

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

KGen Hot Spring LLC

Docket No. ER05-1394-001

ORDER ON REHEARING

(Issued April 10, 2006)

1. On November 4, 2005, KGen Hot Spring LLC (KGen Hot Spring) filed a request for rehearing of the Commission's October 20, 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 KGen Hot Spring 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 25, 2005, KGen Hot Spring filed a proposed rate schedule (KGen Hot Spring LLC Rate Schedule FERC No. 1) 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 Hot Spring County, Arkansas. Entergy Services, Inc. (Entergy) filed a protest to the filing. In the October 20, 2005 Order, the Commission accepted KGen Hot Spring's proposed rate schedule for filing, suspended it for a nominal period, to become effective for the period August 26, 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 KGen Hot

¹ *KGen Hot Spring LLC*, 113 FERC ¶ 61,071 (2005) (October 20, 2005 Order).

Spring'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 filed 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 its band under Order No. 2003.³ As a consequence, in the October 20, 2005 Order the Commission held that, effective November 1, 2005, KGen Hot Spring 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 20 Order will only determine KGen Hot Spring's reactive power revenue requirements for the period August 26, 2005, through October 31, 2005.⁴ Accordingly, the Commission directed

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 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 ¶ 61,071 at P14.

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

Request for Rehearing

4. KGen Hot Spring argues that the Commission erred in not setting for hearing whether KGen Hot Spring has an independent contractual right to compensation for reactive power service. KGen Hot Spring 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, KGen Hot Spring maintains that the Commission’s decision in the October 20, 2005 Order appears to preclude KGen Hot Spring 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. KGen Hot Spring posits that by requiring it to cancel its Reactive Service Rate Schedule, the Commission has prejudged the issue without affording KGen Hot Spring appropriate due process. Accordingly, it requests that the Commission grant rehearing and rescind the requirement that KGen Hot Spring file to cancel its rate schedule in advance of the evidentiary hearing that the Commission has directed to be held in this proceeding.

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

⁵ On November 4, 2005, in Docket No. ER05-1394-002, Hot Spring submitted a “Conditional Notice of Cancellation” of the rate schedule under protest. That filing is pending. In addition, on March 6, 2006, Hot Spring and Entergy filed an uncontested settlement of the Docket No. ER05-1394-000 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.

Reactive Service Rate Schedules in effect prior to November 1, 2005. Because KGen Hot Spring'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. KGen Hot Spring explains that to the extent that the Commission later finds that KGen Hot Spring's reactive service charges may not be just and reasonable, Entergy and its transmission customers are fully protected by the refund currently in place.

5. Finally, KGen Hot Spring argues that the Commission erred in assuming that Entergy does not compensate its own generation for reactive power service within the 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 Order⁷ denying rehearing of the October 14, 2005 *Entergy* Order, we grant rehearing. As we observed in the March 23, 2006 *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, KGen Hot Spring has claimed it has such independent contractual authorization under its interconnection agreement with Entergy. Accordingly, we will grant rehearing, and allow KGen Hot Spring 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, KGen Hot Spring'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 P18.

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, KGen Hot Spring 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 20, 2005 Order. Billing for post-October 31, 2005 reactive power, as well as action on KGen Hot Spring's compliance filing in Docket No. ER05-1394-002, 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 this Docket No. ER05-1394-000 proceeding with other pending proceedings in Docket Nos. ER05-1358-000, ER05-1419-000, 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) KGen Hot Springs'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.