040 at note 17.

Service Rate Schedules in effect prior to November 1, 2005. Because Hot Spring Power's Reactive Service Rate Schedule was made effective well before November 1, 2005, *i.e.*, on August 26, 2005, it should continue in effect subject to refund. Hot Spring Power explains that to the extent that the Commission later finds that Hot Spring Power's reactive service charges may not be just and reasonable, Entergy and its transmission customers are fully protected by the refund currently in place.

6. Finally, Hot Spring Power argues that the Commission erred in assuming that Entergy does not compensate its own generation for reactive power service within the dead band for reasons set forth in the request for rehearing of the October 14, 2005 *Entergy* Order. Further, it contends that non-affiliated generators are entitled to compensation for reactive power because it is a valuable service, it avoids discriminatory treatment, comparability demands it, and it is sound policy and provides the right incentives.

Discussion

7. Consistent with our March 23, 2006 *Entergy* Order⁷ denying rehearing of the October 14, 2005 *Entergy* Order, we grant rehearing. As we observed in the March 23, 2005 *Entergy* Order, in the October 14, 2005 *Entergy* Order, the Commission held that, to the extent that certain protestors argue that they have an independent contractual right to compensation for providing reactive power service, they are free to pursue their claims in proceedings focused on their individual contracts, regardless of whether Entergy compensated its own generators.⁸ In the March 23, 2006 *Entergy* Order, we reaffirmed the Commission's decision to allow such arguments in individual proceedings and clarified the basis for our ruling.⁹ Here, Hot Spring Power has claimed it has such independent contractual authorization under its interconnection agreement with Entergy. Accordingly, we will grant rehearing, and allow Hot Spring Power to argue that it has an independent contractual right to pursue rate recovery for providing within the band reactive power service in the hearing established in this proceeding. However, for reasons as discussed in more detail in the March 23, 2006 *Entergy* Order, we reject, as unsupported, Hot Spring Power's claims that Entergy, nonetheless, still is obtaining

⁷ *Entergy Services, Inc.*, 114 FERC ¶ 61,303 (2006) (March 23, 2006 *Entergy* Order).

⁸ 113 FERC ¶ 61,040 at note 17.

⁹ 114 FERC ¶ 61,303 at P 18.

compensation for its generation of within the band reactive power and other arguments unrelated to the claim of independent contractual authorization.¹⁰

8. Accordingly, in the hearing established in this proceeding, Hot Spring Power may raise the issue of whether it has an independent contractual right to obtain compensation for its generation of within the band reactive power. The direction to remove its reactive power rate schedule effective November 1, 2005, is rescinded and it may recommence the collection of such charges effective as of the date of this order, subject to the refund condition established by the October 25, 2005 Order. Billing for post-October 31, 2005 reactive power, as well as action on Hot Spring Power's compliance filing in Docket No. ER05-1419-002, shall be held in abeyance pending the outcome of the hearing and settlement judge procedures.

8. Because of the similarity of issues, for purposes of administrative efficiency, the Chief Administrative Law Judge may consolidate the hearing in the Docket No. ER05-1419-000 proceeding with other pending proceedings in Docket Nos. ER05-1358-000, ER05-1394-000, ER05-483-000, and ER05-977-000 involving the same issue of independent contractual rights of independent generators for compensation from Entergy for the provision of within the band reactive power.

The Commission orders:

(A) Hot Springs Power's request for rehearing is granted as discussed in the body of this order.

(B) The Chief Administrative Law Judge may take such action as authorized above to consolidate pending proceedings.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

¹⁰ 114 FERC ¶ 61,303 at P16.