

147 FERC ¶ 61,170  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;  
Philip D. Moeller, John R. Norris,  
and Tony Clark.

Cottonwood Energy Company LP

Docket No. ER14-1619-000

ORDER ACCEPTING AND SUSPENDING FILING, AND ESTABLISHING  
HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued May 30, 2014)

1. On March 31, 2014, Cottonwood Energy Company LP (Cottonwood) filed a proposed rate schedule,<sup>1</sup> which sets forth its cost-based revenue requirement for Reactive Supply and Voltage Control from Generation Sources Service (reactive service). As discussed below, the Commission accepts for filing the proposed rate schedule, and suspends it for a five month period, to become effective November 1, 2014, subject to refund, and establishes hearing and settlement judge procedures.

**I. Background**

2. Cottonwood is a Delaware limited partnership and an indirect, wholly-owned subsidiary of NRG Energy, Inc. Cottonwood is an exempt wholesale generator with market-based rate authority that owns and operates a combined cycle generation facility with a total generator rating of approximately 1,434 MW near Deweyville, Texas (the Facility).<sup>2</sup> The Facility interconnects to the Entergy Texas, Inc. (Entergy Texas) transmission grid and is located in the Midcontinent Independent System Operator, Inc. (MISO) market.

3. Cottonwood states that its obligation to provide reactive service to Entergy Texas and to receive compensation for such service is set forth in section 9.6 of the Standard

---

<sup>1</sup> Cottonwood, FERC Electric Tariff, [Reactive Rate Schedule, Rate Schedule FERC No. 1, 0.0.0.](#)

<sup>2</sup> Transmittal Letter at 2 (citing *Cottonwood Energy Co. LP*, Docket No. ER01-642-000 (Jan. 30, 2001) (unpublished letter order)).

Large Generator Interconnection Agreement (LGIA) by and between Cottonwood and Entergy Texas dated as of January 27, 2010.<sup>3</sup>

4. Cottonwood states that on January 24, 2005, it originally filed its rate schedule setting forth its revenue requirement for reactive service, which the Commission accepted for filing (2005 Filing).<sup>4</sup> On September 2, 2005, Entergy Services, Inc. (Entergy) filed a petition for declaratory order seeking confirmation from the Commission that if Entergy did not compensate its own or affiliated generators for reactive service within the required power factor dead band, then Entergy need not compensate non-affiliated generators for reactive service within the dead band. Entergy also filed to eliminate the reactive service rates in Schedule 2 of its Open Access Transmission Tariff. On October 14, 2005, the Commission granted Entergy's petition and accepted the filing to eliminate reactive service rates.<sup>5</sup>

5. Cottonwood states as a result of the December 19, 2013 integration of Entergy Texas' transmission assets into MISO, MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) now governs Cottonwood's right to compensation for reactive service. Cottonwood further states that Schedule 2 of the MISO Tariff provides, among other things, for the supplier to make all appropriate filings with the Commission to justify its cost-based revenue requirement for reactive service and for MISO to "pass-through" the reactive power revenues it receives to the supplier providing the service.<sup>6</sup>

## II. The Filing

6. Cottonwood states that the proposed rate schedule consists of an annual revenue requirement with two components: (1) a fixed capability component, which is designed to recover the portion of plant costs attributable to reactive power production capability; and (2) a heating loss component, which includes the increased generator and step-up transformer heating losses that result from the production of reactive power. Cottonwood states that it reserves the right to amend its rate schedule should it elect to seek compensation for lost opportunity costs if the Facility is directed to modify its energy output to produce additional reactive power.

---

<sup>3</sup> On March 18, 2014, MISO filed with the Commission in Docket No. ER14-1522-000 a Notice of Succession for the LGIA in connection with Entergy Texas' December 19, 2013 integration into MISO. *Id.* at 3.

<sup>4</sup> *Id.* at 3 (citing *Cottonwood Energy Co. LP*, 110 FERC ¶ 61,303 (2005)).

<sup>5</sup> *Id.* (citing *Entergy Services, Inc.*, 113 FERC ¶ 61,040 (2005)).

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

7. Cottonwood explains that the fixed capability component has been calculated by first determining the portion of the Facility's generator/excitation systems, accessory electric equipment and the generator step-up transformers used to produce reactive power consistent with the *AEP* methodology.<sup>7</sup> Cottonwood then applies an allocator to apportion the cost of this plant between real and reactive power. Finally, Cottonwood applies a levelized fixed charge rate to the costs to develop the annual revenue requirement. Cottonwood proposes a total reactive power annual requirement for the fixed capability component of \$6,685,028.61 as a fixed monthly charge of \$557,085.72.

8. Cottonwood states that public utilities are permitted to recover their cost of service with a reasonable return on investment. Cottonwood contends that, for merchant generators like Cottonwood, "it has been the Commission's general policy to allow [an independent power producer] to use the authorized rate of return on common equity of an interconnected utility for reactive power compensation, because... an interconnected utility's return is a conservative estimate of a merchant generator's return because the merchant generator faces more risk."<sup>8</sup> Therefore, Cottonwood proposes an overall rate of return and a return on common equity that is derived from the capital structure and return on equity included in Entergy Texas' rate filing,<sup>9</sup> the utility with which the Facility is interconnected.

9. Cottonwood explains that the heating loss component includes losses that occur from resistive heating associated with armature winding and field winding of generators, and of increased eddy currents in the generator and associated step-up transformer. Cottonwood states that these losses can be calculated as the real power consumed to produce reactive power, and therefore constitute a cost that is directly attributable to the production of reactive power. Cottonwood proposes a total reactive power annual revenue requirement for its heating loss component of \$303,540.24. Therefore, Cottonwood proposes a total annual revenue requirement of \$6,988,568.85 with the monthly charge of \$582,380.74.

10. Cottonwood states that, pursuant to Schedule 2 of the MISO Tariff, Cottonwood will be eligible to begin recovering its cost of providing reactive service within MISO on the first day of the month immediately following Commission acceptance or the first day

---

<sup>7</sup> *Id.* at 4 (citing *American Electric Power Service Corp.*, 88 FERC ¶ 61,141 (1999), *order on reh'g*, 92 FERC ¶ 61,001 (2000) (*AEP*)).

<sup>8</sup> *Id.* (quoting *Bluegrass Generation Co., L.L.C.*, 118 FERC ¶ 61,214, at P 86 (2007) (*Bluegrass*)).

<sup>9</sup> Prepared Direct Testimony of Alan R. Lovinger, Attachment B to Cottonwood March 31, 2014 Filing (Lovinger Testimony), at 15 (citing Entergy Services, Inc., Docket No. ER14-108-000 (filed Oct. 16, 2013)).

of the month if the Commission accepts the proposed rate schedule effective the first day of the month. Therefore, Cottonwood requests an effective date for the proposed revenue requirement of June 1, 2014. In addition, Cottonwood states that under Schedule 2 of the MISO Tariff, MISO will not certify Cottonwood as a Qualified Generator<sup>10</sup> until the Commission issues an order accepting the proposed reactive power revenue requirements.<sup>11</sup> Cottonwood requests waiver of certain cost-of-service requirements set forth in Part 35.13 of the Commission's regulations, which it claims are not necessary for a fixed monthly charge for reactive service.<sup>12</sup>

### **III. Notice of Filing, Interventions and Protest**

11. Notice of Cottonwood's filing was published in the Federal Register, 79 Fed. Reg. 19,325 (2014), with comments, interventions and protests due on or before April 21, 2014. MISO filed a timely motion to intervene. Entergy, on behalf of itself and the Entergy Operating Companies,<sup>13</sup> filed a timely motion to intervene and conditional protest. On May 6, 2014, Cottonwood filed an answer to Entergy's conditional protest.

### **IV. Discussion**

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

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>14</sup> the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

---

<sup>10</sup> A Qualified Generator is defined in the MISO Tariff as "The Generation Resource(s) having the technical capability of providing reactive supply and voltage control as determined by the Transmission Provider in accordance with the provisions specified in Schedule 2 of this Tariff." MISO, Module A, 1.Q, Definitions-Q.

<sup>11</sup> Cottonwood states that, pursuant to Schedule 2, until certification as a Qualified Generator occurs, Cottonwood is not eligible to receive compensation for reactive power services that it is technically capable of providing in MISO markets. Cottonwood states that it satisfies the technical requirements under MISO Tariff Schedule 2 for Qualified Generator status. Transmittal Letter at 6.

<sup>12</sup> *Id.*

<sup>13</sup> The Entergy Operating Companies include: Entergy Arkansas, Inc., Entergy Gulf States Louisiana, L.L.C., Entergy Louisiana LLC, Entergy Mississippi, Inc., Entergy Texas, and Entergy New Orleans, Inc.

<sup>14</sup> 18 C.F.R. § 385.214 (2013).

13. Rule 213 of the Commission's Rules of Practice and Procedure<sup>15</sup> prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Cottonwood's answer because it has provided information that assisted us in our decision-making process.

**B. Substantive Matters**

**1. Protests and Comments**

14. Entergy states that it does not contest Cottonwood's filing of a rate schedule to recover its costs of providing reactive power, nor does it dispute Cottonwood's use of the *AEP* methodology.<sup>16</sup> Rather, Entergy questions the basis for Cottonwood's proposed annual revenue requirement of approximately \$6.9 million in light of several key differences between the instant filing and the 2005 Filing, which established a reactive power revenue requirement of \$3.4 million.<sup>17</sup> Entergy is concerned that the proposed rates in the instant filing, which nearly doubled since the 2005 Filing, will expose customers in the Entergy Texas transmission pricing zone to excessive and unjustified costs.<sup>18</sup>

15. Entergy argues that Cottonwood did not explain why it decided to use Entergy Texas' cost of capital in developing the annual carrying cost percentage, rather than its own, as it did in 2005.<sup>19</sup> In addition, Entergy notes that Cottonwood has not explained the increase in its fixed charge rate to 20.19 percent from 10.87 percent that it used in 2005.<sup>20</sup> Entergy also questions Cottonwood's inclusion of one-half of a \$36 million combustion turbine overhaul, which it did not reference in the 2005 Filing despite Cottonwood's projection that such an overhaul would be needed every four years.<sup>21</sup>

---

<sup>15</sup> 18 C.F.R. § 385.213(a)(2) (2013).

<sup>16</sup> Entergy Conditional Protest at 4, 6.

<sup>17</sup> *Id.* at 5.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* (citing Lovinger Testimony at 15; 2005 Reactive Power Filing in Docket No. ER05-483, Prepared Direct Testimony of Mark A. Kadon (Kadon Testimony)).

<sup>20</sup> *Id.* (citing Lovinger Testimony at 17; Kadon Testimony at 16).

<sup>21</sup> *Id.*

16. With respect to Cottonwood's proposal to utilize the 12.38 percent MISO-standard return on equity (ROE), Entergy argues that Cottonwood should be subject to the outcome of a pending complaint proceeding in Docket No. EL14-12-000, challenging that ROE, and adjusted accordingly.<sup>22</sup>

17. Entergy urges the Commission to direct Cottonwood to supplement the record to explain and justify its proposed reactive power revenue requirement. Alternatively, Entergy requests that the Commission accept Cottonwood's proposed reactive power revenue requirement only subject to refund, suspend it for five months, and institute hearing procedures.<sup>23</sup>

## 2. Answer

18. Cottonwood requests that the Commission reject Entergy's request that Cottonwood be directed to explain the differences between the instant proposed rate and the rate proposed in the 2005 Filing, which has not been in effect since October 31, 2005. Cottonwood states that although it ceased collecting the revenue requirement established in the 2005 Filing, it has continued to provide reactive power service since October 31, 2005, at a rate of \$0. Cottonwood therefore states that the only relevant comparison for the revenue requirement in the instant filing would be the \$0 revenue requirement that has been in effect since late 2005. However, Cottonwood maintains that there is no Commission requirement for Cottonwood to make the comparison that Entergy requests, and that Entergy can perform its own comparison by examining the differences in the two filings.<sup>24</sup>

19. Cottonwood notes that the increase in the instant filing is primarily driven by the increase in the total fixed charge rate from 10.87 percent to 20.19 percent. The other differences are based on increased capital costs, the use of a Cottonwood-specific allocator for accessory electric equipment, inclusion of cash working capital, and an increase in the heating losses component.<sup>25</sup>

20. With respect to the increased fixed charge rate of 20.19 percent, Cottonwood states that a comparison of the instant filing with the 2005 Filing reveals: (1) an increase in operation and maintenance costs (including an increase in costs for parts and services, the combustion turbine overhaul, and property taxes); (2) a decrease in administrative and

---

<sup>22</sup> *Id.* at 6.

<sup>23</sup> *Id.* at 6-7.

<sup>24</sup> Cottonwood Answer at 3-4.

<sup>25</sup> *Id.* at 5.

general costs; (3) inclusion of income tax allowance on the equity return; (4) an increase in rate of return allowance; and (5) inclusion of accumulated deferred income tax. According to Cottonwood, these items total 9.32 percent of the 10.87 percent fixed charge rate in the 2005 filing and 18.82 percent of the 20.19 percent fixed charge rate in the instant filing.<sup>26</sup>

21. Cottonwood maintains that it cited and followed Commission precedent in using Entergy Texas' rate of return and the return on common equity. Cottonwood states that, according to *Bluegrass*, the policy for rate of return for merchant generators' reactive power filings allows the use of the rate of return and the common equity component of the interconnected utility. Cottonwood notes that Entergy itself followed the same approach and relied on the same precedent in a recent reactive service filing.<sup>27</sup>

22. Noting that it was under different ownership in 2005, Cottonwood states that it is in no position to opine why the 2005 Filing did not mention the rate treatment of combustion turbine costs, nor is such an opinion relevant.<sup>28</sup>

23. Cottonwood states that if the Commission accepts its filing without further condition, it would be willing to agree to a requirement that it be subject to the ROE determined in the pending complaint proceeding in Docket No. EL14-12-000 on a prospective basis.<sup>29</sup>

24. Finally, Cottonwood argues that Entergy has failed to establish a basis to suspend Cottonwood's proposed rate schedule for the maximum five-month period. Cottonwood contends that Entergy has failed to establish any element of Cottonwood's proposed rate that is excessive, much less that the proposed rate is substantially excessive, as required by *West Texas*.<sup>30</sup> Cottonwood adds that it would be harmed by a five-month suspension because it would remain uncompensated for the reactive service it must continue to

---

<sup>26</sup> *Id.* at 5-6.

<sup>27</sup> *Id.* at 7-8 (citing Entergy Services, Inc., Docket No. ER14-108-000 (filed Oct. 16, 2013)).

<sup>28</sup> *Id.* at 8.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 9 (citing *West Texas Utilities Company*, 18 FERC ¶ 61,189 (1982) (*West Texas*)).

provide during that period. By contrast, Cottonwood states that Entergy would not be harmed by a decision to suspend the rate for only a nominal period.<sup>31</sup>

### 3. Commission Determination

25. Cottonwood's proposed rate schedule raises issues of material fact that cannot be resolved based on the record before us and are more appropriately addressed in the hearing and settlement judge procedures ordered below.

26. Our preliminary analysis indicates that Cottonwood's proposed revenue requirement has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept Cottonwood's proposed rate schedule for filing, suspend it for five months, to become effective November 1, 2014, subject to refund, and set it for hearing and settlement judge procedures.<sup>32</sup>

27. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.<sup>33</sup> If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.<sup>34</sup> The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement

---

<sup>31</sup> *Id.* at 10.

<sup>32</sup> In *West Texas*, 18 FERC ¶ 61,189, we explained that, when our preliminary examination indicates that proposed rates may be unjust and unreasonable and may be substantially excessive, as defined in that order, we would generally impose a five-month suspension. In this proceeding, we find that the proposed rates may be substantially excessive.

<sup>33</sup> 18 C.F.R. § 385.603 (2013).

<sup>34</sup> If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of the date of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (<http://www.ferc.gov/legal/adr/availjudge.asp>).

discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) Cottonwood's proposed rate schedule is hereby accepted for filing and suspended for a five month period to become effective November 1, 2014, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning Cottonwood's proposed rate schedule, as discussed in the body of this order. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2013), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within 15 days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five days of the date of this order.

(D) Within 30 days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every 60 days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within 15 days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural

schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.