

122 FERC ¶ 61,216  
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. ER05-1065-009

ORDER ON REHEARING AND  
CLARIFYING PREVIOUS ORDER

(Issued March 7, 2008)

1. This order addresses a narrow issue arising out of the establishment of Entergy's Independent Coordinator of Transmission (ICT). In our order on rehearing and compliance filing (Order on Rehearing and Compliance),<sup>1</sup> we held that any reclassification of network upgrades under the ICT generation interconnection pricing proposal must have an effective date concurrent with the date on which the software calculating compensation is implemented. Entergy objects that our holding was inconsistent with prior orders and amounts to an impermissible grant of rehearing. For the reasons stated below, we will deny Entergy's rehearing request, but clarify the Order on Rehearing and Compliance.

**I. Background**

2. The background to this case is described in detail in the Order on Rehearing and Compliance and the Order Conditionally Approving ICT<sup>2</sup> in this proceeding. Briefly, the Commission found that Entergy's ICT proposal, with modification, is consistent with or superior to the Order No. 888 tariff. The ICT should improve the transparency of transmission information, enhance transmission access and relieve transmission congestion. The ICT is responsible for independently developing the Base Plan that identifies those facilities that are needed for reliability. It is also responsible for identifying Supplemental Upgrades that are needed for economic reasons. Transmission pricing is based on the classification of upgrades as Base Plan or Supplemental. The Commission required Entergy to amend Attachment T of its open access transmission

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<sup>1</sup> *Entergy Services, Inc.*, 119 FERC ¶ 61,187, at P 41 (2007) (Order on Rehearing and Compliance).

<sup>2</sup> *Entergy Services, Inc.*, 115 FERC ¶ 61,095 (2006), *errata notice* May 4, 2006, *order on reh'g*, 116 FERC ¶ 61,275 (2006).

tariff (OATT) to provide compensation for an entity that has funded a Supplemental Upgrade when the capacity of that upgrade provides short-term point-to-point (PTP) service to another transmission customer.<sup>3</sup>

3. The Order on Rehearing and Compliance held that it was not practical to compensate these entities before the software that would calculate compensation is in place. Accordingly, we held that the effective date of any upgrade reclassification “should occur simultaneously with the software implementation that calculates compensation.”<sup>4</sup>

## II. Request for Rehearing and Answers

4. On rehearing, Entergy argues that the Commission erred in finding that reclassifications of facilities (and thus previously incurred costs) cannot become effective until the software to provide compensation for short-term PTP uses is implemented. It states that the Commission's decision is inconsistent with its prior orders, and amounts to an impermissible grant of rehearing.

5. Specifically, Entergy contends that the Commission has abandoned the approach in the Order Conditionally Approving ICT. In that order, we stated that the effective date of any reclassification would be the date granted by the Commission in the applicable section 205 filing. Entergy interprets that statement to mean that, after Entergy makes a section 205 filing to amend an interconnection agreement, the Commission will allow an effective date in accordance with its “general suspension policy.”<sup>5</sup> Entergy argues that making the effective date depend on the readiness of the software (rather than the “general suspension policy”) should have been addressed on rehearing in the September 22, 2006 Order,<sup>6</sup> or in the October 18, 2006 Order. Entergy argues that no party challenged the effective date in the October 18, 2006 Order, and the January 2007

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<sup>3</sup> See *Entergy Services, Inc.*, 117 FERC ¶ 61,055, at P 93 (2006) (requiring Entergy to file tariff sheets describing compensation) (October 18, 2006 Order).

<sup>4</sup> Order on Rehearing and Compliance, 119 FERC ¶ 61,187 at P 41.

<sup>5</sup> Entergy argues that under that policy, the Commission suspends filings under section 205 for one day, unless (a) the Commission's preliminary examination indicates that the proposed rates may be unjust and unreasonable, and may be substantially excessive, or (b) extraordinary factors indicate that wholesale customers may suffer irreparable harm absent a longer suspension. It says that only in those instances will the Commission suspend filings for five months. Entergy June 25, 2007 Request for Rehearing at 4 (citing *West Texas Utils. Co.*, 18 FERC ¶ 61,189, P 30 n. 9 (1982)).

<sup>6</sup> *Entergy Services, Inc.*, 116 FERC ¶ 61,275 (2006) (September 22, 2006 Order).

Compliance Filing made no changes to the section of Attachment T addressing the effective date for changes to the treatment of previously incurred costs.<sup>7</sup>

6. Cottonwood Energy Company LP (Cottonwood) filed a motion to answer Entergy's rehearing request. Entergy filed an answer to Cottonwood's answer.

### **III. Discussion**

#### **A. Procedural Issues**

7. Rule 713(d)(1) of the Commission's Rules of Practice and Procedure<sup>8</sup> prohibits answers to requests for rehearing. Accordingly, we reject Cottonwood's and Entergy's answers.

#### **B. Analysis**

8. We find no error in our directive that reclassification of the Supplemental Upgrades cannot become effective until the software to provide compensation for short-term PTP uses is ready. The effective date of any reclassification of Supplemental Upgrades will end any credits that those who paid for Supplemental Upgrades receive from Entergy. In the place of credits, the Commission accepted Entergy's proposal to develop software to calculate payments. If the software is not operational by the effective date of reclassification, the owners of those facilities will neither receive credits nor have a reliable way to calculate payments for amounts owed for the use of the facilities for which they paid. In other words, it will be unclear how much and in what way they will be paid. This result would be unjust and unreasonable.

9. Entergy's argument that our finding is somehow inconsistent with prior orders and amounts to an impermissible grant of rehearing is without merit. Entergy filed its proposal on the ICT, pricing, and the Weekly Procurement Process as a package, and the April 24, 2006 ICT Order accepted them as a package. Indeed, throughout the ICT's development, reclassifying upgrades has been conditioned on a fair and accurate compensation mechanism so that transmission customers who pay for upgrades get paid if the upgrades are used by another transmission customer. As early as March 22, 2005, the Commission directed Entergy to work with affected parties to develop a method to fairly compensate customers who paid for Supplemental Upgrades.<sup>9</sup> When Entergy argued that an initial two-year term for the ICT proposal was too short to justify developing software that could provide for short-term compensation, the Commission

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<sup>7</sup> Citing Entergy OATT, Attachment T § 5.5.

<sup>8</sup> 18 C.F.R. § 385.713(d)(1) (2007).

<sup>9</sup> *Entergy Services, Inc.*, 110 FERC ¶ 61,295, P 72 (2005) (Guidance Order).

increased the initial term to four years because a compensation mechanism was essential.<sup>10</sup> We required Entergy to file a detailed explanation of the technical changes needed to provide such compensation and the time and cost of establishing such a compensation system.

10. The September 22, 2006 Order continued this theme, repeating that “if a previously funded upgrade is found to be a Supplemental Upgrade, the customer will receive valuable rights for funding that upgrade.” While we rejected arguments by customers that ICT implementation should be delayed until Entergy provides for compensation, we deferred ruling on the effective date for upgrade reclassifications, noting that the Order Conditionally Approving ICT required Entergy to file more information on how it planned to compensate the funding customers. On review of the compliance filing, we directed Entergy to explain in detail how it would provide financial compensation for Supplemental Upgrades being used for short-term PTP service.<sup>11</sup>

11. We note that Entergy, itself, has consistently recognized that compensation is essential to any upgrade reclassifications. For example, in a July 8, 2005 response in this docket to intervenor questions (response 47), Entergy committed to amending the tariff to include the definition of financial compensation. Similarly, in its May 24, 2006 compliance filing in response to the Order Conditionally Approving ICT, Entergy stated in the transmittal that both Entergy and the Commission viewed the ICT as a package.<sup>12</sup> Entergy noted that it was amending the tariff to include the definition of financial compensation and that this was consistent with its prior commitment.<sup>13</sup> Indeed, the tariff now provides that a financial payment is the dollar amount calculated under section 4.3 and paid to a customer that is deemed to have funded a Supplemental Upgrade when a portion of that upgrade is used to grant service to another customer.<sup>14</sup>

12. In sum, the ICT has always been considered as an integrated package, and our orders have consistently held as fundamental the principle that funders of Supplemental Upgrades will be paid *when* that upgrade is used to grant service to another customer—not at some later date. Accordingly, the Order on Rehearing and Compliance, which stated that the effective date of any reclassification of upgrades should occur

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<sup>10</sup> Order Conditionally Approving ICT, 115 FERC ¶ 61,095 at P 96.

<sup>11</sup> *Entergy Services, Inc.*, 117 FERC ¶ 61, 055, at P 93 (2006).

<sup>12</sup> Transmittal at 4.

<sup>13</sup> *Id.* at 16.

<sup>14</sup> Section 1.1.2 to Attachment T of Entergy’s OATT.

simultaneously with the software that calculates compensation is implemented, was not inconsistent with prior orders. Moreover, our suspension policy on section 205 filings is irrelevant in this context, since that policy is triggered only after Entergy actually makes the requisite section 205 filings to propose specific reclassifications. We clarify that Entergy may make its section 205 filings at any time; however, there is no way to evaluate whether a proposed reclassification is just and reasonable without knowing how the funding customer will be paid.

The Commission orders:

The request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.