UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

ExxonMobil Corporation Docket No. EL03-230-000

v.

Entergy Services, Inc.

ORDER GRANTING COMPLAINT

(Issued January 19, 2007)

1. On September 16, 2003, ExxonMobil Corporation (ExxonMobil) filed a complaint against Entergy Services, Inc. and Entergy Gulf States, Inc. (collectively, Entergy) requesting that the Commission reclassify certain facilities and order Entergy to provide ExxonMobil with transmission credits for the costs of the facilities. For the reasons discussed below, we grant ExxonMobil's complaint.

I. Background

2. ExxonMobil is the owner and operator of an oil refinery in Beaumont, Texas. On September 28, 2001, it entered into an interconnection and operation and generator imbalance agreement (IA) with Entergy to accommodate a single 165 MW combustion turbine generator unit. The IA was accepted by Commission letter order on December 7, 2001.[1] The IA identified certain facilities in that agreement as interconnection facilities (Original Transmission Facilities) and directly assigned the cost of these facilities to ExxonMobil without requiring Entergy to provide transmission credits.

[1] *See Entergy Services, Inc.*, Docket No. ER02-144-000 (December 7, 2001) (delegated letter order).

3. ExxonMobil has since installed two additional generators. Entergy and ExxonMobil attempted to negotiate the terms of a revised IA (Revised IA) to accommodate the expanded facilities (New Transmission Facilities), but, because they could not reach agreement on the terms of the revised IA, ExxonMobil requested that Entergy file the Revised IA in unexecuted form. Entergy filed the Revised IA on May 16, 2003, in Docket No. ER03-851-000. ExxonMobil intervened in that proceeding and protested, stating that all of the facilities are located at or beyond the point of interconnection on the Entergy network and are therefore network upgrades subject to transmission credits. The Commission granted ExxonMobil's protest with respect to the New Transmission Facilities. With regard to the Original Transmission Facilities, however, the Commission stated that the request was in effect a complaint and should be filed separately.[2] This filing is the complaint requesting that the Original Transmission Facilities be reclassified as network facilities.

II. Complaint

4. ExxonMobil states that IA and the Revised IA identify the same point of interconnection for both the New Transmission Facilities and the Original Transmission Facilities.[3] ExxonMobil claims that, just as the Commission found the New Transmission Facilities to be network upgrades not subject to direct assignment, Entergy should similarly not be allowed to directly assign to ExxonMobil, without providing transmission credits and interest, the cost of the Original Transmission Facilities, which are located at or beyond the point of interconnection on the Entergy transmission network.

5. ExxonMobil asserts that the prospective reclassification of facilities to reflect their current function does not constitute retroactive rulemaking. In *Duke Hinds II*, the Commission found that certain existing Entergy facilities are integrated transmission facilities and are properly classified as network facilities, even though they had been previously classified erroneously; the fact that these facilities were classified as interconnection facilities in the original IA does not transform them into non-network facilities.[4] Therefore, ExxonMobil requests that the Commission direct Entergy to

---

[2] *See Entergy Services, Inc.*, 104 FERC ¶ 61,084 (2003), *order on reh'g* 111 FERC ¶ 61,181 (2005).

[3] Revised IA, Appendix A.

[4] *Duke Energy Hinds, LLC v. Entergy Services, Inc.*, 102 FERC ¶ 61,068 at P 28 (2003) (*Duke Hinds II*), *order on reh'g*, 117 FERC ¶ 61,210 (2006) (*Duke Hinds III*).

reclassify the Original Transmission Facilities and provide ExxonMobil credits for the costs associated with the facilities, together with interest, from the date of the Commission order.

III. Notice of Filing and Responsive Pleadings

6. Notice of ExxonMobil's filing was published in the Federal Register, 68 Fed. Reg. 57,685 (2003), with interventions, answers and protests due on or before October 14, 2003. Entergy filed a timely answer.

7. Entergy argues that the proposed facilities reclassification should not be granted because ExxonMobil executed the IA and agreed to all of its terms and conditions, including the direct cost assignment of the interconnection facilities. Further, Entergy notes that ExxonMobil did not protest any aspect of the IA when Entergy filed it with the Commission.

8. Entergy contends that the Original Transmission Facilities epitomize "Direct Assignment Facilities" as defined by the *pro forma* OATT and "Interconnection Facilities" as defined in Entergy's *pro forma* IA. Entergy maintains that section 1.10 of the *pro forma* OATT defines direct assignment facilities as "Facilities … that are constructed by the Transmission Provider for the sole use/benefit of a particular Transmission Customer." According to Entergy, the Original Transmission Facilities only serve to connect the Beaumont Facility's generation capacity to Entergy's transmission system and do not provide any benefit to Entergy or Entergy's customers.

9. Entergy also states that the *pro forma* IA defines Interconnection Facilities as facilities installed to interconnection and deliver energy from the facility to Entergy's transmission system.[5] Accordingly, Entergy argues, Entergy's *pro forma* IA requires that the Original Transmission Facilities be classified as Interconnection Facilities. Further, Entergy argues that the complaint provides no evidence that the Original Transmission Facilities provide "a general benefit to all users" of Entergy's system, thereby preventing them from qualifying as Network Upgrades.

10. Entergy also asserts that ExxonMobil cannot support its position by citing decisions that are subject to judicial review and are therefore not authoritative.

11. Entergy further argues that reclassifying the Original Transmission Facilities violates the filed-rate doctrine and is retroactive ratemaking. According to Entergy, section 205 of the Federal Power Act (FPA) does not allow for the re-opening of the

[5] Section 1.10 of Entergy's *pro forma* IA.

unmodified provisions of a previously-accepted agreement and requires that Entergy only charge ExxonMobil the filed rate associated with the Original Transmission Facilities.

12. Finally, Entergy argues that the FPA requires the Commission to allocate costs to those who cause such costs to be incurred, contrary to the "at or beyond" policy cited by ExxonMobil.[6] According to Entergy, ExxonMobil fails to justify a Commission departure from this principle.

IV. Discussion

13. On November 17, 2006, the Commission issued an order on rehearing of *Duke Hinds II*.[7] As that order discusses the substantive issues raised in the instant proceeding, we will not now discuss them further here.[8] We disagree with Entergy that ExxonMobil cannot support its position by citing decisions that are subject to judicial review. The Commission may rely on contested orders even though they are pending on rehearing or appeal because the Commission's decisions are final and effective unless they have been stayed.[9]

14. In accordance with our determination in *Duke Hinds III*, we will grant ExxonMobil's complaint and order Entergy to pay credits for both Required System Upgrades and Optional System Upgrades on the Original Transmission Facilities.

---

[6] Entergy Answer at 14-15, citing 16 U.S.C. §824j, 824k (2000).

[7] *Entergy Services, Inc.*, 117 FERC ¶ 61,210 (2006).

[8] *Duke Hinds III* at P 21-40.

[9] *See* section 313(c) of the FPA, 16 U.S.C. § 825l (c) (2000) ("The filing of an application for rehearing [or] the commencement of [review] proceedings shall not, unless specifically ordered by the Commission, operate as a stay of the Commission's order."); *see also Northwest Pipeline Corp.*, 88 FERC ¶ 61,298 at 61,911 (1999), *pet. for review denied sub nom., Canadian Ass'n of Petroleum Producers v. FERC*, 254 F.3d 289 (2001) (finding that "[m]erely because [an order] and related or similar cases are pending on appeal before the Court, the Commission is not required to hold other cases involving the same issues in abeyance pending the outcome of those appeals. Such a requirement would unnecessarily delay the Commission's work, to the detriment of the pipelines and their ratepayers. If the Court determines that aspects of the Commission's [contested] policy are inappropriate, cases that have followed those aspects of the policy may be addressed again where the parties have preserved their positions through requests for rehearing or through appeal.").

Entergy is directed to file revisions to its IA reflecting this decision within 30 days of the date of this order.

15. In cases where, as here, the Commission institutes an investigation on a complaint under section 206 of the FPA, section 206(b), as it was in effect at the time that ExxonMobil filed its complaint, requires that the Commission establish a refund effective date that is no earlier than 60 days after the date a complaint was filed, but no later than five months after the expiration of such 60-day period.[10] Consistent with our general policy of providing maximum protection to customers, we will set the refund effective date at the latest date possible, *i.e.*, five months after 60 days after the filing of the ExxonMobil complaint, which is April 15, 2004.[11] Credits accrue from the date of commercial operation of the generator. Because ExxonMobil filed its complaint before the generator went into operation, and because the refund effective period extends for 15 months, making the refund period earlier would cause ExxonMobil to lose the ability to earn credits for the period before commercial operation commenced.

16. Section 206 of the FPA, states that the Commission may order refunds of any amounts paid, for the period after the refund effective date through a date fifteen months after such refund effective date.[12] Therefore, Entergy is directed to provide ExxonMobil any credits that would have been accrued from the refund effective date, April 15, 2004, through July 15, 2005, which is fifteen months after the refund effective date, with interest calculated in accordance with 18 C.F.R. § 35.19(a)(2)(ii). Further, Entergy is required to provide ExxonMobil credits on a prospective basis from the date of this order. Entergy must file a compliance report, within fifteen (15) days after making the required credits.

---

[10] We note that section 206(b) of the FPA was amended by the Energy Policy Act of 2005, Pub. L. No. 109-58, § 1285, 119 Stat. 594, 980-81 (2005), to require that in the case of a proceeding instituted on a complaint, the refund effective date shall not be earlier than the date of the filing of such complaint or later than five months after the filing of such complaint.

[11] *See, e.g., Southern California Edison Co. v. Arizona Public Service Co.*, 48 FERC ¶ 61,102 at 61,395 (1989), *reh'g denied*, 50 FERC ¶ 61,150 at 61,449 (1990); *East Texas Electric Cooperative, Inc. v. Central and South West Services, Inc.*, 84 FERC ¶ 61,233 at 62,194 (1998).

[12] 16 U.S.C. § 824e(b).

17. Pursuant to Article 11.4.1 of the Large Generator Interconnection Agreement, which provides for a maximum 20-year refund period, credits for the four distinct periods at issue are to be calculated as follows: Credits accrue over a 20-year period commencing from commercial operation of the generator. For the period from commercial operation until April 15, 2004, any credits that would have been earned are not recoverable, and interest on those credits will not be paid.[13] From April 15, 2004 through July 15, 2005, the credits earned are recoverable, and Entergy must pay ExxonMobil credits for this period with interest, as discussed above. From the end of the 15-month refund effective period until the date of the Commission order, any credits that would have been earned are not recoverable, and interest on those credits would also not be paid. Finally, to the extent that ExxonMobil has not previously taken service for which credits either did accrue or would have accrued, Entergy must provide ExxonMobil credits with interest on a prospective basis from the date of this order.

The Commission orders:

(A) ExxonMobil's complaint is hereby granted.

(B) Entergy is hereby directed to file, within 30 days of this order, a revised IA reflecting the provision of credits as discussed in the body of this order.

(C) Within 30 days of this order, Entergy is hereby directed to provide ExxonMobil any credits that would have accrued from the refund effective date, April 15, 2004, through July 15, 2005, with interest calculated in accordance with 18 C.F.R. § 35.19(a)(2)(ii). Further, Entergy is required to provide ExxonMobil credits on a prospective basis from the date of this order, as discussed in the body of this order.

[13] In *Duke Hinds III*, we provided an example of how the dollar amount of the credits was to be reduced to account for transmission service payments made before the refund effective date. *Duke Hinds III* at P 34. In this case, this example would also apply to the period from the end of the 15-month refund effective period until the date of the Commission order.

(D) Entergy is hereby directed to file a compliance report, within fifteen (15) days after providing credits.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.