

122 FERC ¶ 61,269
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.

KGen Hinds LLC Docket No. ER05-1358-002

KGen Hot Spring LLC Docket No. ER05-1394-002

Hot Spring Power Company, LP Docket No. ER05-1419-002

ORDER ACCEPTING COMPLIANCE FILINGS
AND REQUIRING REFUNDS

(Issued March 24, 2008)

1. In this order, the Commission accepts three compliance filings made by the Independent Generators,¹ cancelling rate schedules for Reactive Supply and Voltage Control from Generation Sources Services (Reactive Power).² Consistent with the Commission's October 14, 2005 Order³ and a subsequent order disposing of Independent Generators' underlying claims, the Commission now accepts the compliance filings cancelling the Independent Generators' Reactive Power rate schedules.⁴ The Commission also orders the Independent Generators to make refunds, with interest, of any revenues collected under the rate schedules since November 1, 2005.

¹ The Independent Generators are: KGen Hinds LLC (Hinds), KGen Hot Spring LLC (Hot Spring), and Hot Spring Power Company, LP (Hot Spring Power).

² Respectively, Hinds Rate Schedule FERC No. 1, Hot Spring Rate Schedule FERC No. 1, and Hot Spring Power Rate Schedule FERC No. 2.

³ See *Entergy Services, Inc.*, 113 FERC ¶ 61,040 (2005), *reh'g denied*, 114 FERC ¶ 61,303, *reh'g denied*, 115 FERC ¶ 61,378 (2006) (October 14, 2005 Order).

⁴ *Entergy Services, Inc.*, 117 FERC ¶ 63,004 (2006) (Initial Decision) (containing a detailed background and procedural history of this proceeding); *KGen Hinds LLC et al.*, 120 FERC ¶ 61,284 (2007) (affirming the Initial Decision).

I. Background

2. These proceedings began in 2005 when the Independent Generators filed cost of service rate schedules to recover from Entergy the costs of providing Reactive Power. Entergy then filed a petition for declaratory order requesting the Commission to confirm that if Entergy did not compensate its own or affiliated generators for Reactive Power within the dead band, then Entergy need not on a prospective basis compensate non-affiliated generators for Reactive Power within the dead band. Entergy also filed a revision to Schedule 2 of its Open Access Transmission Tariff (OATT) to set to zero the charge levied by Entergy for Reactive Power within the dead band from its own generators, effective November 1, 2005. In the October 14, 2005 Order, the Commission granted Entergy's petition for declaratory order and accepted its proposed revision of Schedule 2.⁵

3. In light of the October 14, 2005 Order, the Commission conditionally accepted the rate schedules filed by the Independent Generators, suspended them for a nominal period, made them effective subject to refund, ordered hearing and settlement judge procedures, and specified that, because the Commission accepted Entergy's proposed tariff revisions in the October 14, 2005 Order, the charges in the rate schedules would become unjust and unreasonable, effective November 1, 2005. The Commission thus ordered the Independent Generators to make compliance filings to remove from their rate schedules any charges for Reactive Power within the dead band by November 1, 2005.⁶

4. On April 10, 2006, the Commission issued three separate orders granting rehearing of the three Independent Generator Orders.⁷ In the orders on rehearing, the Commission stated that the Independent Generators could argue in the ongoing hearing and settlement judge procedures that they had an independent contractual right under their interconnection agreements to compensation for Reactive Power. The Commission also rescinded the directives for the Independent Generators to remove their Reactive Power rate schedules by November 1, 2005, and allowed the Independent Generators to recommence the collection of charges subject to refund. The Commission held in abeyance, pending the outcome of the hearing and settlement judge procedures, action on

⁵ See October 14, 2005 Order, 113 FERC ¶ 61,040 at P 22, 38.

⁶ See *KGen Hinds LLC*, 113 FERC ¶ 61,041, at P 14; *KGen Hot Spring LLC*, 113 FERC ¶ 61,071, at P 14; *Hot Spring Power Co., LP*, 113 FERC ¶ 61,088, at P 14 (2005) (Independent Generator Orders). Accordingly, in each case the Commission stated that the hearing would only cover the period from the particular generator's rate effective date through October 31, 2005.

⁷ See *Hot Spring Power Co., LP*, 115 FERC ¶ 61,027; *KGen Hinds LLC*, 115 FERC ¶ 61,028; *KGen Hot Spring LLC*, 115 FERC ¶ 61,029 (2006).

the Independent Generators' compliance filings removing the Reactive Power rate schedules. In the Initial Decision, the Presiding Judge found that the Independent Generators do not have an independent contractual right under their interconnection agreements with Entergy to compensation for Reactive Power within the dead band.⁸ The Commission subsequently affirmed the Initial Decision.⁹

II. Notice of Filing and Responsive Pleadings

5. Notice of Hinds' compliance filing was published in the *Federal Register*, 70 Fed. Reg. 69,328 (2005), with protests and interventions due on or before November 21, 2005. Notice of Hot Springs' compliance filing was published in the *Federal Register*, 70 Fed. Reg. 70,607 (2005), with protests and interventions due on or before November 25, 2005. Notice of Hot Spring Power's compliance filing was published in the *Federal Register*, 70 Fed. Reg. 71,822 (2005), with protests and interventions due on or before November 30, 2005. Entergy filed similar timely protests to the each of the compliance filings in Docket Nos. ER05-1358-002, ER05-1394-002, and ER05-1419-002.¹⁰ Independent Generators each filed similar answers to Entergy's protest in their respective dockets.

III. Discussion

A. Procedural Matters

6. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007) the timely, unopposed motions to intervene serve to make the entities that filed them parties to these proceedings. Entergy's timely, unopposed motions to intervene serve to make it a party to these proceedings. Rule 213(a)(2) of the Commission's Rules of Practice and Procedures, 18 C.F.R. § 385.213(a)(2) (2007) prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept the Independent Generators' answers and will, therefore, reject them.

⁸ Initial Decision, 117 FERC ¶ 63,004.

⁹ *KGen Hinds LLC et al.*, 120 FERC ¶ 61,284.

¹⁰ Independent Generators submitted their compliance filings under protest. Entergy's protests to the compliance filings were responses to the Independent Generators' protests and argued for acceptance of the compliance filings.

B. Commission Determination

7. We will accept the Independent Generators' compliance filings cancelling their Reactive Power rate schedules, effective November 1, 2005. The issue of contractual authorization to charge for Reactive Power was the only issue upon which the Commission had granted rehearing of the Independent Generator Orders. As noted above, the Commission recently affirmed¹¹ the Initial Decision in which the Presiding Judge found that the Independent Generators do not have an independent contractual right under their interconnection agreements with Entergy to compensation for Reactive Power within the dead band. Independent Generators did not file for rehearing of this order. Thus, we find that the arguments raised by the Independent Generators in these proceedings have been resolved.

8. Consistent with this finding, we order the Independent Generators to refund any revenues collected under the Reactive Power rate schedules since November 1, 2005, with interest calculated pursuant to 18 C.F.R. § 35.19a (2007) of the Commission's regulations.

The Commission orders:

(A) The Independent Generators' compliance filings are hereby accepted, as discussed in the body of this order.

(B) The Independent Generators are hereby ordered to make refunds, with interest, calculated pursuant to 18 C.F.R. § 35.19a (2007) of the Commission's regulations, within 30 days of the date of this order, as discussed in the body of this order. The Independent Generators are hereby directed to submit a refund report within 30 days thereafter, regarding the basis for and calculations of the refunds paid.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹¹ *Id.*