

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Entergy Mississippi, Inc.
Entergy Mississippi, Inc.
Attala Transmission, LLC

Docket No. ER05-1162-000
Docket No. ER05-1163-000
Docket No. ER05-1168-000

ORDER ACCEPTING CERTAIN AGREEMENTS AND ACCEPTING AND
SUSPENDING AN AGREEMENT, ESTABLISHING HEARING AND SETTLEMENT
JUDGE PROCEDURES AND GRANTING REQUESTS FOR WAIVERS

(Issued August 25, 2005)

1. In this order, we are addressing three filings made by Attala Transmission, LLC (Attala)¹ and Entergy Mississippi, Inc. (Entergy Mississippi).² The filings are the result of the sale by Central Mississippi Generating Company (CMGC)³ to: (1) Entergy Mississippi of a 526 MW (name plate rating) natural gas-fired combined cycle generating facility located in Attala County, Louisiana (Generating Facility) and (2) Attala of a step-up transformer and related interconnection facilities, including an approximately one mile 500 kV transmission line that will connect the Generating Facility to Entergy Mississippi's extra high voltage (EHV) transmission system (Interconnection Facilities).

¹ Attala is a wholly owned subsidiary of Cleco Midstream Resources LLC (CMR), a Louisiana limited liability company that is, in turn, a wholly owned subsidiary of Cleco Corporation (Cleco), a Louisiana corporation and an exempt intrastate public utility holding company under section 3(a)(1) of the Public Utility Holding Company Act of 1935.

² Entergy Mississippi is an Operating Company and wholly owned subsidiary of Entergy Corporation.

³ CMGC was established on behalf of 17 lenders, comprised mostly of insurance companies and a trustee.

2. We will accept the Notice of Termination of Interconnection and Operating Agreement (IOA) and Generator Imbalance Agreement (GIA) between Entergy Mississippi and CMGC filed in Docket No. ER05-1162-000. We also will accept the executed Interconnection Agreement (IA) filed by Entergy Mississippi in Docket No. ER05-1163-000. We will also accept for filing, the Interconnection Service Charge Agreement (ISCA) filed by Attala in Docket No. ER05-1168-000, suspend it for a nominal period, to become effective on the closing date of the transaction, as requested, subject to refund. In addition, we will establish hearing and settlement judge procedures regarding Attala's proposed transformation and delivery service charge under the ISCA. We will grant Attala's request for waivers of Order Nos. 888⁴ and 889 (Open Access Same-time Information System (OASIS)).⁵ However, Attala's request for waiver of the Standards of Conduct will be re-docketed as a TS docket and the Commission will issue a separate notice and order on this request in the TS docket.

I. Background

A. Docket No. ER05-1162-000

3. In April 2005, Entergy Services, Inc. (Entergy)⁶ received a letter from CMGC requesting Entergy to terminate the IOA and GIA.⁷ Entergy then filed a Notice of Termination of the IOA and GIA between Entergy Mississippi and CMGC on June 29,

⁴ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

⁵ *Open Access Same-Time Information System and Standards of Conduct*, Order No. 889, FERC Stats. & Regs., Regulations Preambles, July 1996-December 2001 ¶ 31,035 (1996), *order on reh'g*, Order No. 889-A, FERC Stats. & Regs., Regulations Preambles, July 1996-December 2001 ¶ 31,049 (1997), *order on reh'g*, Order No. 889-B, 81 FERC ¶ 61,253 (1997).

⁶ Entergy Services, Inc. is a subsidiary of Entergy Corporation.

⁷ The IOA and GIA were accepted by the Commission on November 2, 2000 in Docket No. ER01-63-000.

2005. The IOA and GIA are designated as Entergy Services, Inc. Original Service Agreement No. 221 and Supplement No. 1, under FERC Electric Tariff, First Revised Volume No. 3.

4. Entergy states that upon and following the sale of the Generating Facility from CMGC to Entergy Mississippi, CMGC will no longer own any generating facilities, and therefore, it is appropriate to cancel the IOA and GIA.

5. Entergy requests that the effective date of the cancellation be the date of the closing of the transaction and commits to notify the Commission when closing occurs. Entergy also requests that the Commission act on the cancellation of the IOA and GIA no later than August 30, 2005, to permit the timely closing of the transaction.

B. Docket No. ER05-1163-000

6. On June 29, 2005, Entergy submitted for filing an executed IA⁸ between Entergy Mississippi and Attala. This IA sets forth the requirements, terms and conditions under which the Interconnection Facilities will serve to interconnect the Generating Facility to Entergy Mississippi's transmission system. Entergy states that Attala will be the owner and operator of the Interconnection Facilities and generator step-up transformers that tie in the Generating Facility to Entergy Mississippi's transmission system.

7. Entergy states that the IA is a system-to-system interconnection agreement and is modeled after other system-to-system agreements on file with the Commission.⁹ Entergy adds that the instant submittal is not a generator interconnection agreement, and the facilities governed by the IA serve to interconnect the Generator Facilities step-up transformers and related equipment to Entergy Mississippi's transmission system. It contends that the pro forma generator interconnection agreement required by Order No. 2003¹⁰ is not applicable here because Attala will not own any generating facilities.

⁸ Original Service Agreement No. 392 under Entergy Services, Inc.'s FERC Electric Tariff, Second Revised Volume No. 3.

⁹ *Citing Entergy Louisiana, Inc.*, 110 FERC ¶ 61,300 (2005).

¹⁰ *See Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005).

8. Entergy requests that the IA become effective upon the closing date of the sale of the Generating Facility and the Interconnection Facilities and commits to notify the Commission when closing occurs. Entergy requests waiver of the Commission's prior notice requirements to permit its proposed effective date.¹¹ Entergy further requests the Commission to waive any and all other requirements under Part 35 of the Commission's regulations and any other applicable regulations. In addition, Entergy also asks the Commission to act on the IA no later than August 30, 2005, to permit the timely closing of the transaction.

C. Docket No. ER05-1168-000

9. On June 29, 2005, Attala submitted for filing an executed ISCA¹² between Attala and Entergy Mississippi. The ISCA sets forth the requirements, rates, terms and conditions under which the Interconnection Facilities will interconnect the Generating Facility to Entergy Mississippi's EHV transmission system and Attala will provide transformation service through the step-up transformer and delivery service over the 500 kV transmission line connecting the Generating Facility to Entergy's McAdams substation, which is located approximately one mile from the Generating Facility.

10. Under the ISCA, Attala will charge Entergy Mississippi a monthly transformation and delivery service charge that is a levelized fixed charge. The charge will be \$97,065 per month, based on a levelized revenue requirement of \$1,164,780 per year (a rate that does not vary based on actual usage). Attala states that the proposed charge was derived using an 11.5 percent return on equity, an 8.48 percent cost of debt, a weighted average cost of capital of 10.16 percent and a capital structure consisting of 45.5 percent debt and 55.5 percent equity. Attala's rate base is based on the projected book value of the Interconnection Facilities as of October 31, 2005.

11. Attala also requests that the Commission grant it waivers of the requirement under Order No. 888 to file an OATT and the requirement under Order No. 889 to establish an OASIS. Attala states that the only jurisdictional facilities it owns are the Interconnection Facilities, which are only incidental facilities necessary to connect the Generating Facility to Entergy Mississippi's transmission system. According to Attala, these are limited and discrete facilities and do not form part of any integrated electricity grid. Attala also states that the service that it has agreed to provide under the ISCA will be provided only to the

¹¹ 18 C.F.R. § 35.3 (2005).

¹² Attala's FERC Electric Tariff, Original Volume No. 1.

Generating Facility. Attala states that because of the location of the Interconnection Facilities and the fact that Entergy Mississippi fully subscribed to the capacity rights to the Interconnection Facilities, no other generator can request transmission service over these facilities. Thus, according to Attala, it would be a waste of resources for it to have to file an OATT or establish an OASIS.

12. Attala also requests waiver of the Standards of Conduct requirements of Part 35 of the Commission's regulations should the Commission determine that Attala will be a provider of transmission service under the ISCA.

13. Attala also requests waiver of Part 101 of the Commission's Uniform System of Accounts claiming that it would be burdensome and costly for Attala to comply where services are provided to only one customer over de minimus jurisdictional facilities.

14. Attala further requests waiver of the Commission's prior notice requirement to permit the ISCA to become effective as of the date the sale of the Interconnection Facilities to Attala by CMGC becomes effective. Finally, Attala asks the Commission to issue an order accepting the ISCA no later than August 26, 2005 to permit closing of the sale of the Interconnection Facilities to Attala by CMGC.¹³

D. Notice of Filing and Pleadings

15. Notices of these three filings were published in the *Federal Register*, 70 Fed. Reg. 41,001 (2005), with comments, protests and interventions due on or before July 20, 2005. On July 19, 2005, joint motions to intervene in Docket Nos. ER05-1163-000 and ER05-1168-000 were filed by the Mississippi Delta Energy Agency, Clarksdale Public Utilities Commission of the City of Clarksdale, Mississippi and the Public Service Commission of Yazoo City, Mississippi. On July 20, 2005, a notice of intervention was filed by the Mississippi Public Service Commission in Docket Nos. ER05-1163-000 and ER05-1168-000. On July 20, 2005, Attala filed a motion to intervene and comments in support of Entergy's filing in Docket No. ER05-1163-000. Entergy Mississippi filed a motion to intervene and comments in support of Attala's filing in Docket No. ER05-1168-000.

¹³ Attala states that the transaction is anticipated to close on or about October 1, 2005, subject to the receipt of Commission approval of the ISCA.

II. Discussion

A. Procedural Matters

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the notice of intervention and the timely unopposed motions to intervene serve to make the entities that filed them parties to the proceeding or proceedings in which they filed.

B. Docket No. ER05-1162-000

17. Our review indicates that the unopposed Notice of Termination of an IOA and GIA between Entergy Mississippi and CMGC is just and reasonable. Accordingly, we will accept it for filing without suspension or hearing.

C. Docket No. ER05-1163-000

18. Our review indicates that the unopposed IA between Entergy Mississippi and Attala is just and reasonable. Accordingly, we will accept it for filing without suspension or hearing.

D. Docket No. ER05-1168-000

19. The ISCA raises issues of material fact concerning the proposed transformation and delivery service charge that cannot be resolved based on the record before us and are more appropriately addressed in the hearing and settlement judge procedures ordered below.

20. Our preliminary analysis indicates that the ISCA may not be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, the Commission will accept the proposed ISCA for filing, suspend it for a nominal period, make it effective on the date the sale of the Generating Facility and Interconnection Facilities become effective, as requested, subject to refund, and set it for hearing and settlement judge procedures. The hearing should address only the proposed transformation and delivery service charge, including the appropriate return on equity.

21. While we are setting this matter for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute 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.¹⁴ 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.¹⁵ The settlement judge shall report to the Chief Judge and the Commission within 60 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 discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

Waiver of Order Nos. 888 and 889

22. In a series of prior orders, the Commission has enunciated the standards for waiver of or exemption from some or all of the requirements of Order Nos. 888 and 889.¹⁶ The Commission has determined that it would grant requests for waiver of Order No. 888 by public utilities that can show that they own, operate, or control only limited and discrete transmission facilities (facilities that do not form an integrated transmission grid), until such time as the public utility receives a request for transmission service. Should the public utility receive such a request, the Commission has determined that the public utility must file with the Commission a pro forma tariff within 60 days of the date of the request, and must comply with any additional requirements that are effective on the date of the request.¹⁷

¹⁴ 18 C.F.R. § 385.603 (2005).

¹⁵ 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 this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

¹⁶ See *Sun River Electric Cooperative, Inc.*, 91 FERC ¶ 61,156 at 61,593 n.6 (2000).

¹⁷ See *Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232 at 61,941 (1996) (*Black Creek*).

23. The Commission also has determined that waiver of Order No. 889 would be appropriate for a public utility: (1) if the applicant owns, operates, or controls only limited and discrete transmission facilities (rather than an integrated transmission grid); or (2) if the applicant is a small public utility¹⁸ that owns, operates, or controls an integrated transmission grid, unless it is a member of a tight power pool, or other circumstances are present that indicate that a waiver would not be justified.¹⁹ Moreover, the Commission has held that a waiver of Order No. 889 will remain in effect until the Commission takes action in response to a complaint to the Commission that an entity evaluating its transmission needs could not get the information necessary to complete its evaluation (for OASIS waivers) or an entity complains that the public utility has used its access to information about transmission to unfairly benefit the utility or its affiliate (for Standards of Conduct waivers).²⁰

24. In support of its request for waiver of the requirements of Order Nos. 888 and 889 (OASIS), Attala asserts that it would be a waste of resources for Attala to file an OATT or to establish an OASIS when it is only providing interconnection services to Entergy Mississippi. Attala explains that because of the location of the Interconnection Facilities, no other generator could request transmission service from Attala over the Interconnection Facilities from the Generating Facility to Entergy Mississippi. Attala further explains that pursuant to the ISCA, Entergy Mississippi holds all of the rights to the capacity on the Interconnection Facilities. Attala states that although a third party could not receive transmission service from Attala over the Interconnection Facilities, Attala would agree to offer interconnection services at the same rates, terms and conditions offered to Entergy Mississippi. Attala further states that the Interconnection Facilities are limited and discrete facilities and do not form part of any integrated electricity grid. Based on the statements in Attala's request, we will grant Attala, consistent with *Black Creek*, a waiver of the requirements of Order Nos. 888²¹ and 889 (OASIS).

¹⁸ To qualify as a small public utility, the applicant must meet the Small Business Administration (SBA) definition of a small electric utility (*i.e.*, disposes of no more than four million MWh annually).

¹⁹ See *Black Creek*, 77 FERC at 61,941; see also *Midwest Energy, Inc.*, 77 FERC ¶ 61,208 at 61,854 (1996) (describing tight power pool exception).

²⁰ See *Central Minnesota Municipal Power Agency*, 79 FERC ¶ 61,260 at 62,127 (1997); *Easton Utilities Commission*, 83 FERC ¶ 61,334 at 62,343 (1998).

²¹ To the extent this determination is inconsistent with the Commission's determination in *Entergy Louisiana, Inc.*, 110 FERC ¶ 61,300 (2005), we hereby overrule that determination.

25. Attala also requests waiver of the Standards of Conduct requirement under Part 358 of the Commission's regulations should the Commission determine that services provided under the ISCA constitute transmission service. The Commission will re-docket this waiver request as a TS Docket and will issue a separate notice and order on Attala's request for waiver of the Standards of Conduct in that TS docket.

Waiver of Other Filing Requirements

26. Attala also requests waiver of other Commission regulations. These include the requirement under section 35.12 to provide a comparison with other rates. Attala states that it has no other rates for interconnection or transformation services. Attala also requests waiver of Part 101 of the Commission's regulations regarding the Uniform System of Accounts, stating that it would be burdensome and costly to comply with the Uniform System of Accounts for interconnection services provided to only one customer over minimal facilities. The Commission hereby grants the requested waivers.

The Commission orders:

(A) The Notice of Termination of the IOA and the GIA between Entergy Mississippi and CMGC in Docket No. ER05-1162-000 is hereby accepted to become effective on the closing date of the transaction. The Interconnection Agreement filed by Entergy in Docket No. ER05-1163-000 to become effective on the closing date of the transaction is hereby accepted. The ISCA filed in Docket No. ER05-1168-000, is hereby accepted for filing and suspended for a nominal period, to become effective as of the closing date of the transaction as requested, subject to refund, as discussed in the body of this order.

(B) Attala's request for waiver of the requirements of Order Nos. 888 and 889 is hereby granted, as discussed in the body of this order.

(C) 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 the Federal Power Act, particularly sections 205 and 206 thereof, 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 the rate for transformation and delivery service filed in Docket No. ER05-1168-000. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Paragraphs (D) and (E) below.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2005), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (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 in writing or by telephone within five (5) days of the date of this order.

(E) Within sixty (60) days of the date of this order, 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 sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(F) 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 fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in this proceeding in a hearing room of the Commission, 888 First Street, N.E., Washington, DC 20426. Such 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)

Magalie R. Salas,
Secretary.