

120 FERC ¶ 61,042  
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.

Entergy Services, Inc.

Docket No. OA07-17-000

ORDER ON PROPOSED VARIATIONS FROM THE PRO FORMA OPEN ACCESS  
TRANSMISSION TARIFF

(Issued July 13, 2007)

1. On April 16, 2007, Entergy Services, Inc. (Entergy) filed a request to retain certain provisions of its Open Access Transmission Tariff (OATT) that vary from the non-rate terms and conditions of the *pro forma* OATT as modified in Order No. 890.<sup>1</sup> As discussed below, the Commission rejects Entergy's energy imbalance provisions and accepts its generator imbalance provisions, to become effective July 13, 2007.

**I. Background**

2. In Order No. 890, the Commission reformed the *pro forma* OATT to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a non-discriminatory basis.<sup>2</sup> Among other things, Order No. 890 amended the *pro forma* OATT to require greater consistency and transparency in the calculation of available transfer capability, open and coordinated planning of transmission systems, and standardization of charges for generator and energy imbalance services. The Commission also revised various policies governing network resources, rollover rights, and reassignments of transmission capacity.

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<sup>1</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (March 15, 2007), FERC Stats. & Regs. ¶ 31,241 (2007).

<sup>2</sup> *See id.* at P 26-61.

3. The Commission established a series of compliance deadlines to implement the reforms adopted in the revised *pro forma* OATT. Transmission providers that have not been approved as an independent system operator (ISO) or regional transmission organization (RTO), and whose transmission facilities are not under the control of an ISO or RTO, were directed to submit Federal Power Act (FPA) section 206 filings that conform the non-rate terms and conditions of their OATTs to those of the *pro forma* OATT, as reformed in Order No. 890, within 120 days from publication of Order No. 890 in the *Federal Register*, *i.e.*, July 13, 2007.<sup>3</sup>

4. The Commission recognized, however, that some of these non-ISO/RTO transmission providers may have provisions in their existing OATTs that the Commission previously deemed to be consistent with or superior to the terms and conditions of the Order No. 888<sup>4</sup> *pro forma* OATT, but which *pro forma* terms and conditions were modified by Order No. 890. The Commission provided an opportunity for such transmission providers to submit an FPA section 205 filing seeking determination that a previously-approved variation from the Order No. 888 *pro forma* OATT substantively affected by the reforms adopted in Order No. 890 continues to be consistent with or superior to the revised *pro forma* OATT. The Commission directed applicants to make those filings within 30 days from publication of Order No. 890 in the *Federal Register*, *i.e.*, April 16, 2007, and to request that the proposed tariff provisions be made effective as of the date of the transmission provider's FPA section 206 compliance filing, described above, except for imbalance-related provisions, which may become effective on the first day of the billing cycle following that date. The Commission also requested that applicants state that the Commission has 90 days following the date of submission to act under section 205.

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<sup>3</sup> The original 60-day compliance deadline provided for in Order No. 890 was extended by the Commission in a subsequent order. See *Preventing Undue Discrimination and Preference in Transmission Service*, 119 FERC ¶ 61,037 (2007).

<sup>4</sup> *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub. nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

## II. Entergy's Filing

5. Entergy states that there are two categories of provisions in its OATT that are impacted by Order No. 890: (1) those related to otherwise "standard" OATT transmission-related services provided by Entergy; and (2) those related to Entergy's Independent Coordinator of Transmission (ICT), Weekly Procurement Process (WPP), and transmission upgrades pricing procedures (set forth in Attachments S through V of its OATT). Entergy states that the first category includes its current energy and generator imbalance provisions, sections 17.2 (Completed Application under Procedures for Arranging Firm Point-to-Point Transmission Service) and 18.2 (Completed Application under Procedures for Arranging Non-Firm Point-to-Point Transmission Service) of its OATT, and section 11 (Creditworthiness) provisions, each of which are directly affected by specific changes adopted in Order No. 890.<sup>5</sup> Entergy states that the second category may include the pricing structure applicable to planning redispatch under the WPP.

6. With regard to Entergy's imbalance provisions, Entergy states that its current Schedule 4 is consistent with or superior to Order No. 890's revised *pro forma* Schedule 4 because Entergy's energy imbalance charges are based on incremental costs for the provision of energy imbalance services and because, through graduated deviation bands, it promotes accurate scheduling of load. Entergy contends that these two fundamental principles form the basis for the reforms adopted in Order No. 890 and, therefore, its current Schedule 4 is consistent with and superior to the revised *pro forma* OATT provisions. Entergy argues that Order No. 890's third policy objective regarding intermittent generation resources is not relevant because Schedule 4 concerns load imbalances. Entergy also argues that its Schedule 4 is the result of extensive litigation, dating back nearly six years, and the Commission should therefore find that Entergy's Schedule 4 remains consistent with or superior to the modifications adopted in the revised *pro forma* OATT.<sup>6</sup>

7. With regard to Entergy's generator imbalance provisions, Entergy explains that it has previously implemented a *pro forma* Generator Imbalance Agreement (GIA), included as Attachment P to its OATT. Entergy states that its GIA was accepted by the Commission, following an agreement with the Independent Power Producers (IPPs) on its

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<sup>5</sup> Entergy attaches to its filing the original tariff sheets containing these provisions, stating that it will refile the substance of these provisions with appropriate formatting and pagination as part of its July 13, 2007 compliance filing.

<sup>6</sup> Entergy notes that its Schedule 4 includes a mechanism to credit penalty revenues to non-offending customers, but does not currently credit energy imbalance penalty revenues to native load customers as required by Order No. 890. Entergy states that it will propose a methodology to do so in its July 13 compliance filing.

system. Entergy contends that its approach to generator imbalances has evolved over time, in response to various circumstances that required Entergy to refine its procedures. In particular, Entergy notes that the growth of IPPs on the Entergy transmission system has been unprecedented, straining the ability of available generation resources to respond to the imbalances and regulatory burdens they impose. Entergy contends that this IPP growth has resulted in over 20,000 megawatts (MW) in independent generator capacity. Entergy further argues that scheduling inefficiencies have resulted in dramatic costs imposed on Entergy. In 2003, Entergy notes, IPPs on the Entergy system produced approximately 319,651 MWh of Excess Energy, as well as incurring 33,398 MWh of Deficient Energy. Entergy contends that the GIA is the product of a global settlement with the IPPs on its system to resolve this issue by providing the correct incentives to encourage accurate scheduling that is absolutely critical to the operation of its system. Entergy explains that it has developed specialized software to monitor and manage generator imbalances under the GIA and employs six system operators to monitor and manage imbalances.

8. Entergy states that, like its Schedule 4, the GIA satisfies, or will satisfy, Order No. 890's three policy objectives for imbalances and is, therefore, consistent with or superior to the new *pro forma* Schedule 9. Entergy argues its GIA satisfies these objectives because its GIA standardizes the terms, conditions, and pricing for generation imbalances as part of a Commission-filed tariff, it sets forth a comprehensive model for the scheduling of generation by IPPs on the Entergy system in a way that clearly delineates roles and responsibilities and achieves the Commission's objective of encouraging accurate scheduling without being punitive, and it contains clear and specific pricing provisions based on incremental cost. Entergy also argues that its GIA enjoys the built-in advantage of existing for over 6 years, and therefore, IPPs on Entergy's system are familiar with the existing framework.

9. Entergy states that it is resubmitting its current sections 17.2 and 18.2 to rejustify language that allows the owner of a generation facility to submit a written request to Entergy for the identity of a transmission customer that has requested service from such owner's facility. Entergy further explains that this allows for a generator to ensure that transmission reservations sourcing from its generation facility are legitimate without unmasking confidential source and sink information posted on its Open Access Same Time Information System (OASIS). Additionally, Entergy explains that it filed this language with the Commission on November 4, 2005 in Docket No. ER06-162-000 as part of the stakeholder process implemented in Entergy's Available Flowgate (AFC) Proceeding. Entergy concedes that these provisions are not directly related to the revisions of section 17.2 and 18.2 of the *pro forma* OATT adopted in Order No. 890, but it is nonetheless including these sections in an abundance of caution.

10. With respect to its creditworthiness provisions, Entergy states that its section 11 has been accepted by the Commission in Docket Nos. ER03-1140-000, *et al.*, and ER04-

207-000, *et al.* Entergy contends that its creditworthiness procedures are consistent with the requirements of Order No. 890 because they include similar provisions. For instance, Entergy explains, its section 11 specifically delineates the objective criteria that Entergy uses to evaluate a customer's creditworthiness when applying for transmission service or during the course of annual credit reviews of Entergy's customers, which it argues Order No. 890 requires.<sup>7</sup> Lastly, Entergy explains that all transmission customers have clear information as to the credit process and standards used by Entergy because it has posted on its OASIS the criteria that Entergy uses when evaluating transmission customers.

11. With respect to the second category of variations affected by Order No. 890, Entergy acknowledges that Attachments S through V of Entergy's OATT will require a number of changes in order to conform to the revised *pro forma* OATT. Entergy states that it will include those changes in its July 13, 2007 compliance filing. For purposes of addressing the previously approved variations specifically affected by the reforms adopted in Order No. 890, but which Entergy would like to retain, Entergy contends that only the pricing structure applicable to planning redispatch provided through the WPP may be relevant in the event the Commission intended the pricing structure for planning redispatch adopted in Order No. 890 to apply to short-term (less than one year) transmission service. If that is the case, Entergy requests authorization to retain the existing pricing structure for planning redispatch provided through the WPP. Entergy argues that the Commission approved the ICT proposal as a package, including the expanded planning redispatch under the WPP and the pricing associated with that service. In Entergy's view, planning redispatch under the WPP goes beyond the requirements of Order No. 890 and thus the Commission should find that the pricing structure applicable to that service is consistent with or superior to the Order No. 890 pricing structure.

### **III. Notice of Filing and Responsive Pleadings**

12. Notice of Entergy's filing was published in the *Federal Register*, 72 Fed. Reg. 20,524 (2007), with comments, protests or interventions due on or before May 7, 2007. Calpine Corporation, Union Power Partners, L.P., Occidental Chemical Corporation, and NRG Companies<sup>8</sup> filed timely motions to intervene. Southwest Power Pool, Inc. filed an untimely motion to intervene. Arkansas Electric Cooperative Corporation, Mississippi Delta Energy Agency, Clarksdale Public Utilities Commission and the Public Service Commission of Yazoo City (Joint Intervenors) filed a joint protest. Entergy filed an answer to Joint Intervenors.

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<sup>7</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at 1657.

<sup>8</sup> NRG Companies includes NRG Power Marketing Inc., Bayou Cove Peaking Power LLC, Big Cajun I Peaking Power LLC, Big Cajun II Unit 4 LLC, Louisiana Generating LLC, and NRG Sterlington Power LLC.

#### IV. Discussion

##### A. Procedural Matters

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>9</sup> the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

14. We will grant Southwest Power Pool Inc.'s motion to intervene out of time, given its interest in this proceeding, the early stage of this proceeding, and the absence of any undue prejudice or delay.

15. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,<sup>10</sup> prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Entergy's answer because it has provided information that assisted us in our decision-making process.

##### B. Schedule 4 – Energy Imbalance Service

###### 1. Incremental and Decremental Costs

16. In Order No. 890, the Commission determined that imbalance charges must be consistent with three principles: (1) the charges must be based on incremental cost or some multiple thereof; (2) the charges must provide an incentive for accurate scheduling, such as by increasing the percentage of the adder above (and below) incremental cost as the deviations become larger; and (3) the provisions must account for the special circumstances presented by intermittent generators and their limited ability to precisely forecast or control generation levels, such as waiving the more punitive adders associated with higher deviations. The Commission also implemented a consistent definition for incremental and decremental costs. The revised *pro forma* OATT Schedule 4 provides that:

For purposes of this Schedule, incremental cost and decremental cost represent the Transmission Provider's actual average hourly cost of the last 10 MW dispatched to supply the Transmission Provider's Native Load Customers, based on the replacement cost of fuel, unit heat rates, start-up costs (including any commitment and redispatch costs), incremental

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<sup>9</sup> 18 C.F.R. § 385.214 (2006).

<sup>10</sup> 18 C.F.R. § 385.213(a)(2) (2006).

operation and maintenance costs, and purchased and interchange power costs and taxes, as applicable.<sup>11</sup>

The Commission determined that incremental cost should be defined to include both additional energy and commitment costs. The Commission found that it is appropriate, through the definition of incremental cost, to allow for recovery of both commitment and redispatch costs while excluding the cost recovery of additional regulation reserve costs.<sup>12</sup>

17. The Commission also found that it is not appropriate to require transmission providers to use market proxy pricing to calculate incremental costs in the revised *pro forma* OATT. The Commission notes that the feasibility of using market proxies must be considered on a case-by-case basis.<sup>13</sup>

**a. Proposed Variations**

18. Entergy argues that the Commission should allow its Schedule 4 to remain effective because it is fundamentally based on Entergy's incremental costs for the provision of energy imbalance services. Entergy states that its Schedule 4 prices energy imbalances based on Entergy's "Avoided Cost" for Excess Energy and Entergy's System Incremental Cost (ESIC) for Deficient Energy. Entergy defines Avoided Cost as the incremental cost to Entergy of electric energy which, but for a positive imbalance, Entergy would generate itself or purchase from another source. Thus, Entergy argues, Avoided Cost captures the costs of the last real-time MWs. Entergy further states that for Deficient Energy, ESIC is defined as the most expensive source of energy generated or purchased by Entergy, excluding longer term power purchase agreements. Entergy contends that ESIC includes the most expensive source of energy generated or purchased and is consistent with the *pro forma* OATT as revised by Order No. 890 because the last MWs, whether it be less than, more than, or equal to 10 MWs, are called-upon in real-time to supply the transmission provider's native load are normally the most expensive.

**b. Comments**

19. Joint Intervenors argue that Entergy's definitions for incremental and decremental costs not only vary from the Commission's *pro forma* definition but are not internally consistent with one another. Thus, Joint Intervenors argue, Entergy's energy and

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<sup>11</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at 31,395-96.

<sup>12</sup> *Id.* at P 687-88.

<sup>13</sup> *Id.* at P 692.

generator imbalance charges impose more onerous penalties on transmission customers than those imposed in the revised *pro forma* OATT. Joint Intervenors further argue that Entergy offers no evidence to show how its contravention of Order No. 890's direction to employ incremental costs actually incurred to serve native load as the basis for imbalance charges is consistent with or superior to that definition. Joint Intervenors comment that Entergy's definition of ESIC does not explicitly preclude the possibility that Entergy could include purchases made for bulk power trading purposes in the determination of ESIC. Joint Intervenors acknowledge that Entergy has been operating with these definitions for several years, but state that if it wishes to retain these definitions, it should be required to provide the Commission with actual data comparing Entergy's and the Commission's definitions of ESIC.

20. Joint Intervenors also argue Entergy's definition of decremental cost differs from the Commission's *pro forma* definition. Joint Intervenors note that the Commission has one definition for both incremental and decremental costs, using a common measure, but argue that Entergy's energy imbalance schedule has two different definitions for incremental and decremental costs. Joint Intervenors contend that Entergy's Schedule 4 defines Avoided Cost as incremental cost to Entergy of electric energy which, but for a positive imbalance, Entergy would generate itself or purchase from another source. Joint Intervenors further contend that Entergy's definition does not ensure that decremental costs are based on the marginal resource actually backed down as the result of a positive energy imbalance.

**c. Entergy's Answer**

21. Entergy maintains that its current Schedule 4 satisfies the three principles set forth in Order No. 890 (including incremental pricing) and therefore should be allowed to remain effective. Entergy urges the Commission to reject the protest because it is essentially arguing that Entergy's current Schedule 4 must be identical to the *pro forma* imbalance provisions in order to be consistent with or superior to the *pro forma* OATT as revised by Order No. 890.

**d. Commission Determination**

22. We will reject Entergy's definition of incremental cost for Schedule 4 Energy Imbalance Service because it has not demonstrated its definition is consistent with or superior to the Order No. 890 *pro forma* OATT. Under Order No. 890, imbalance charges must be based on incremental cost, or some multiple thereof, and define incremental cost as the transmission provider's actual average hourly cost of the last 10 MW dispatched to supply the transmission provider's native load customers. We conclude that Entergy's definition of incremental cost (ESIC) does not necessarily reflect the actual additional costs of correcting an imbalance as required in Order No. 890.

23. Entergy contends that its definition of “ESIC” is consistent with or superior to the reformed *pro forma* Schedule 4 definition because the last megawatts (whether it is 10, more than 10 or less than 10) called upon in real-time are normally the most expensive. In Entergy’s view, then, offending customers are appropriately charged with the most expensive generation purchased during that month. However, this does not necessarily reflect the actual additional costs associated with correcting imbalances during the hour. For example, if Entergy made purchases several weeks in advance that were higher than Entergy’s incremental costs (or purchase costs) during the hour of imbalance it would not charge the real-time generation costs, but would instead charge the higher purchased power costs incurred for service that could have been received weeks earlier. This is contrary to the *pro forma* Schedule 4 definition which uses the actual average hourly cost of the last 10 MW dispatched.

24. Entergy thus fails to demonstrate that its existing definition of incremental costs for its Schedule 4 Energy Imbalance Service is consistent with or superior to the *pro forma* OATT definition adopted in Order No. 890. Entergy’s current definition does not necessarily reflect the actual additional costs of correcting the imbalance and appears to create higher prices than the revised *pro forma* OATT definition. Therefore, we will reject Entergy’s definition of incremental cost and require Entergy to amend its Schedule 4 imbalance provisions to reflect the incremental cost definition adopted in the revised *pro forma* OATT in a compliance filing to be submitted within 30 days of the date of this order.

25. We will also reject Entergy’s Schedule 4 definition of decremental cost, referred to as Avoided Cost used to price Excess Energy or a positive energy imbalance. Entergy has not shown that its definition of decremental cost will be less expensive than that used in the *pro forma* OATT (the actual average hourly cost of the last 10 MW dispatched). That definition is therefore not consistent with or superior to the definition for decremental cost adopted in Order No. 890. We direct Entergy to amend its Schedule 4 imbalance provisions to reflect the decremental cost definition used in the revised *pro forma* OATT in a compliance filing to be submitted within 30 days of the date of this order.

## **2. Three-tiered Approach and Penalty Levels for Energy Imbalances**

26. In Order No. 890, the Commission established a three-tiered approach for addressing imbalances: (1) imbalances of less than or equal to 1.5 percent of the scheduled energy (or 2 MW) will be netted on a monthly basis and settled financially at 100 percent of incremental or decremental cost at the end of each month; (2) imbalances between 1.5 and 7.5 percent of the scheduled amounts (2 to 10 MW) will be settled financially at 90 percent of the transmission provider’s system decremental cost for overscheduling imbalances that require the transmission provider to decrease generation

or 110 percent of the incremental cost for underscheduling imbalances that require generation in that control area; and (3) imbalances greater than 7.5 percent of the scheduled amounts (or 10 MW), will be settled at 75 percent of the system decremental cost for overscheduling imbalances or 125 percent of the incremental cost for underscheduling imbalances.

**a. Proposed Variations**

27. Entergy argues that its Schedule 4 uses approximately the same deviation bands as those adopted in Order No. 890 and that its Schedule 4 encourages transmission customers to schedule their loads accurately through its use of graduated deviation bands. Entergy states that under Schedule 4 transmission customers have an initial penalty free deviation band of plus or minus 1.5 percent for both Excess and Deficient Energy. Within this initial deviation band, customers are not subject to energy imbalance charges, but rather are subject to return-in-kind payments within 30 days or another reasonable time period generally accepted in the region and consistently adhered to by Entergy.

28. Entergy explains that its Schedule 4 uses three deviation bands for Excess Energy of 0 to 1.5 percent, 1.5 - 10 percent (or a minimum of 2 MW – 20 MW), and over 10 percent (or a minimum of over 20 MW). Entergy also notes that it purchases Excess Energy for positive load imbalances ranging from 1.5 to 10 percent at 80 percent of Entergy's Avoided Cost. Entergy contends that Excess Energy for positive load imbalances of greater than a 10 percent deviation will be purchased at 70 percent of Entergy's Avoided Cost.

29. Entergy's Excess Energy has two deviation tiers. The first tier is 0 to 1.5 percent (2 MW minimum) and the second tier is any imbalance over 1.5 percent. Entergy states that Deficient Energy outside of the first-tiered deviation band is priced at 125 percent of ESIC.

30. For Deficient Energy, Entergy implements a penalty of 125 percent of ESIC for imbalances greater than 1.5 percent (or 2 MW). Entergy currently has no third tier for deficient energy. With respect to Excess Energy, Entergy prices imbalances greater than 1.5 percent and less than 10.0 percent at 80 percent of Avoided Cost within the second tier. In the third tier, Entergy prices imbalances greater than 10.0 percent at 70 percent of Avoided Cost.

**b. Comments**

31. Joint Intervenors note that Entergy has only two deviation bands for Deficient Energy, with customers being subject to the highest penalty (of 125 percent of ESIC) above a 1.5 percent deviation band. Also, Joint Intervenors argue that Entergy's penalty levels are significantly higher than those adopted by the Commission in Order No. 890. Thus, Joint Intervenors argue that Entergy's penalty structure for deficient energy is

substantially inferior to the *pro forma* Schedule 4. Joint Intervenors note the *pro forma* Schedule 4 has a middle tier, between 1.5 and 7.5 percent, in which customers are only charged 110 percent of incremental cost. Joint Intervenors argue that this aspect of Entergy's energy imbalance scheme does not comport with the Commission's second principle, which is that a percentage of the adder above incremental cost increase as the deviations become large. Thus, Joint Intervenors argue that Entergy should include a middle tier for deviations that are less than 7.5 percent or 10 MW.

**c. Entergy's Answer**

32. Entergy maintains that its current Schedule 4 satisfies the three principles (including the tiered deviation bands) and therefore should be allowed to remain effective. Entergy urges the Commission to reject the protest because it is essentially arguing that Entergy's current Schedule 4 must be identical to the *pro forma* imbalance provisions in order to be consistent with or superior to the revised *pro forma* OATT.

**d. Commission Determination**

33. We will reject Entergy's two-tiered approach for Deficient Energy Imbalances as it has not been demonstrated to be consistent with or superior to the revised *pro forma* OATT. The current two-tiered structure gives Entergy's customers less flexibility with deficient energy imbalances by subjecting them to the highest imbalance charge of 125 percent of ESIC once the 1.5 percent (or 2 MW) has been exceeded. This is not consistent with or superior to the revised *pro forma* Schedule 4, which provides for an intermediate deviation band at the lower charge of 110 percent of incremental cost. We therefore require Entergy to make a compliance filing based on a three-tiered approach in conformance with the revised *pro forma* OATT, within 30 days of the date of this order.

34. We also reject the charges proposed by Entergy for Excess Energy. Entergy's imbalance charges are slightly higher for Tier 2 (90 percent vs. 80 percent) and Tier 3 (75 percent vs. 70 percent) than the charges adopted in Order No. 890. Although the second and third tiers of Entergy's three-tiered approach are more liberal than the *pro forma* OATT,<sup>14</sup> Entergy has not shown that the benefits of this additional flexibility outweigh the increased costs associated with the higher imbalance charges. Accordingly, Entergy has not demonstrated that its three-tiered approach for Excess Energy penalties is consistent with or superior to the revised *pro forma* OATT adopted in Order No. 890.

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<sup>14</sup> Entergy's second tier allows a deviation up to 10 percent (or 20 MW) while the second tier in the revised *pro forma* OATT only allows a deviation up to 7.5 percent (or 10 MW). Entergy's third tier applies when the deviations exceed 10 percent (or 20 MW) while the third tier in the revised *pro forma* OATT applies to deviations in excess of 7.5 percent (or 10 MW).

We direct Entergy to amend its Schedule 4 to adopt the three-tiered approach of the *pro forma* OATT, as modified in Order No. 890 in a compliance filing to be submitted within 30 days of the date of this order.

35. We find that Entergy's current penalties for Deficient Energy are excessive and are not consistent with or superior to the revised *pro forma* OATT's Deficient Energy imbalance penalties. For example, for deficient energy imbalances, Entergy fails to offer three tiers of graduated deviation bands, and anything in excess of 1.5 percent (or 2 MW) is charged 125 percent of ESIC). This excessively penalizes customers, charging them fifteen percentage points (125 percent) higher than the revised *pro forma* OATT's second tier deviation band penalty (110 percent). Similarly, we reject Entergy's penalty levels for Excess Energy, and will require Entergy to make a compliance filing based on the deviation bands of Order No. 890's three-tiered approach within 30 days of the date of this order.

### **3. Settlement of Accumulated Deviations within Tier 1**

36. The Commission implemented an energy imbalance pricing approach where imbalances of less than or equal to 1.5 percent of the scheduled energy, or 2 MW, would be netted on a monthly basis and settled financially at 100 percent of incremental or decremental cost at the end of each month.

#### **a. Proposed Variations**

37. Although not addressed in its transmittal letter, Entergy's current tariff includes additional language that affects the settlement of accumulated deviations in the Tier 1 deviation band. In addition to the return-in-kind settlement provisions for Tier 1, Entergy's tariff provides that any deviations between the transmission customer's hourly metered energy and the energy actually supplied by the transmission customer's resources in any hour is within +/- 1.5 percent of the transmission customer's hourly metered energy for that hour, such excess or deficient energy is to be accumulated in either an On-Peak Account or Off-Peak Account. Moreover, to the extent that the amount of energy accumulated in the On-Peak or Off-Peak accounts at the end of any hour exceeds six percent of the transmission customer's hourly metered energy during that hour, the customer shall purchase deficient energy in excess of 6 percent at the 125 percent ESIC penalty level, or Entergy will purchase the excess energy at 70 percent of Avoided Cost.<sup>15</sup>

#### **b. Comments**

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<sup>15</sup> See Entergy Services, Inc., FERC Electric Tariff, Second Revised Vol. No. 3, Substitute Second Revised Sheet Nos. 126-27, section C.

38. Joint Intervenors argue that Entergy's Schedule 4 inappropriately includes hourly penalties within Tier 1. Joint Intervenors note that the Commission determined in Order No. 890 that imbalances of less than or equal to 1.5 percent of the scheduled energy should be netted on a monthly basis and settled financially at 100 percent of incremental or decremental cost at the end of each month. The Joint Intervenors claim that Entergy has not demonstrated that this provision is consistent with or superior to the revised *pro forma* OATT provisions.

**c. Commission Determination**

39. We will reject Entergy's additional language noted above because it effectively caps at six percent the amount of energy that can accumulate in the on-peak and off-peak accounts at the end of any hour. Entergy included these tariff sheets with this language in its filing but did not explain nor attempt to justify its inclusion in its filing. Therefore, Entergy has not demonstrated how this provision is consistent with or superior to the revised *pro forma* OATT.

**4. Penalties Charged for the Same Imbalance**

40. Order No. 890's modifications to the *pro forma* OATT Schedule 4 and Schedule 9 provide explicitly that a transmission provider may charge a customer a penalty for either hourly generator imbalance or energy imbalance for the same imbalance, but not for both.

**a. Proposed Variations**

41. Entergy's Schedule 4 does not explicitly discuss the issue of penalties charged for the same imbalance. Entergy states that its Schedule 4 uses approximately the same deviation bands as the revised *pro forma* OATT as adopted in Order No. 890.

**b. Comments**

42. Joint Intervenors argue that neither Entergy's Schedule 4 nor its Attachment P include a statement that, as required in the revised *pro forma* OATT, explicitly provides that a transmission provider may charge a customer a penalty for either hourly generator imbalance or energy imbalance for the same imbalance, but not both. Joint Intervenors state that Entergy does not indicate that it will add this language in its July 13, 2007 compliance filing and that omission of this provision would not be consistent with or superior to the revised *pro forma* OATT.

**c. Entergy's Answer**

43. Entergy responds that Joint Intervenors misread Entergy's Schedule 4 and GIA. Entergy states that customers do not face the risk of being double-charged for capacity and energy under Entergy's current Schedule 3,<sup>16</sup> Schedule 4, and the GIA because Section II.C of Entergy's GIA (Attachment P) states:

No [Generator Imbalance Service (GIS)] charge shall apply under this Agreement for any transaction to the extent an over delivery or under delivery of energy relative to the Schedule is offset by a corresponding deviation between the Schedule and the load served by the transaction that is covered by Schedule 4 (Energy Imbalance Service). The [Entergy Transmission System Operations Center (SOC)] commits to adjust the [Generation Regulation Service (GRS)] charge to account for complementary regulation service provided under OATT Schedule 3, if it is shown to offset the total regulation burden of a Delivering Party. The SOC, the Delivering Party, and the transmission customer receiving service under Schedule 3 will make the necessary arrangements in advance to measure and account for any offsetting regulation service.

Because of this language, Entergy states that the GIA specifically prevents the type of double-charge that Joint Intervenors allege might be assessed to customers.

**d. Commission Determination**

44. Entergy's GIA contains satisfactory language to prevent double-charging a customer, but its Schedule 4 does not contain specific language to prevent double-charging. We direct Entergy to make a compliance filing to add language to its current Schedule 4 to conform its OATT to the revised *pro forma* OATT as adopted in Order No. 890, within 30 days of the date of this order. Specifically, Entergy must modify Schedule 4 to state: "The Transmission Provider may charge a Transmission Customer a penalty

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<sup>16</sup> Schedule 3 (Regulation and Frequency Response Service) states:

Regulation and Frequency Response Service is the provision of generation and load response capability, including capacity, energy, and maneuverability, that is dispatched within a scheduling period by Entergy in order to meet the generation and demand balancing requirements for a Transmission Customer...and to correct mismatches between the Transmission Customer's actual loads and resources.

Entergy Services, Inc., FERC Electric Tariff, Second Revised Vol. No. 3, Second Revised Sheet No. 122.

for either the hourly generator imbalances under Schedule 9 or hourly energy imbalances under this schedule for the same imbalance, but not both.”<sup>17</sup>

**5. Penalty Crediting for Native Load**

**a. Proposed Variations**

45. Entergy states that it currently does not credit energy imbalance penalty revenues to native load customers as required by the revised *pro forma* OATT, but it states that it will include a methodology to do so in its July 13 compliance filing.

**b. Comments**

46. AECC specifically notes that it sought rehearing of the Commission’s decision to allow imbalance penalty revenues to be distributed to transmission users that are not exposed to the penalties.<sup>18</sup>

**c. Commission Determination**

47. The merits of Entergy’s penalty for crediting native load are beyond the scope of this proceeding. We note that Joint Intervenors raised this issue on rehearing of Order No. 890 in Docket Nos. RM05-17-001 and RM05-25-001. Joint Intervenors’ issues regarding this provision is more appropriately addressed in those proceedings. We will evaluate Entergy’s proposal to credit penalties to native load in its Order No. 890 compliance filing due on July 13, 2007.

**C. Generator Imbalance Services**

**1. Incremental and Decremental Costs**

48. The Commission outlined the definition and calculation of incremental and decremental costs for both energy imbalance and generator imbalance services in Order No. 890. The Commission implemented the same definitions and calculations for both energy and generator imbalance services, as described above.<sup>19</sup>

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<sup>17</sup> See Original Sheet No. 132 of the *pro forma* OATT.

<sup>18</sup> See Request for Rehearing and Clarification of the Transmission Dependent Utility Systems, filed March 19, 2007 at 67-69.

<sup>19</sup> The definitions and calculations are discussed in Part A of this order, Energy Imbalance Services.

a. **Proposed Variations**

49. Entergy argues that the rates, terms, and conditions of its GIA were designed to specifically promote accurate scheduling.<sup>20</sup> For instance, Entergy states that its GIA implements a graduated pricing mechanism for Entergy's purchases of Excess Energy consistent with the second principle established in Order No. 890. Under this methodology, Entergy states that it purchases Excess Energy: (1) up to or equal to 120 percent of the Schedule at 90 percent of Entergy's Avoided Cost; (2) above 120 percent of the Schedule and up to or equal to 150 percent of the Schedule at 75 percent of Avoided Cost; and (3) above 150 percent of Schedules at 50 percent of Avoided Cost. Entergy explains that it supplies Deficient Energy: (1) at 110 percent of ESIC for under deliveries associated with a notice event; (2) 100 percent for under deliveries associated with a notice event during an hour with an emergency event; and (3) at 110 percent for under deliveries not associated with a notice event. Entergy further states that, if the total amount of Deficient Energy supplied by Entergy under all GIAs is more than the most expensive purchase, then Entergy will base the price of its most expensive purchase on the weighted average costs of the most expensive purchases that supply an amount of energy equal to the total amount of Deficient Energy for that hour.

50. Entergy argues that its fundamental pricing mechanisms have been previously approved by the Commission and should continue without modification. Entergy admits that its GIA defines ESIC slightly differently than that definition used in its Energy Imbalance section. Under the GIA, Entergy states, ESIC is the higher of: (1) the energy cost for the hour of the most expensive source of energy generated (using incremental heat rates) or purchased by Entergy, excluding any multi-year energy purchases, any annual purchases, and any Entergy generation that would not be operating in that hour but for transmission reliability purposes, or (2) the Daily Market Price, which is 100% of the On-Peak "Into Entergy" price posted in *Megawatt Daily*. For under-deliveries occurring during Non-Peak Hours, Entergy explains that ESIC shall equal the cost of the most expensive energy source of energy generated or purchased by Entergy, excluding long-term purchases and any Entergy generation that would not be operating in that hour but for transmission reliability purposes.

51. Despite its differences with Schedule 4, Entergy argues that the GIA's definition of ESIC is consistent with the revised *pro forma* OATT's definition of incremental costs. Entergy contends that the *pro forma* Schedule 9 specifically included the transmission provider's actual real-time expenses, purchases, and other real-time operation and

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<sup>20</sup> Entergy admits that its current GIA does not include a mechanism to accommodate Intermittent Resources. Entergy commits to include a mechanism to accommodate Intermittent Resources' unique imbalance requirements in its July 13 compliance filing. *See* Transmittal Letter at 11-12.

maintenance expenses associated with the transmission provider's last resources dispatched. Entergy also claims that the Commission has authorized the use of the greater-of incremental costs or an index, such as the *Megawatt Daily* component in the ESIC. Since the Commission previously held that the proposed greater-of pricing also provides an incentive for customers to reduce or eliminate imbalances and losses to encourage good operating practices, Entergy contends that it should be permitted to retain its greater-of pricing.<sup>21</sup>

**b. Comments**

52. Joint Intervenors note that the Commission uses the same definition for incremental and decremental costs in the *pro forma* generator imbalance provisions and argue that Entergy's definitions differ. Specifically, Joint Intervenors argue that including a market price in a region where the market is not competitive in the definition of ESIC is not consistent with or superior to the revised *pro forma* OATT. Joint Intervenors also argue that Entergy's definitions of ESIC and Avoided Cost are significantly different from one another. As a result, when Entergy purchases Excess Energy from customers, Joint Intervenors argue that it does so based on a supposed decremental cost that is significantly lower than the incremental cost which forms the basis for the Deficient Energy penalties.

**c. Entergy's Answer**

53. Entergy argues that its imbalance provisions do not have to be identical to the *pro forma* in order to be consistent with or superior to the revised *pro forma* OATT, but rather only the three principles need to be satisfied. Entergy argues it has satisfied those principles. Additionally, Entergy contends that it was not required to submit empirical data in order to support its calculation of Avoided Costs and ESIC for its imbalance provisions to remain effective. Entergy states that such information would have been submitted in the initial proceeding approving Schedule 4, not this proceeding.

**d. Commission Determination**

54. We accept Entergy's definitions of incremental and decremental costs under the GIA. Entergy's definitions of incremental and decremental costs are an integral part of Entergy's GIA that was the result of extensive settlement discussions with its IPPs. The Commission recognizes the complexity of the Entergy system and its numerous independent generators. Reflecting this complexity, the GIA features numerous negotiated features that better equips Entergy to address the generation imbalance-related issues in its service territory. For example, Entergy has developed specialized software to monitor and manage generator imbalances and employs six system operators to

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<sup>21</sup> See *PacifiCorp*, 95 FERC ¶ 61,145 at 61,464 (2001).

monitor generator imbalances. We note that the IPPs, which comprise the majority of Entergy's system, and which agreed to the current provisions of the GIA, raised no issue in the current proceedings with retaining the current provisions or Entergy's implementation of the GIA. We therefore find that Entergy's definition of incremental and decremental costs in the current GIA, Attachment P, when viewed in conjunction with all of the other features of the GIA, is consistent with *pro forma* Schedule 9, notwithstanding arguments to the contrary made by the Joint Intervenors. However, Entergy's current GIA does not fully comply with the remaining requirements of Order No. 890 because it does not take into account the special circumstances presented by Intermittent Resources. As Entergy acknowledges, it will be required to amend its GIA to accommodate Intermittent Resources' limited ability to precisely forecast or control generation levels in its FPA section 206 compliance filing on or before July 13, 2007.

## **2. Deficient Energy Penalties Include Intra-hour Penalties**

55. The Commission found in Order No. 890 that it is appropriate to maintain the *status quo* of aggregating net generation over the hour in the revised *pro forma* OATT. The Commission also determined that the use of a shorter interval will continue to be considered on a case-by-case basis.

### **a. Proposed Variations**

56. Entergy's GIA does not implement a graduated pricing mechanism for Deficient Energy. However, Entergy asserts that the GIA contains other negotiated terms and conditions that are consistent with or superior to this methodology. Under its current procedures, when an IPP is under-delivering below certain thresholds, Entergy's system dispatchers adjust the IPP's schedules to the level of the output. These schedules are deemed automatically reduced within either 10 or 15 minutes of each notice, depending on whether the schedule sinks inside or outside of Entergy's control area. This automatic adjustment feature of the GIA limits the amount of Deficient Energy that IPPs must purchase. Therefore, Entergy claims a graduated pricing deviation band for under-deliveries is not necessary to promote efficient scheduling under this model because IPPs are only subject to GIA charges for under-deliveries for very short periods of time. Entergy states that once an IPP experiences difficulties meeting its schedule, Entergy adjusts the schedule, rather than charge the IPP for increasingly higher rates.

57. Entergy contends that its GIA contains other sophisticated features that resulted from the extensive settlement procedures. For example, Entergy discovered through a study in 2004 that IPPs experienced difficulties matching output with scheduling during the early morning period and in the evening when generation was ramping down at the end of the daily schedules. As a result, Entergy asserts that additional features were uniquely tailored to address the particular issues in the Entergy region. Specifically, Entergy states that its GIA contains provisions whereby Entergy agrees to purchase energy delivered by IPPs during periods of time delineated as a Testing Period, Start-Up

Period, or Shut-Down Period. Entergy further states that this is part of the expensive software that assists IPPs in meeting their schedules, thereby reducing the need for imbalance service, to monitor real-time generator imbalances on its system and to implement the provisions of its GIA.

**b. Comments**

58. Joint Intervenors claim that Entergy does not net under-deliveries on a monthly basis and, instead, monitors schedules on an on-going basis and adjusts schedules as necessary, and apply penalties of 110 percent of ESIC for generators that fall out of schedule. Joint Intervenors also object to Entergy's generator imbalance schedule for failing to contain any provision that credits penalty revenues to non-offending customers.

**c. Entergy's Answer**

59. Entergy responds that its IPPs submit inter-hour or "stair-stepping" schedules in order to minimize imbalances. Furthermore, Entergy argues that it has made extensive efforts to reduce the need for imbalance service, to monitor real-time generator imbalances on its system, and to implement the provisions of its GIA through the installation of expensive software to assist IPPs in meeting their schedules. Moreover, Entergy asserts that these negotiated features go well beyond the terms and conditions of the *pro forma* Schedule 9 and would be lost if its GIA was no longer permitted to remain effective.

**d. Commission Determination**

60. We accept Entergy's continued reliance on the GIA's imbalance monitoring provisions. Entergy has explained in detail its reasons for monitoring schedules within each hour and making any necessary adjustments as needed. Joint Intervenors do not provide a reason why Entergy's current GIA is not consistent with or superior to the Order No. 890 *pro forma* GIA. In contrast to Joint Intervenors' assertion, Entergy has made extensive efforts to reduce the need for imbalance service. Entergy has implemented methods to monitor real-time generator imbalances and installed software to assist IPPs in meeting their schedules. Entergy's interactive features are superior to Order No. 890's Schedule 9 *pro forma* OATT. For these reasons, we permit Entergy to retain the GIA in its entirety.

61. Further, in response to Joint Intervenors' claim that Entergy does not provide penalty crediting in Schedule P, we note that Entergy has committed that this language will be part of Entergy's compliance filing due July 13, 2007. Therefore, we dismiss the argument as premature.

**3. Generator Regulation Service Charges**

62. In Order No. 890, the Commission allowed public utility transmission providers the option of having separate demand charges assigned to customers for the purpose of recovering the cost of holding additional reserves for meeting imbalances, so long as the transmission provider demonstrates that these charges do not allow for double recovery of such costs. The Commission also addressed Entergy's concern that the real-time regulation burden imposed by IPPs is similar to the real-time regulation burden imposed by loads. To relieve this burden, the Commission allows transmission providers to propose separate regulation charges for generation resources selling out of the control area and to consider such proposals on a case-by-case basis.

**a. Proposed Variations**

63. Entergy argues that Order No. 890 allows transmission providers to propose separate regulation charges for generation resources selling out of the control area.<sup>22</sup> Entergy's GIA contains graduated generator regulation charges, which were previously negotiated between Entergy and the existing IPPs on the Entergy System in Docket No. ER04-901-000. Specifically, Entergy asserts that the current rate structure promotes accurate scheduling and that generally, its generator regulation charges are consistent with or superior to the *pro forma* Schedule 9.

**b. Comments**

64. With respect to Entergy's Generator Regulation Service, Joint Intervenors argue that Entergy proposes to retain generator regulation charges that are calculated based on the internal and external schedules submitted by the IPPs. Joint Intervenors also argue that Entergy has not explained how it is not double recovering Schedule 3 charges for internal schedules.

**c. Entergy's Answer**

65. Entergy responds to Joint Intervenors' argument that Schedule 3 will result in double recovery by pointing out its GIA specifically prevents the type of double charge that the Joint Protestors allege might be assessed to customers.

**d. Commission Determination**

66. As discussed above, we find that Entergy's GIA is consistent with or superior to the revised *pro forma* OATT. Order No. 890 allows transmission providers the ability to propose separate regulation charges for generation resources selling out of the control

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<sup>22</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 690.

area and are considering proposals on a case-by-case basis. As previously mentioned, Entergy has explained that its GIA provisions prevent the double charging Joint Intervenors allege could occur. Therefore, we are allowing Entergy to retain its GIA in its entirety and find that Entergy's generator regulation service charges are consistent with or superior to the *pro forma* Order No. 890 OATT.

**D. Miscellaneous**

67. Entergy acknowledges that its existing section 17.2 and section 18.2 are not substantively affected by Order No. 890. Entergy also acknowledges that the planning redispatch provisions of its WPP apply only to short-term (less than one year) transmission service. Under Order No. 890, planning redispatch options are only required to be offered to customers that request firm point-to-point service of more than a year in duration.<sup>23</sup> Pricing of redispatch service provided for short-term transactions under the WPP is therefore not affected by Order No. 890. We therefore reject as unnecessary Entergy's filing as it relates to sections 17.2 and 18.2, and the pricing provisions of the WPP.

68. We will accept section 11 because we have found it to be consistent with the revised *pro forma* OATT. We note, however, that we have considered only those previously-approved variations from the *pro forma* OATT that Entergy contends in its transmittal letter are consistent with or superior to the reforms adopted in Order No. 890. The conditional acceptance of these proposed variations to the revised *pro forma* OATT does not relieve Entergy of the obligation to make a section 206 compliance filing for requirements of Order No. 890 not addressed in the instant filing on or before July 13, 2007.

**E. Effective Date**

69. The Commission accepts Entergy's compliance filing, with an effective date of July 13, 2007, as requested, conditioned upon Entergy making a compliance filing as discussed above, within thirty days of the date of this order.

The Commission orders:

(A) Entergy's proposed variations to its OATT for Energy Imbalance are rejected, as discussed in the body of this order.

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<sup>23</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 978.

(B) Entergy is hereby directed to submit a compliance filing as discussed in the body of this order, within 30 days of the date of this order.

(C) Entergy's proposed variations to its OATT for Generator Imbalance are hereby accepted, effective July 13, 2007, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.