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August 2, 2004

By *eFile* Transmission

The Honorable Magalie R. Salas
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: Technical Conference on *Entergy Services, Inc.*,
Docket Nos. ER04-699-000, *et al.*

Dear Secretary Salas:

Enclosed for filing in the above-referenced proceeding is the "Opening Statement of Joseph Marone on Behalf of Occidental Energy Ventures Corporation," which was prepared for Mr. Marone's appearance as a panelist during the Federal Energy Regulatory Commission's technical conference held on July 29 and 30, 2004 in New Orleans, Louisiana.

Respectfully submitted,



Earle O'Donnell
Zori Ferkin
Daniel Hagan
Attorneys for
Occidental Chemical Corporation

Enclosure

cc: Service List
Chairman Wood
Commissioner Brownell
Commissioner Kelliher

**Opening Statement of Joseph Marone
on Behalf of
Occidental Energy Ventures Corporation
for FERC Technical Conference in
Entergy Services, Inc. Docket Nos. ER04-699-000, ER04-901-000, ER03-1272-002,
ER98-4410-000, ER98-4410-001, and ER98-4410-002**

New Orleans, LA

July 30, 2004

Good morning. My name is Joseph Marone and I am Director, Power Purchasing for Occidental Energy Ventures Corporation, a wholly owned subsidiary of Occidental Petroleum Corporation. I would like to thank the Commission for sponsoring this technical conference and for inviting Occidental to participate on this panel to discuss the very important issue of transmission access on the Entergy System.

As one of Entergy's largest customers, and as a generator, Occidental brings a unique perspective to this discussion.

For many years, Occidental purchased retail electric service for both the Convent and Taft facilities from Entergy Louisiana, or ELI. At Taft, Occidental developed a cogeneration facility that is a "QF" under PURPA. The Taft QF is capable of producing 778 MW of power. After supplying the electric and steam requirements of the Taft chlor-alkali plant, the Taft Facility has approximately 400 MW of merchant generating capacity available for sale into the wholesale market. The Taft QF began commercial operations on December 17, 2002. The facility is located in the Amite South geographic region of Entergy's service area, a long-standing load pocket which remains today severely constrained.

Occidental Chemical Corporation filed a Protest to Entergy's "ICT" proposal because there are real issues that need to be addressed with respect to access to Entergy's transmission system, and the proposed ICT will not address these issues. Quite simply,

the ICT proposal is a distraction from the real issue facing the Commission and Entergy's competitors, which is the need to address Entergy's continuing incentive and ability to operate and control its Transmission Business to disadvantage competition. I will discuss first the overall unreasonableness of the ICT proposal, and second, describe specific examples of issues relating to the availability of open and non-discriminatory access to Entergy's transmission system.

The ICT proposal is not a solution to discrimination, actual or perceived. Even if this ICT had authority to require Entergy to adhere to the rules, tariffs and procedures by which Entergy operates its Transmission Business, and the Protests that have been filed with this Commission amply demonstrate that it does not have such authority, it will not fix the problem, because Entergy continues to demonstrate its ability to foreclose competition within the very rules, tariffs and procedures the ICT would ensure are followed. As this Commission has recognized "the longer the vertically integrated transmission provider can use access to interconnection or transmission service to delay or prevent entry of competing generators to its service territory, the longer it can profit from its own generation sales with a limited threat of competition." As a vertically integrated utility, Entergy continues to have incentives to administer its Transmission Business to disadvantage its competition. This was painfully evident to Occidental and other QFs when Entergy, in administering the generator imbalance provisions of their FERC-jurisdictional interconnection contracts, deemed the QFs' output to be going to serve their wholesale transmission schedules first and their host industrial loads second. This practice was not evident just from reading Entergy's tariff. Once it was brought to light, however, Occidental and other QFs protested it, and this Commission found it was

unreasonable and unduly discriminatory, and that it resulted in charges that were excessive. Moreover, the Commission found this practice effectively excluded QFs from the wholesale electric energy market in the Southeast and that Entergy increased its market share by forcing QFs out of the market. While this particular issue of access was resolved, it highlights an important lesson—how Entergy interprets and applies its tariffs and rules, not only the terms and the language of the tariffs and rules, is critical to whether it is fulfilling its obligations to provide nondiscriminatory access.

Entergy, in its Answer in the ICT docket, makes much of the role of the ICT in *detecting* discrimination, noting your statement in Order No. 2000, that ““instances of actual discrimination may be undetectable in a non-transparent market and, in any event, it is often hard to determine, on an after-the-fact basis.”” Entergy’s reference to your statement is ironic because it highlights the fundamental flaw in Entergy’s approach. The “market” here is not transparent. Indeed, the Commission has highlighted this very concern to Entergy about its “AFC” methodology, that “the AFC proposal is not sufficiently transparent and could allow Entergy to discriminate in favor of its generators when assigning transmission service.” Entergy can, and does, administer and implement the rules, tariffs and procedures in ways that foreclose competitors from access to the wholesale markets and benefit Entergy’s generation arm. It is rather telling that Entergy has not presented you with a solution that adds transparency. Instead, this ICT “overseer”, despite its purported authority to “detect” discriminatory practices, will have no rights under the Federal Power Act to seek redress for any such practices. The ICT will not stop Entergy from exercising its transmission market power. The ICT will not

enhance Occidental's confidence that Entergy will not discriminate—in fact, Occidental's confidence would decrease.

I will focus on three examples of Entergy's ability to foreclose competition by its administration of its Transmission Function all, with one exception, arguably within the rules. All raise issues as to the availability of open and nondiscriminatory transmission access on Entergy's system.

First, Entergy's implementation of the AFC methodology began April 27, 2004 and there has been a profound impact on Occidental's ability to sell power from its Taft generating facility in the wholesale market. Before then, Occidental regularly obtained transmission service under Entergy's OATT to support bilateral, negotiated sales of power in the wholesale market. But since the AFC methodology took effect, even non-firm transmission for power sourced from the Taft Facility has consistently been unavailable. As a result of the implementation of the AFC methodology, the Taft Facility for all intents and purposes is restricted to selling its excess energy to one buyer—Entergy—at the Entergy-set avoided cost rates. Entergy's avoided cost prices, however, have historically been lower than the prices that can be negotiated in the bilateral wholesale power market. This provides Entergy's generation arm the opportunity to profit by reselling the lower priced wholesale PURPA power at the higher market price. To illustrate, the amount of power sold in the wholesale energy market decreased from about 25% of the Taft Facility's total excess generation sold for the month of April 2004 to about 9% for the month of May 2004—the first full month under the AFC methodology. Also Entergy recently made changes to its avoided cost methodology that depress the avoided cost price Entergy pays QFs for wholesale PURPA power. Clearly

ICT oversight will have no impact on the discriminatory results of the AFC methodology as those results are grounded in the rules that an ICT would purportedly ensure are followed.

Before moving onto the second example regarding Entergy's failure to relieve congestion, I pause to clarify what I said was an exception to the examples I was describing being Entergy discriminating "within the rules." Occidental requested that Entergy provide workpapers explaining the reasons for the denied transmission service requests under the AFC process. The Commission specifically required that the right to obtain such workpapers be included in Entergy's OATT to address, in part, the Commission's concern that the AFC process was not sufficiently transparent. After two months, Entergy has yet to comply with Occidental's request. In fact, Entergy didn't even acknowledge Occidental's request until Tuesday of this week. That acknowledgment, however, merely explained that Entergy did not know when it would be able to provide the requested workpapers because it was still working on getting software in place. Thus, two months after Occidental's request and three months after the AFC process was implemented, nothing has been done to address the AFC's lack of transparency. Occidental recommends that instead of spending time and resources exploring the ICT proposal, Entergy, market participants and regulators would be better served if Entergy fulfilled its existing obligations under its OATT and provided non-discriminatory transmission service.

My second example addresses Entergy's ability to foreclose competition by delaying economic transmission upgrades to relieve long-standing congestion. A prime example of Entergy's exercise of its dominant transmission position is the severe import

capacity limitations in Amite South, which predate Entergy's 1992 merger with Gulf States Utilities Company. Entergy testified to this Commission over ten years ago that one of the benefits of the merger with Gulf States was to be the elimination of the Amite South transmission constraint. Imports into Amite South remain severely constrained, and Amite South remains a load pocket. Now, generation located in a load pocket, like the Taft QF, logically should be able to access transmission to serve that load. Under Entergy's implementation of its AFC methodology, however, Entergy's system seems to be an exception to the rule, because transmission access to this constrained load as well as load outside the constrained area just isn't consistently available!

Entergy's reluctance to relieve congestion is not limited to the Amite South region. Indeed, Entergy's Chief Executive Officer, in a speech to investment bankers in 2000, regarding the then planned merger between Entergy and Florida Power and Light Company, stated that to make money in the transmission business (and I quote), "you have to have growth, you have to have a greater need for transmission service in your territory, *you need the users to identify their sources and their sinks so you have information available that the market place does not have and congestion is a good thing.* It's a good thing because it provides complexity and with complexity is going to provide opportunity if you can solve the problems." Thus, Entergy's overall reluctance to relieve congestion is hardly surprising given Entergy's Chief Executive Officer's opinion that "congestion is a good thing." Such a view is entirely consistent with a practice of fostering congestion in order to provide an environment suitable for use of its transmission market power. This ICT will have absolutely no impact on this problem.

My last example also illustrates Entergy's administration of its transmission business to the disadvantage of competitors and to the benefit of its generation arm. As I previously explained, Entergy's application of its AFC methodology has driven the Taft Facility from the wholesale market to avoided cost sales under PURPA. Entergy has recently changed its avoided cost methodology, and I cite the process by which Entergy has pursued approval of those changes to demonstrate that the corporate ties between generation and transmission within Entergy continue to prove problematic for transmission access.

First, Entergy's avoided costs are set by Entergy's wholesale merchant function, "EMO." Entergy's statutory obligation under PURPA to purchase energy from QFs is also administered by EMO. Entergy has applications pending before the state commissions in Louisiana and Texas for approval to modify its methodology for calculating its avoided cost payments to QFs. The modifications include certain assumptions about the ability of alternative sources of purchase power to access the Entergy transmission system, both externally and internally. Basically, these ignore the possibility of the existence of internal congestion. Based upon these assumptions, the avoided cost calculations produce substantially lower purchase prices offered to QFs than if those assumptions are not used. In Texas, the QFs, including Occidental, challenged the reasonableness of these assumptions. In response, Entergy arranged for a Transmission Function employee to proffer testimony endorsing the reasonableness of these transmission assumptions in its generation affiliate methodology.

Under the principles of independent functioning and equal treatment, reiterated so clearly in Orders 2004 and 2004A, a Transmission Function employee should not be

taking sides in a dispute regarding a purchase price used by its wholesale merchant function. A truly independent Transmission Provider would have no interest in the merchant function's purchase price it offers to competitors. That Entergy administers its Transmission Business to provide for this kind of activity creates, at a minimum, an overt perception of discrimination. The inherently suspect and discriminatory nature of such activity by a Transmission Provider is only highlighted by the fact that, as I discussed above, Entergy's new AFC methodology drives QF competitors from the bilateral wholesale market to avoided cost sales under PURPA. Entergy Transmission's ability to force QF sellers, like the Taft Facility, out of the wholesale market under its AFC methodology, and to favorably influence the avoided cost purchase rates that its merchant function pays those QFs, raises serious market power issues that warrant investigation in proceedings open to participation by all market participants affected by Entergy's transmission market power. The ICT would not prevent such instances of anti-competitive behavior, and would not enhance market participants' confidence.

In closing, I would like to stress that the ICT proposal is not progress but a step backwards. In recommending that the ICT proposal be rejected, Occidental is not advocating that nothing be done in the interim. Occidental respectfully requests that the resources being expended to address the ICT proposal be redirected to an investigation into Entergy's discriminatory administration of its transmission system and the prescription of meaningful mitigation measures to Entergy's transmission market power. Entergy's claim that such discriminatory action does not exist highlights the absurdity and unreasonableness of asking this Commission to charge Occidental and other customers the costs for Entergy to hire the ICT whose mission, under contract with

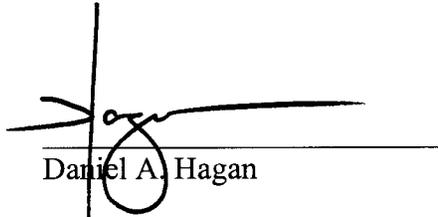
Entergy, would be to “oversee” that Entergy complies with obligations that Entergy asserts it is already fully satisfying. Such an investigation, like this conference, should be open to participation by all market participants, so that the Commission will have the benefit of their insight into the issues of transmission access on Entergy’s system.

That concludes my opening statement.

Thank you.

CERTIFICATE OF SERVICE

I hereby certify that I have this 2nd day of August, 2004, served by first-class mail, postage prepaid the foregoing document upon each person listed on the official Service List in this proceeding.

A handwritten signature in black ink, appearing to read 'D. Hagan', is written over a horizontal line. A vertical line extends upwards from the center of the signature.

Daniel A. Hagan

*Attorney for
Occidental Chemical Corporation*

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