

111 FERC ¶ 61,222  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Entergy Services, Inc.

Docket No. EL05-52-001

ORDER ON CLARIFICATION

(Issued May 12, 2005)

1. On April 8, 2005, several intervenors<sup>1</sup> requested certain clarifications of the Commission's March 22, 2005 order in this proceeding.<sup>2</sup> In addition, on April 21, 2005, Entergy Services, Inc. (Entergy) and certain of Entergy's retail regulators<sup>3</sup> separately requested clarification or rehearing of the *ICT Order*.<sup>4</sup> That order addressed a petition for

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<sup>1</sup> Occidental Chemical Corporation; The Dow Chemical Company; Calpine Corporation; Cottonwood Energy Company LP; Union Power Partners, LP; NRG Energy, Inc.; Suez Energy North America, Inc.; Lafayette Utilities System; Municipal Energy Agency of Mississippi; Louisiana Energy and Power Authority; Mississippi Delta Energy Agency; Clarksdale Public Utilities Commission; Public Service Commission of Yazoo City; Arkansas Electric Cooperative Corporation; Southeast Electricity Consumers Association; Dynegy Power Marketing, Inc.; and Calcasieu Power, LLC (collectively Intervenors).

<sup>2</sup> *Entergy Services Inc.*, 110 FERC ¶ 61,295 (2005) (*ICT Order*).

<sup>3</sup> These retail regulators are the Louisiana Public Service Commission, the Mississippi Public Service Commission and the Council of the City of New Orleans (collectively, Retail Regulators). The Retail Regulators included in their filing both requests for rehearing and for clarification.

<sup>4</sup> In this order, the Commission is addressing only the request for limited clarification filed on April 8, 2005, Entergy's request for clarification, and the requests for clarification in the Retail Regulators' filing on April 21, 2005. The Commission will address requests for rehearing and any other requests for clarification at a later date.

declaratory order submitted by Entergy requesting guidance on issues associated with its proposal in Docket No. ER04-699-000 to establish an Independent Coordinator of Transmission (ICT).

2. On April 21, 2005, Entergy filed a letter in this docket informing the Commission of its intent to file a section 205 filing on or about May 27, 2005 adopting the ICT Proposal as modified by the *ICT Order*. The Commission believes that it is important to provide guidance on the substance of this section 205 filing as soon as possible. Thus, we will clarify the *ICT Order*, as laid out below. This order benefits customers by aiding Entergy in drafting its section 205 filing in order to fulfill the Commission's requirements as laid out in the *ICT Order*.

### **Background**

3. On April 1, 2004, in Docket No. ER04-699-000, Entergy filed revisions to its Open Access Transmission Tariff (OATT) (Original ICT Proposal) proposing: (1) to contract with an independent entity, the ICT, to provide oversight over the operation of the Entergy transmission system; (2) a new process for assigning cost responsibility for transmission upgrades; and (3) a new Weekly Procurement Process (WPP). The Commission convened a series of technical conferences to discuss issues raised by Entergy's proposal. As a result of the extensive discussions with Entergy's customers and retail regulators in the technical conferences, Entergy proposed, in Docket No. EL05-52-000, to enhance the functions of the ICT from those in the Original ICT Proposal (Enhanced ICT Proposal).

4. The proposed enhancements would give the ICT authority to grant or deny requests for transmission service, calculate AFC, administer Entergy's Open Access Same Time Information System (OASIS), and perform an enhanced planning function (integrating the plans of Entergy and other potential transmission owners to identify regional synergies). Entergy asked for guidance from the Commission as to whether its transmission pricing proposal, as administered by the ICT, would satisfy the Commission's transmission pricing policies.

5. In the *ICT Order*, the Commission stated that it is prepared to grant Entergy's proposed transmission pricing proposal on a two-year experimental basis, subject to certain enhancements and monitoring and reporting conditions, if Entergy makes an acceptable section 205 filing. Before any approval of Entergy's transmission pricing proposal can be given, Entergy will need to make a section 205 filing in a new docket detailing the enhanced functions that the ICT will perform.

6. The Commission stated that the section 205 filing will need to more fully specify in the tariff the responsibilities and duties of the ICT and that it must clearly give the ICT authority to grant or deny requests for transmission service. We stated that the ICT must be given authority to independently administer Entergy's OASIS – including calculating and posting available transmission and flowgate capability on the Entergy system. The process for requesting transmission service on the Entergy system and the standards under which the ICT will evaluate such requests must be transparent and understandable to market participants. The Commission stated that it will evaluate the section 205 filing to determine whether, in granting or denying transmission service, the ICT has sufficient authority to ensure that the terms and conditions of Entergy's OATT (including AFC procedures) will be applied in a fair and non-discriminatory manner.

7. Under Entergy's transmission pricing proposal, the upgrades to the transmission system are bifurcated into two categories for purposes of pricing. For the first category, the Base Plan, Entergy proposed to continue to roll in the costs of those upgrades needed for reliability and load growth purposes.<sup>5</sup> Entergy proposed to develop the initial Base Plan subject to oversight by the ICT. The ICT would review whether Entergy's planning standards are consistent with local, regional and North American Electric Reliability Council (NERC) criteria and whether the standards were applied fairly. The Commission modified this proposal, stating that intervenors made a persuasive argument that the ICT, not Entergy, should develop the original Base Plan,<sup>6</sup> including any inputs and numerical values that go into the Base Plan.

8. With regard to the Supplemental Upgrades, the cost would be directly assigned to the entity requesting the service that makes the upgrades necessary. The *ICT Order* stated that the rights that Entergy proposed to provide in exchange for the customer's payment for the upgrades were not sufficiently explained. The Commission, therefore, required Entergy to propose and fully support a method for providing firm transmission rights to customers who pay for Supplemental Upgrades. We stated that these transmission rights must protect customers that pay for Supplemental Upgrades from congestion costs that would be faced if not for the upgrades. These firm transmission rights also should protect customers from curtailment except in force majeure situations. We encouraged Entergy to work with parties to this proceeding to develop a method to fairly compensate customers who pay for Supplemental Upgrades in the form of Financial Transmission Rights or a comparable form of rights.

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<sup>5</sup> This is consistent with Entergy's current pricing methodology and with the Commission's traditional pricing methodology for such upgrades.

<sup>6</sup> *ICT Order* at P 68.

9. In the *ICT Order*, the Commission noted that Entergy had only identified one entity that could be selected as the ICT, SPP.<sup>7</sup> Therefore, based on Entergy's filing, we assumed that Entergy would select SPP as its candidate to be the ICT. The Commission has already ruled that SPP complies with the independence requirements of Order No. 2000. Since we have already determined that SPP is an independent entity, we stated that we saw no reason to address allegations that the ICT would not be independent. However, we stated that once Entergy contracts with the ICT, that contract will be subject to Commission review and approval.

### **Discussion**

10. Entergy filed an answer to the Intervenors' request for clarification on April 25, 2005. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2004), prohibits answers to requests for rehearing. Accordingly, we will reject Entergy's answer.

11. In order to provide Entergy guidance for the section 205 filing, the Commission will clarify the *ICT Order* in several respects. As requested by Entergy, we will defer acting on the Intervenors' request for clarification on the role of the ICT in developing the Base Plan until we have seen Entergy's specific proposal in the section 205 filing.

### **ICT's Role in Administering the AFC Process**

12. First, the Intervenors request clarification as to the scope of the ICT's role in administering the AFC process. They state that the *ICT Order* did not specify that the ICT should determine the procedures used in making the AFC calculations and postings. They state that if the ICT is limited to administering the AFC methodology as developed by Entergy, then the ICT will provide little value. In the *ICT Order*, the Commission stated that it will evaluate Entergy's section 205 filing to determine whether the ICT has sufficient authority to ensure that the terms and conditions of the Entergy's OATT, including the AFC procedures, will be applied in a fair and non-discriminatory manner. The Intervenors want to be sure that the AFC process does not just change hands, and that the ICT will address the problems expressed by the Intervenors regarding Entergy's AFC methodology.

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<sup>7</sup> See, e.g. Arkansas PSC at 3-4. At the October 8, 2004 Technical Conference, SPP's President indicated that the SPP is willing to serve as Entergy's ICT. Tr. 120-121.

13. In the *ICT Order*, the Commission stated that the ICT must be responsible for calculating and posting available transmission and flowgate capability on the Entergy system. We clarify that Entergy is to work with the ICT and Entergy's stakeholders to develop the procedures by which the ICT will calculate AFC. We will then review these procedures. Entergy should endeavor to ensure that the various concerns raised with regard to its AFC process are addressed.<sup>8</sup> To this end, Entergy must consult with the ICT and Entergy's stakeholders before making a filing to modify its AFC procedures to address any such problems. The Commission will review Entergy's section 205 filing implementing the requirements in the *ICT Order* to ensure that the ICT's ability to calculate and post AFC on the Entergy system is a meaningful improvement over the status quo.

### **Firm Transmission Rights**

14. In order for the Commission to approve Entergy's pricing proposal, the Commission required Entergy to propose a method for providing firm transmission rights to customers who pay for Supplemental Upgrades. The Intervenor expressed concern that the regions that use Financial Transmission Rights have very different pricing policies and markets in their control areas. They state that without clarification of this aspect of the *ICT Order*, Entergy will claim that Financial Transmission Rights are not applicable to its system, and the parties will be required to re-argue the "and" pricing policy issues in Entergy's section 205 filing. The Intervenor request that the Commission clarify that Entergy must provide customers paying for Supplemental Upgrades something of tangible value on the Entergy system.

15. We agree with the Intervenor that when a customer is required to pay costs associated with supplemental upgrades, Entergy must specifically define the rights that the customer will receive. We realize that the Entergy system does not employ LMP pricing and therefore does not have Financial Transmission Rights, nonetheless, Entergy bears the burden of defining long term firm transmission rights which protect the customer from any future "congestion" costs associated with re-dispatching generation and must protect the customer from curtailment except in a force majeure situation. Importantly, the transmission rights which the customer receives must be defined with sufficient specificity that they can be resold by the customer. The Commission directs Entergy to work with parties in this proceeding to develop well-defined and tradable rights for customers that are required to pay for Supplemental Upgrades.

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<sup>8</sup> See, e.g. *Entergy Services, Inc.*, 109 FERC ¶ 61,281 (2004). See also *Entergy Services, Inc.* Docket No. PA04-17-000 (December 17, 2004) (Unpublished Letter Order).

### **ICT Independence**

16. The Intervenors request that the Commission clarify SPP's ability to operate independently of Entergy under the ICT contract. The *ICT Order* stated that since the Commission has "already determined that SPP is an independent entity by virtue of its being an RTO, we see no reason to address commenters' allegations that the ICT will not be independent." The Intervenors claim that the Commission did not address whether SPP was independent of Entergy in the SPP RTO proceeding. They state that they are seeking clarification that the Commission has not pre-judged this issue and that the parties may review the proposed contract and raise issues as to whether SPP is sufficiently independent to perform the ICT functions when Entergy makes its section 205 filing.

17. The Retail Regulators are concerned that the Commission's jurisdictional analysis rests on Entergy choosing SPP as the ICT. Specifically, they point to the statement that the "presence of SPP as the ICT will not change the existing balance of jurisdiction between this Commission and Entergy's retail regulators."<sup>9</sup> The Retail Regulators also request clarification that the Commission has not decided that SPP must be the ICT. They request that the Commission clarify that the ICT is required to be independent of all market participants.

18. We agree with the Intervenors that, if SPP is selected as the ICT, SPP's independence from Entergy should be further examined at the time Entergy files its section 205 filing. The *ICT Order* made clear that "once Entergy contracts with the ICT, that contract will be subject to Commission review and approval."<sup>10</sup> We realize that, although SPP is an independent entity in its performance of its duties in the SPP market, the contract between it and Entergy must provide for the performance of ICT functions in an independent manner. This issue will be looked at more closely in the section 205 filing and when Entergy files the contract with the ICT. At that time, any party may comment on those filings. As requested by the Retail Regulators, we clarify that this review and approval process for the ICT will also include a review of the ICT's independence from all market participants.

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<sup>9</sup> *Id.* at 11, citing *ICT Order* at P 38.

<sup>10</sup> *Id.* at P 74.

19. The Retail Regulators also express concern that the Commission's jurisdictional analysis rested on Entergy's choosing SPP as the ICT. Since Entergy's filing indicated that it would likely select SPP as the ICT candidate, we simply relied on this representation when we addressed the jurisdictional balance issue. There is no need for us to further clarify this jurisdictional balance issue..

20. Along similar lines, the Retail Regulators request that the Commission make clear that we have not prejudged that SPP must be selected as the ICT. Although Entergy's filing indicated that SPP will be the entity Entergy will select as the ICT candidate, we have not prejudged this issue. We will address the selection of the ICT when a specific filing on this matter is made at the Commission.

### **Start and End of the Two-Year Experiment**

21. Finally, Entergy requests that the Commission clarify the start and end of the two-year period of ICT operations. It asks that the Commission clarify that the ICT will not be "installed" until after Entergy has received any necessary retail regulatory authorizations.<sup>11</sup> Therefore, the Commission should clarify that the ICT need not begin operations until 60 days after all retail regulatory authorizations are obtained.

22. Paragraph 75 of the *ICT Order* states that "this two-year period will begin upon the effective date of our acceptance of Entergy's section 205 filing."<sup>12</sup> However, the *ICT Order* also stated that "the ICT as well as Entergy's proposed transmission pricing will sunset after two years of Commission approval of the 205 filing."<sup>13</sup> Therefore, Entergy requests that the two-year sunset date be linked to the actual start date of operations. It argues that, since the Commission approved the ICT on an experimental basis, the experiment can only begin when the ICT commences operations.

23. Paragraph 78 of the *ICT Order* stated "[w]e expect that Entergy will file to install an independent entity with the ICT functions within 60 days after a Commission order approving the section 205 filing. We also expect that the ICT will be installed within 60 days of the date of the order approving the section 205 filing unless the ICT requests a

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<sup>11</sup> Entergy states that it anticipates receiving all such authorizations by the end of this year. Entergy Request for Clarification at 8.

<sup>12</sup> *ICT Order* at P 75.

<sup>13</sup> *Id.* at P 80.

delay.” We clarify that Entergy must file to install an independent entity with the ICT functions (including the applicable contracts) within 60 days after a Commission order approving the section 205 filing, and the ICT must be installed within 30 days of the date of a Commission order approving that ICT contract filing.

24. We clarify that the two year time period will not begin until Entergy’s proposals take effect, *i.e.*, the date the ICT becomes operational.

The Commission orders:

The requests for clarification are hereby granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Linda Mitry,  
Deputy Secretary.