

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Entergy Nuclear Generation Company	Docket Nos. ER99-1004-005 ER99-1004-006
Entergy Nuclear FitzPatrick, LLC	ER00-2738-004 ER00-2738-005
Entergy Nuclear Indian Point 3	ER00-2740-004 ER00-2740-005
Entergy Nuclear Indian Point 2	ER00-1721-002 ER00-1721-003
Entergy Nuclear Vermont Yankee, LLC	ER02-564-002 ER02-564-003
Northern Iowa Windpower LLC	ER02-257-006

ORDER ACCEPTING UPDATED MARKET POWER ANALYSIS AND TARIFF
REVISIONS

(Issued July 31, 2006)

1. In this order, we accept an updated market power analysis filed by Entergy Nuclear Generation Company (Entergy Nuclear), Entergy Nuclear FitzPatrick, LLC (FitzPatrick), Entergy Nuclear Indian Point 3, LLC (Indian Point 3), Entergy Nuclear Indian Point 2, LLC (Indian Point 2), and Entergy Nuclear Vermont Yankee, LLC (Vermont Yankee) (collectively, the Entergy Nuclear Companies) and find that, with the tariff modifications directed herein, the Entergy Nuclear Companies satisfy the Commission's standards for market-based rate authority. We also accept the Entergy Nuclear Companies' and Northern Iowa Windpower LLC's (Northern Iowa) proposed market-based rate tariff revisions, which provide that the respective market-based rate tariffs apply to sales of electric energy and capacity outside of the Entergy Operating

Companies' control area (Entergy control area).¹ We also accept the tariff sheets that include the change in status language adopted by the Commission in Order No. 652² and the deletion of the Commission's market behavior rules.³ The Entergy Nuclear Companies' next updated market power analysis is due three years from the date of this order.

Background

2. On July 29, 2005, the Entergy Nuclear Companies filed an updated market power analysis, change in status language and the Commission's market behavior rules. Each Entergy Nuclear Company owns and operates generation facilities in the New York Independent System Operator (NYISO) or ISO New England (ISO-NE) markets.⁴

3. Each of the Entergy Nuclear Companies is an indirect, wholly-owned subsidiary of Entergy Corporation. The Entergy Nuclear Companies state that they sell all of the power that their units generate to wholesale customers in NYISO or ISO-NE. The Entergy Nuclear Companies further state that they have no power marketing activities outside of the NYISO and ISO-NE markets.

¹ The Entergy Operating Companies are: Entergy Arkansas, Inc.; Entergy Louisiana, Inc.; Entergy Mississippi, Inc.; Entergy New Orleans, Inc.; and Entergy Gulf States, Inc.

² *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 70 Fed. Reg. 8,253, FERC Stats. & Regs. ¶ 31,175, order on reh'g, 111 FERC ¶ 61,413 (2005).

³ The tariff sheets described in Appendix A are accepted for filing.

⁴ The Commission accepted the Entergy Nuclear Companies' initial applications for market-based rate authority in *Entergy Nuclear Generation Co.*, 86 FERC ¶ 61,142 (1999); *Entergy Nuclear Fitzpatrick, L.L.C. and Entergy Nuclear Indian Point 3, L.L.C.*, Docket No. ER00-2738-000, *et al.* (Aug. 9, 2000) (unpublished letter order); *Entergy Nuclear Indian Point 2, LLC*, Docket No. ER01-1721-000 (May 24, 2001) (unpublished letter order); *Entergy Nuclear Vermont Yankee, LLC*, Docket No. ER02-564-000 (Feb. 5, 2002) (unpublished letter order).

4. On December 14, 2005, Entergy Services, Inc. (Entergy),⁵ on behalf of Entergy Nuclear Companies and Northern Iowa, filed a proposed revision to their market-based rate tariffs prohibiting sales at market-based rates with points of delivery in the Entergy control area, and requested an effective date of July 22, 2005.⁶

5. Northern Iowa is a Delaware limited liability company that owns and operates an 80 MW wind-powered electric generating facility located in Worth County, Iowa, which is in the Midwest Independent Transmission System Operator, Inc. market.⁷

6. On May 4, 2006, Entergy Nuclear Companies and Northern Iowa revised their December 14, 2005 filings to include revisions: (a) limiting sales of electric energy and capacity under their market-based rate tariffs to sales outside of the Entergy control area; (b) deleting the Commission's market behavior rules; and (c) revising the list of the issuing officers.

Notice and Responsive Pleadings

7. Notice of the July 29, 2005, filing was published in the *Federal Register*, 70 Fed. Reg. 47,191 (2005), with interventions or protests due on or before August 19, 2005. None was filed.

⁵ Entergy Services, Inc. is a subsidiary of Entergy Corporation. Entergy Corporation is a registered public utility holding company that owns all of the common stock of the Entergy Operating Companies and Entergy Services, Inc.

⁶ Entergy, on behalf of Entergy Nuclear Companies and Northern Iowa, requested that the Commission accept the amendments to Entergy Nuclear Companies' and Northern Iowa's market-based rate tariffs to be effective July 22, 2005, the date on which Entergy filed a notice stating that it was withdrawing its request for continued market-based rate authority on behalf of its affiliates for transactions with points of delivery in the Entergy control area and would adopt cost-based rates for such transactions. Entergy December 14, 2005 Transmittal Letter at 2.

⁷ Northern Iowa was authorized to sell electric energy and capacity at wholesale at market-based rates in *Northern Iowa Windpower LLC*, Docket No. ER01-1570-000 (May 3, 2001) (unpublished letter order) and *Northern Iowa Windpower LLC*, Docket No. ER02-257-000 (Dec. 21, 2001) (unpublished letter order). Northern Iowa's last updated market power analysis was accepted for filing in *Northern Iowa Windpower LLC*, Docket No. ER02-257-004 (Aug. 4, 2005) (unpublished letter order).

8. Notice of the December 14, 2005, filing was published in the *Federal Register*, 71 Fed. Reg. 107 (2006), with interventions or protests due on or before January 4, 2006. None was filed.

9. Notice of the May 4, 2006, filing was published in the *Federal Register*, 71 Fed. Reg. 29,328 (2006), with interventions or protests due on or before May 15, 2006. None was filed.

Discussion

Market-Based Rate Authorization

10. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, market power in generation and transmission and cannot erect other barriers to entry. The Commission also considers whether there is evidence of affiliate abuse or reciprocal dealing.⁸ As discussed below, the Commission concludes that the Entergy Nuclear Companies satisfy the Commission's standards for market-based rate authority with the tariff modifications directed herein.

Generation Market Power

11. In its order issued in *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018, *order on reh'g*, 108 FERC ¶ 61,026 (2004), the Commission adopted two indicative screens for assessing generation market power. The Entergy Nuclear Companies state that they have applied both the pivotal supplier and the wholesale market share screens for the NYISO and ISO-NE, the relevant geographic markets.

12. The Commission has reviewed the Entergy Nuclear Companies' generation market power analysis and has determined that the Entergy Nuclear Companies pass the generation market power screens in the NYISO and ISO-NE markets. Accordingly, the Commission finds that the Entergy Nuclear Companies satisfy the Commission's generation market power standard for the grant of market-based rate authority.

Transmission Market Power

13. The Entergy Nuclear Companies state that neither they nor any of their affiliates own or control any transmission facilities in the relevant geographic markets, other than

⁸ See, e.g., *Progress Power Marketing, Inc.*, 76 FERC ¶ 61,155 at 61,919 (1996); *Northwest Power Marketing Co., L.L.C.*, 75 FERC ¶ 61,281 at 61,899 (1996); *accord*, *Heartland Energy Services, Inc.*, 68 FERC ¶ 61,223 at 62,062-63 (1994).

limited interconnection facilities that are necessary to effect the sale of electric energy at wholesale.

14. Based on the Entergy Nuclear Companies' representations, we find that the Entergy Nuclear Companies satisfy the Commission's transmission market power standard for the grant of market-based rate authority.⁹

Barriers To Entry

15. The Entergy Nuclear Companies note that, in determining whether an applicant for market-based rate authorization can erect barriers to entry, the Commission considers control over plant sites or control over inputs to generation as potential barriers to entry. The Entergy Nuclear Companies state that neither the Entergy Nuclear Companies nor any of their affiliates have dominant control over sites or other scarce inputs to generation in either NYISO or ISO-NE.

16. Based on the Entergy Nuclear Companies' representations, we find that the Entergy Nuclear Companies cannot erect barriers to entry.

Affiliate Abuse

17. The Entergy Nuclear Companies state that neither they nor any of their affiliates have a franchised electric service territory within either of the relevant geographic markets. They further state that the Entergy Nuclear Companies' market-based rate tariffs prohibit sales of electric energy and capacity to affiliates who are franchised electric utilities.

18. The Commission's review of the market-based rate tariffs of the Energy Nuclear Companies reveals that, with the exception of Indian Point 2, the tariffs prohibit sales of electric energy and capacity to affiliates with a franchised service territory. Indian Point 2's tariff states that it will not make sales to any affiliate with a franchised service territory absent a rate filing under section 205 of the Federal Power Act (FPA).¹⁰ Consistent with Commission precedent, we direct Indian Point 2 to revise its tariff to state that it will not make sales to any affiliate with a franchised service territory without

⁹ We note that Entergy Nuclear Companies' affiliate, Entergy, owns transmission facilities in another control area and has an open access transmission tariff (OATT) on file with the Commission. The Commission accepted Entergy's OATT in *Entergy Services, Inc.*, 77 FERC ¶ 61,145 (1996).

¹⁰ 18 U.S.C. § 824d (2000).

first receiving Commission authorization of the transaction under section 205 of the FPA.¹¹

19. Entergy Nuclear Companies also state that each of the Entergy Nuclear Companies has filed market-based rate tariffs which include the Commission's standard code of conduct.¹² However, the Commission's review of the Entergy Nuclear Companies' codes of conduct reveals that they do not conform to the Commission's standard code of conduct. When initially granting market-based rate authority to FitzPatrick, Indian Point 3, Indian Point 2, and Vermont Yankee, the Commission stated: "If the applicant submitted a code of conduct, it is accepted if consistent with Appendix B [the Commission's standard market-based rate code of conduct] which reflects requirements adopted in previous Commission orders. Any code of conduct inconsistent with Appendix B is rejected and in such case Appendix B has been designated as the applicant's code of conduct."¹³ The codes of conduct for FitzPatrick, Indian Point 3, Indian Point 2, and Vermont Yankee that were submitted as part of the Entergy Nuclear Companies' updated market power analysis differ from the Appendix B code of conduct. The code of conduct for Entergy Nuclear that was submitted as part of the Entergy Nuclear Companies' updated market power analysis similarly does not conform to the standard code of conduct. Therefore, we will direct the Entergy Nuclear Companies to file with the Commission, within thirty days of the date of this order, codes of conduct that conform to the Commission's standard code of conduct, which is included as Appendix B to this order.

20. Based on Entergy Nuclear Companies' representations, and subject to the tariff revisions we direct herein, we find that Energy Nuclear Companies satisfy the Commission's concerns with regard to affiliate abuse.

Market-Based Rate Tariff Revisions

21. In the May 4, 2006 filing, Entergy Nuclear Companies and Northern Iowa proposed to amend their market-based rate tariffs to provide that the tariffs apply only to sales of electric energy and capacity outside of the Entergy control area. We will accept

¹¹ See *Aquila, Inc.*, 101 FERC ¶ 61,331 at P 12 (2002).

¹² Entergy Nuclear Companies July 29, 2005 filing, Henderson Aff. at 11.

¹³ *Entergy Nuclear Fitzpatrick, L.L.C. and Entergy Nuclear Indian Point 3, L.L.C.*, Docket No. ER00-2738-000, *et al.*, App. A at 3 (Aug. 9, 2000) (unpublished letter order); *Entergy Nuclear Indian Point 2, LLC*, Docket No. ER01-1721-000, App. A at 4 (May 24, 2001) (unpublished letter order); *Entergy Nuclear Vermont Yankee, LLC*, Docket No. ER02-564-000, App. A at 4 (Feb. 5, 2002) (unpublished letter order).

this revision to their tariffs, to be effective July 22, 2005, as requested. We also accept the tariff revisions that incorporate the Order No. 652 change in status language, as well as the tariff revisions that remove the market behavior rules.

Reporting Requirements

22. The Commission has stated that it no longer grants waiver of the full requirements of Part 45 in its orders granting market-based rate authority.¹⁴ Rather, the Commission now requires persons seeking to hold interlocking positions to comply with the full requirements of Part 45. An individual who currently is authorized to hold interlocking positions will not need to refile under the full requirements of Part 45 to continue to hold such interlocking positions (unless and until that individual assumes different or additional interlocking positions). Consistent with Order No. 664, we require the Entergy Nuclear Companies and Northern Iowa to comply with the full requirements of Part 45.

23. The Entergy Nuclear Companies must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.¹⁵ As noted above, Entergy Nuclear Companies and Northern Iowa have included the change in status reporting requirement in their tariffs.

24. Consistent with the procedures the Commission adopted in Order No. 2001, an entity with market-based rates must file electronically with the Commission an Electric Quarterly Report containing: (1) a summary of the contractual terms and conditions in every effective service agreement for market-based power sales; and (2) transaction information for effective short-term (less than one year) and long-term (one year or greater) market-based power sales during the most recent calendar quarter.¹⁶ Electric

¹⁴ See *Commission Authorization to Hold Interlocking Positions*, order No. 664, 70 Fed. Reg. 55,717 (September 23, 2005), FERC Stats. & Regs., Regulations Preambles, January 2001-December, 2005, ¶ 31,194 at P 34 (2005); *order denying reh'g*, Order No. 664-A, 114 FERC ¶ 61,142 PP 9, 14-15 (2006).

¹⁵ Order No. 652, 70 Fed. Reg. 8,253, FERC Stats. & Regs. ¶ 31,375 at P2.

¹⁶ *Revised Public Utility Filing Requirements*, Order No. 2001, 67 Fed. Reg. 31,043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127 (2002). Required data sets for contractual and transaction information are described in Attachments B and C of Order No. 2001. The Electric Quarterly Report must be submitted to the Commission using the EQR Submission System Software, which may be downloaded from the Commission's website at <http://www.ferc.gov/docs-filing/eqr.asp>.

Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.¹⁷

25. We will direct the Entergy Nuclear Companies to file an updated market power analysis within three years of the date of this order. The Commission also reserves the right to require such an analysis at any intervening time.

The Commission orders:

(A) The Entergy Nuclear Companies' updated market power analysis is hereby accepted for filing, as discussed in the body of this order.

(B) The Entergy Nuclear Companies and Northern Iowa's revisions to their market-based rate tariff sheets permitting sales at market-based rates outside of the Entergy control area are hereby accepted for filing, effective July 22, 2005, as requested, as discussed in the body of this order.

(C) The Entergy Nuclear Companies' revised tariff sheets incorporating the Order No. 652 language are hereby accepted for filing.

(D) The Entergy Nuclear Companies are hereby directed to file an updated market analysis within three years of the date of this order.

(E) Indian Point 2 is directed to make a compliance filing to revise the affiliate sales prohibition language in its market-based rate tariff, within 30 days of the date of this order, as discussed in the body of this order.

¹⁷ The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2005). Failure to file an Electric Quarterly Report (without an appropriate request for extension), or failure to report an agreement in an Electric Quarterly Report, may result in forfeiture of market-based rate authority, requiring filing of a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

(F) The Entergy Nuclear Companies are hereby directed to file with the Commission, within thirty days of the date of this order, codes of conduct that conform to the Commission's standard code of conduct.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

Appendix A

Tariff Designations

Entergy Nuclear Generation Company
FERC Electric Tariff, Original Volume No. 1, First Revised Sheet No. 1 and Original Sheet No. 2 (Supersedes Original Sheet No. 1).

Entergy Nuclear FitzPatrick, LLC
FERC Electric Tariff, Original Volume No. 1, First Revised Sheet Nos. 1 and 2, (Supersedes Original Sheet Nos. 1 and 2).

Entergy Nuclear Indian Point 3, LLC
FERC Electric Tariff, Original Volume No. 1, First Revised Sheet Nos. 1 and 2 (Supersedes Original Sheet Nos. 1 and 2).

Entergy Nuclear Indian Point 2, LLC
FERC Electric Tariff, Original Volume No. 1, First Revised Sheet Nos. 1-3 (Supersedes Original Sheet No. 1-3).

Entergy Nuclear Vermont Yankee, LLC
FERC Electric Tariff, Original Volume No. 1, First Revised Sheet Nos. 1 and 2 (Supersedes Original Sheet Nos. 1 and 2).

Northern Iowa Windpower LLC
FERC Electric Tariff, First Revised Volume No. 1 and First Revised Sheet No. 1 (Supersedes Original Volume No. 1 and Original Sheet Nos. 1, 4 and 5).

Appendix B

CODE OF CONDUCT WITH RESPECT TO THE RELATIONSHIP BETWEEN [POWER MARKETER] AND [PUBLIC UTILITY]

Marketing of Power

1. To the maximum extent practical, the employees of [Power Marketer] will operate separately from the employees of [Public Utility].
2. All market information shared between [Public Utility] and [Power Marketer] will be disclosed simultaneously to the public. This includes all market information, including but not limited to, any communication concerning power or transmission business, present or future, positive or negative, concrete or potential. Shared employees in a support role are not bound by this provision, but they may not serve as an improper conduit of information to non-support personnel.
3. Sales of any non-power goods or services by [Public Utility], including sales made through its affiliated EWG's or QF's, to [Power Marketer] will be at the higher of cost or market price.
4. Sales of any non-power goods or services by the [Power Marketer] to [Public Utility] will not be at a price above market.

Brokering of Power

To the extent [Power Marketer] seeks to broker power for [Public Utility]:

5. [Power Marketer] will offer [Public Utility's] power first.
6. The arrangement between [Power Marketer] and [Public Utility] is non-exclusive.
7. [Power Marketer] will not accept any fees in conjunction with any Brokering services it performs for [Public Utility].