

124 FERC ¶ 61,148
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 Nos. OA07-32-000
OA07-32-001

ORDER ON COMPLIANCE FILING

(Issued August 6, 2008)

1. Entergy Services, Inc. (Entergy) submitted a compliance filing on July 13, 2007, as further amended on August 13, 2007 and on September 13, 2007 under section 206 of the Federal Power Act (FPA),¹ as required by Order No. 890 (July 13 Filing).² In this order, we accept Entergy's compliance filing, as modified, as in compliance with Order No. 890.

I. Background

2. In Order No. 890, the Commission reformed the *pro forma* Open Access Transmission Tariff (OATT) to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a non-discriminatory basis. 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.

¹ 16 U.S.C. § 824e (2006).

² *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241 (2007), *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007) *order on reh'g*, Order No. 890-B, 73 Fed. Reg. 39,092 (2008).

3. The Commission established a series of compliance deadlines to implement the reforms adopted in Order No. 890. Transmission providers that have not been approved as independent system operators (ISO) or regional transmission organizations (RTO), and whose transmission facilities are not under the control of an ISO or RTO, were directed to submit within 120 days from publication of Order No. 890 in the *Federal Register* (i.e., July 13, 2007), section 206 compliance filings that conform the non-rate terms and conditions of their OATTs to those of the *pro forma* OATT, as reformed by Order No. 890.³

II. Compliance Filing

4. Entergy states that its July 13 filing either incorporates Order No. 890's conforming non-rate terms and conditions into its OATT, or identifies requirements that it needs additional time to incorporate. As discussed below, following a stakeholder process, Entergy will file to incorporate these remaining Order No. 890 requirements into its transmission-related Criteria Manuals, which consist of the Available Flowgate Capability Manual (Attachment C), the System Impact and Facilities Study Manual (Attachment D), and the Transmission Service Request Manual (Attachment E).⁴ The Criteria Manuals are to be used by Entergy's Independent Coordinator of Transmission (ICT) in determining whether to grant or deny requests for transmission service under Entergy's OATT and were originally filed by Entergy on November 16, 2006. By order dated April 4, 2007, the Commission conditionally accepted the Criteria Manuals, subject to the requirement that Entergy vet the Criteria Manuals through an ICT-led stakeholder process. Through that ongoing stakeholder process, Entergy has agreed that certain provisions of Attachment T (Recovery of New Facilities Costs), as discussed below, will also be subject to the stakeholder process and proposed revisions resulting from that process will be filed at a later date. Accordingly, Entergy asks the Commission to defer acting on Order No. 890 compliance issues associated with the Criteria Manuals and Attachment T pending completion of the ongoing stakeholder process and subsequent filing of proposed revisions to the Criteria Manuals and Attachment T resulting from that process.

5. Entergy states that its filing also includes revisions to its Energy Imbalance Agreement (Schedule 4), Generator Imbalance Agreement (GIA), and creditworthiness provisions in its OATT. It committed to make these revisions in an earlier, 30-day

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

⁴ See *Entergy Servs., Inc.*, 119 FERC ¶ 61,009 (2007) (directing a stakeholder process to amend Entergy's Criteria Manuals).

compliance filing to ensure that its previously-approved OATT variations substantially affected by Order No. 890 are consistent with or superior to that order.⁵

III. Notice of Filing and Responsive Pleadings

6. Notice of Entergy's July 13, 2007 filing was published in the *Federal Register*, 72 Fed. Reg. 41,727 (2007), with interventions and protests due on or before August 3, 2007.

7. Notice of Entergy's August 13, 2007 filing was published in the *Federal Register*, 72 Fed. Reg. 46,621 (2007), with interventions and protests due on or before September 4, 2007.

8. Notice of Entergy's September 13, 2007 filing was published in the *Federal Register*, 72 Fed. Reg. 56,733 (2007), with interventions and protests due on or before October 4, 2007.

9. Timely motions to intervene were filed by Calpine Corporation; Occidental Chemical Corporation; Cleco Power LLC; Arkansas Electric Cooperative Corporation; the Benton Arkansas Utilities, the Conway Corporation, the Hope Water & Light Commission, the City of Osceola, Arkansas, the City of Prescott, Arkansas, and the West Memphis Utilities Commission (Arkansas Cities); and NRG Power Marketing, Inc., Bayou Cove Peaking Power LLC, Big Cajun I Peaking Power LLC, Louisiana Generating LLC, and NRG Sterlington Power LLC (NRG Companies). A notice of intervention was filed by the Arkansas Public Service Commission.

10. On July 27, 2007, a joint motion to intervene and request for an extension of the comment date for issues pertaining to Entergy's Criteria Manuals and Attachment T was filed by the Mississippi Delta Energy Agency and its members, the Clarksdale Public Utilities Commission of the City of Clarksdale, Mississippi, the Public Service Commission of Yazoo City, of the City of Yazoo City, Mississippi (Mississippi Cities), and the Lafayette Utilities System, the Louisiana Energy and Power Authority and the Municipal Energy Agency of Mississippi (L-M Municipals). The Mississippi Cities and L-M Municipals then each two separate protests on August 3, 2007 protesting Entergy's July 13, 2007 compliance filing. On August 3, 2007, Union Power Partners, L.P. and Suez Energy North America, Inc. (Union/Suez) filed a joint motion to intervene and protest. On August 20, 2007, Entergy filed an answer. The L-M Municipals filed a protest on September 4, 2007 to Entergy's August 13, 2007 amendment.

⁵ *Entergy Servs., Inc.*, 120 FERC ¶ 61,042 (2007) (July 13 Order).

IV. Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

12. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), 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. We grant the joint motion by Mississippi Cities and L-M Municipals for an extension of the comment date for issues pertaining to Entergy's Criteria Manuals and Attachment T, as these portions of the OATT are the subject of an ongoing stakeholder process led by the ICT.⁶ We directed Entergy in our April 4, 2007 order conditionally accepting the Criteria Manuals to submit the revised Criteria Manuals resulting from the stakeholder consultation process within 120 days of the date of that order. On August 2, 2007, Entergy submitted a status report requesting an additional extension until September 28, 2007. On September 28, 2007, Entergy filed its most recent report with the Commission, detailing the extensive work completed thus far, but Entergy stated it would file an additional report once a new expected filing date has been established. As discussed below, we defer acting on issues associated with the Criteria Manuals and Attachment T, pending the completion of the stakeholder process and subsequent filing of revisions to the Criteria Manuals and Attachment T that result from that process. Parties will have an opportunity to comment on those issues once those amendments are filed.

V. Discussion

A. Energy and Generator Imbalance Tariff Provisions

1. Background

13. Entergy states that Order No. 890 granted non-ISO/RTO transmission providers the option to re-justify previously approved variations from the Order No. 890 *pro forma* OATT if the variations are substantially affected by Order No. 890. On April 16, 2007, in Docket No. OA07-17-000, Entergy submitted a filing to explain why certain provisions of its existing OATT affected by Order No. 890 are consistent with or superior to the Order No. 890 *pro forma* tariff. Specifically, Entergy proposed to retain its existing Schedule 4 Energy Imbalance Agreement provisions and Attachment P Generator Imbalance Agreement provisions.

⁶ See *Entergy Servs., Inc.*, 119 FERC ¶ 61,009 (2007).

14. In the July 13 Order, the Commission rejected certain existing Entergy energy imbalance service provisions as inconsistent with Order No. 890's *pro forma* OATT. We rejected: (1) existing definitions of incremental and decremental costs; (2) existing deviation bands for calculation of imbalance charges; and (3) settlement of accumulated deviations under tier 1. The Commission also ordered Entergy to clarify that it may charge a transmission customer a penalty for either the hourly generator imbalances or the hourly energy imbalances for the same imbalance, but not both. Accordingly, the Commission directed Entergy to file revisions to its tariff.

15. The July 13 Order also accepted Entergy's Generator Imbalance Agreement as consistent with the *pro forma* OATT, clarifying that nonconforming provisions were the result of extensive settlement discussions with independent power producers.⁷ However, we directed Entergy to amend the Generator Imbalance Agreement in its July 13, 2007 compliance filing to credit penalty revenues and to revise its tariff to accommodate the limited ability of intermittent resources to precisely forecast or control generation levels.⁸ Entergy's July 13 Filing includes revised tariff sheets to reflect the accommodation of intermittent resources, but does not add a generator imbalance penalty crediting mechanism. Entergy did not include such a mechanism, despite its commitment to do so in its April 16, 2007 filing in OA07-17-000.

2. Responsive Pleadings

16. L-M Municipals argue that Entergy should immediately submit the *pro forma* Order No. 890 tariff version of the Energy Imbalance Service Agreement, which would satisfy all of Entergy's compliance obligations with respect to Schedule 4 in the July 13 Order. L-M Municipals do not imply that Entergy should have complied with an order issued the same day it made its section 206 compliance filing, but note that since the Commission did not authorize continued use of existing Schedule 4, Entergy should immediately submit the *pro forma* Schedule 4 Energy Imbalance Service in lieu of its Energy Imbalance Agreement.

3. Commission Determination

17. On August 13, 2007, and in compliance with the July 13 Order, Entergy submitted a revised Schedule 4 that complies with Order No. 890. In a delegated letter order issued on December 13, 2007 in Docket No. OA07-17-001, the Commission accepted Entergy's Schedule 4 provisions as being in compliance with Order No. 890. Entergy also submitted those revised tariff sheets as an amendment to the instant filing. Thus, Entergy's Energy Imbalance Agreement now conforms with Order No. 890.

⁷ July 13 Order, 120 FERC ¶ 61,042 at P 54, 60, 66.

⁸ *Id.* P 54.

18. Also, we accept Entergy's revisions to its Generator Imbalance Agreement, which now exempts intermittent resources from its highest imbalance deviation bandwidth for excess energy. Accordingly, we find that Entergy's proposed generator imbalance deviation bandwidth provisions, including the accommodation of intermittent resources, now comply with Order No. 890. However, as discussed below, we find that Entergy did not comply with the Commission's requirement to credit generator imbalance penalty revenues.

B. Distribution of Imbalance Penalties

19. In Order No. 890, the Commission determined that charges for both energy and generator imbalances would be based on a tiered approach that reflects incremental costs. The Commission also required transmission providers to credit revenues in excess of incremental costs to all non-offending customers. As a result, the Commission directed transmission providers to develop, as part of their Order No. 890 compliance filings, a mechanism for crediting such revenues to all non-offending transmission customers (including affiliated transmission customers) and to the transmission provider on behalf of its own customers.⁹

1. Energy Imbalance Penalty Distribution

a. Entergy's Proposal

20. As required by Order No. 890,¹⁰ Entergy filed to amend its crediting provisions in Schedule 4 to provide that Entergy will credit energy imbalance penalties to both non-offending customers and native load customers.¹¹ For deficient and excess energy, Entergy will credit imbalance penalty revenues based on the ratio of transmission usage of the native load customers, and each transmission customer that did not experience an energy imbalance in excess of the deviation band in an hour, to the total transmission usage of the native load customers and all transmission customers who did not experience energy imbalances in the hour. Entergy will disburse accumulated penalty revenues, plus interest, when the annual amount reaches \$100,000. If the \$100,000 annual threshold is not met, Entergy proposes to retain the penalty revenues.

⁹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 663, 667, 727.

¹⁰ Entergy's July 13, 2007 Filing at 8 (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 727-28).

¹¹ *Id.* (citing Entergy, OATT, Schedule 4, § III).

b. Responsive Pleadings

21. Union/Suez and L-M Municipals argue that Entergy's crediting mechanism does not comply with Order No. 890. First, they argue that it violates Order No. 890's requirement to credit all penalty revenues in excess of incremental costs. They note that if the \$100,000 threshold is not met within the calendar year, Entergy keeps the revenues. Union/Suez explain that because these revenues are ultimately used as credits for Entergy's own native load customers and/or passed through to shareholders, Entergy will enjoy preferential treatment at the expense of all other transmission customers.

22. Further, they argue that Entergy selectively revised its energy imbalance penalty crediting mechanism by adopting certain Order No. 890 requirements that benefit Entergy's native load customers while ignoring other requirements of Order No. 890 that directed transmission providers to credit revenues in excess of incremental costs to all non-offending customers. Also, with credits being determined on the basis of the ratio of Entergy's native load customers to that of each transmission customer that qualifies for credits, the \$100,000 threshold is merely a fiction – the threshold is actually higher. For example, they contend that assuming that native load is entitled to 50 percent of the penalty revenues, the penalty revenues could climb to \$199,999.99 before credits are due. And in this example, if the \$200,000 threshold is not met, they argue that Entergy would retain any amount below \$200,000.

23. In its answer, Entergy states that its proposed \$100,000 threshold is consistent with Commission precedent. Entergy argues that Commission precedent recognizes that the practicalities of administering of a crediting mechanism must be considered when evaluating its justness and reasonableness, and that \$100,000 is a fair threshold to justify the costs of disbursing penalties to non-offending customers.¹²

24. In its September 4, 2007 protest to Entergy's August 13, 2007 amendment, L-M Municipals argue that Entergy's proposed one-hour compliance period is so short that it substantially reduces the disincentive for compliance, since penalties paid in any given hour could be made up through penalty revenue credits in other hours. L-M Municipals support a compliance period of one month.

c. Commission Determination

25. While Entergy proposes to distribute accumulated imbalance penalty revenues only after they exceed \$100,000, it provides no mechanism for the revenues to be rolled over for the following year if those penalty revenues do not exceed the threshold in a given year. By not providing a rollover mechanism, Entergy does not comply with the

¹² *Carolina Power and Light Co.*, 103 FERC ¶ 61,209, at P 35 (2003).

Order No. 890 requirement that all penalty revenues must be distributed.¹³ Accordingly, we direct Entergy to file, within 30 days of the date of this order, a further compliance filing proposing a rollover mechanism that ensures that all imbalance revenues will be distributed once they exceed \$100,000.

26. We disagree with Union/Suez's hypothetical regarding a \$200,000 threshold. The ratio that Entergy uses to credit the revenues has no bearing on the actual threshold. Rather, once Entergy accumulates \$100,000 in penalty revenues, it will credit those revenues to non-offending customers according to the ratio.

27. As noted in Order No. 890-A, and in regard to the time frame during which there is to be a matching of penalty revenue and credits to non-offending customers, we clarify that the transmission provider must distribute the penalty revenue received in a given hour to those customers who were non-offending in that hour, i.e., those customers to whom the penalty component did not apply in the hour.¹⁴ We find that Entergy proposes to distribute the imbalance penalty revenue received in a given hour to non-offending customers in that hour. However, as required by Order No. 890-A, Entergy must include in the distribution the customers that were out of balance but within the first tier. We direct Entergy to modify its energy imbalance penalty distribution provisions accordingly, in a compliance filing due within 30 days of the date of this order.

2. Generator Imbalance Penalty Distribution

a. Entergy's Proposal

28. In Order No. 890, the Commission determined that transmission providers, as a part of their compliance filings, must develop a mechanism for crediting imbalance revenue in excess of incremental costs to all non-offending customers. Entergy does not propose a crediting mechanism for generator imbalance penalty revenues.

b. Responsive Pleadings

29. L-M Municipals point out that Entergy's Generator Imbalance Agreement contains no provisions to distribute all revenues received through imbalance penalties or charges. L-M Municipals also argue that Entergy promised to include a mechanism in its previous Order No. 890 compliance filing. L-M Municipals request that the Commission direct Entergy to comply with its Order No. 890 requirements.

¹³ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 727.

¹⁴ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 333.

c. Commission Determination

30. As directed by Order No. 890, Entergy must propose a crediting mechanism for generator imbalance penalty revenues.¹⁵ In addition, the Commission, in its July 13 Order, noted Entergy's commitment to include such provisions in its tariff. Accordingly, we direct Entergy to file, within 30 days of the date of this order, a compliance filing that proposes, consistent with Order No. 890, a mechanism to credit generator imbalance penalty revenues to all non-offending transmission customers (including affiliated transmission customers) and to the transmission provider on behalf of its own customers.

C. Unreserved Use Penalties and Distribution

31. In Order No. 890, the Commission determined that transmission customers will be subject to unreserved use penalties when they use transmission service that they have not reserved and the transmission provider has a Commission-approved unreserved use penalty rate explicitly stated in its OATT.¹⁶ The Commission also established a rebuttable presumption that unreserved use penalties no greater than twice the firm point-to-point rate for the penalty period are just and reasonable, provided that the penalty rates are consistent with certain principles articulated in Order No. 890.¹⁷ Specifically, the Commission stated that: (1) the unreserved use penalties must be based on the period of unreserved use; (2) the unreserved use penalty for a single hour of unreserved use must be based on the rate for daily firm point-to-point transmission service; and (3) more than one assessment for a given duration (e.g., daily) results in an increase of the penalty period to the next longest duration (e.g., weekly). However, transmission providers proposing to charge an unreserved use penalty in excess of twice the relevant point-to-point rate were required to make a filing under section 205 of the FPA.¹⁸

1. Unreserved Use Penalties

a. Entergy's Proposal

32. Entergy filed revisions to its OATT to include unreserved use penalties. Specifically, Entergy revised section 13.7 (Nature of Firm Point-to-Point Transmission Service) and section 28.6 (Nature of Network Integration Transmission Service) to provide that if a transmission customer exceeds its firm reserved capacity, Entergy will charge the customer for usage in excess of firm reserved capacity at a rate equal to two times the rate specified in Schedule 7 (Firm Point-to-Point Service).

¹⁵ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 663, 667, 727.

¹⁶ *Id.* P 834, 838.

¹⁷ *Id.* P 846, 848.

¹⁸ 16 U.S.C. § 824d (2006).

b. Responsive Pleadings

33. Union/Suez state that sections 13.7 and 28.6 should be clear as to which categories of rates apply. Union/Suez further argue that Entergy's application of the firm point-to-point transmission service rates outlined in Appendix A to Schedule 7 remains ambiguous, as the rates cover different terms of service. They state that in Order No. 890, the Commission tied the penalty to the period of unreserved use rather than the period for which service is reserved, subject to certain principles. They state that Entergy's tariff language does not capture the "period of unreserved use" concept and therefore, must be revised. As drafted, sections 13.7 and 28.6 could be interpreted to mean that if there is unreserved use, Entergy can assess a penalty charging multiples of any of the rates in Schedule 7, regardless of the term of unreserved use and regardless of the term of the underlying service.

34. In its answer, Entergy states that it will revise the tariff language in sections 13.7 and 28.6 of its OATT in a further compliance filing to remove any ambiguity on this issue and to ensure that Entergy's crediting mechanisms are based on the period of unreserved use.

c. Commission Determination

35. Entergy agrees to remove any ambiguity on the issue and will make a further compliance filing. Accordingly, and consistent with Order No. 890, we direct Entergy to clarify, in a compliance filing due with 30 days of the date of this order, that unreserved use penalties will be based on the period of unreserved use.

36. We also clarify that section 13.4 of the *pro forma* OATT provides that the customer using unreserved service shall be deemed to have executed a service agreement to govern that service. This means that all unreserved uses of the transmission provider's system, including inappropriate use of network transmission service to support off-system (third party) sales, are to be considered uses of firm point-to-point transmission service, even if the customer is taking network service or non-firm point-to-point service for the reserved portion of its service.¹⁹ Accordingly, it is not necessary for Entergy to also specify its unreserved use penalty rates in section 28.6.

¹⁹ See *Arizona Public Service Co.*, 121 FERC ¶ 61,246 (2007), and Order No. 890-A, FERC Stats. & Regs. ¶ 31,261, at P 454 (2007).

2. Entergy Shall Distribute All Unreserved Use Penalty Revenues

a. Entergy's Proposal

37. Entergy states that it revised sections 13.7 and 28.6 of its OATT to credit unreserved use penalties to non-offending long-term and short-term firm point-to-point customers, as well as network service customers. It further states that, for administrative efficiency, and to be consistent with Commission precedent,²⁰ it will distribute accumulated penalty revenues, plus interest, to non-offending customers when the annual accumulated amount of unreserved use penalty revenues to be credited reaches \$100,000. It states that the annual accounting will begin on January 1 of every year and end on December 31, and that penalty revenues in one year will not be carried over into subsequent years.

b. Responsive Pleadings

38. Union/Suez argue that Entergy's proposed unreserved use penalty provisions are ambiguous. They point out that the proposal does not provide for distribution of penalties collected for non-firm service under section 14.5 (Classification of Non-Firm Point-To-Point Transmission Service). They also argue that Entergy creates separate hold-backs for penalty revenues under sections 13.7 and 28.6 that could be in excess of \$100,000 for each hold-back, though the exact amount is uncertain. Union/Suez argue that because Entergy's use of the term "penalty revenues" does not appear to include interest, it appears that the \$100,000 threshold applies to the penalties collected prior to application of interest, enabling Entergy to retain in excess of \$100,000 under Section 13.7 and in excess of \$100,000 under Section 28.6.

39. According to Mississippi Cities, the category-by-category threshold for the crediting of penalty revenues proposed by Entergy would allow Entergy to retain hundreds of thousands of dollars in penalty revenues if the revenues collected for each of several penalty categories approach, but do not exceed, \$100,000 in a given year. Mississippi Cities argue that, although the Commission has approved a provision allowing retention of revenues arising from energy imbalance penalties until such revenues exceed \$100,000 on an annual basis,²¹ it has not permitted such an accumulation and retention of penalty revenues for each of multiple categories of penalties.

²⁰ Entergy's July 13, 2007 Filing at 5, n.22 (citing *Carolina Power and Light Co.*, 95 FERC ¶ 61,429 (2001), *order on reh'g*, 103 FERC ¶ 61,209 (2003) (Carolina Rehearing Order), *order on compliance filing*, 104 FERC ¶ 61,276 (2003)).

²¹ *Carolina Power and Light Co.*, 103 FERC ¶ 61,209 at P 35.

40. Entergy agrees that unreserved use by its non-firm point-to-point transmission service customers should also be subject to unreserved use penalties, and commits to revising section 14.5 to provide for such penalties and include the same crediting language included in sections 13.7 and 28.6 of its OATT.²²

41. Entergy clarifies that the \$100,000 threshold identified in sections 13.7 and 28.6, and that it will reflect in section 14.5, is an aggregate number of all unreserved use penalties for all types of service. Entergy also explains that its proposed \$100,000 threshold is supported by Commission precedent, and that Entergy is merely proposing a mechanism that the Commission has allowed in the past.²³ It argues that the tracking and disbursing of penalty revenues less than \$100,000 would be administratively burdensome and would undermine the value of disbursing penalties to customers. Accordingly, once penalties for all unreserved use for non-firm and firm point-to-point service and network service reach the \$100,000 threshold in a calendar year, Entergy will credit those revenues to non-offending customers.

c. Commission Determination

42. In Order No. 890, the Commission determined that transmission providers must distribute *all* unreserved use penalties that they collect, whether from the transmission provider's merchant function or other transmission customers.²⁴ In Order No. 890-A, the Commission clarified that it may be administratively difficult for some transmission providers to distribute small amounts of operational penalty revenues. We noted that transmission providers are free to propose a reasonable minimum threshold to trigger a distribution.²⁵ Entergy's \$100,000 threshold for distributing unreserved use penalties is reasonable, as it was accepted, for example, by the Commission in *Carolina Power and Light*.

43. However, Entergy's proposal to retain penalty revenues if they do not exceed \$100,000 in a year is unreasonable and inconsistent with Order No. 890. Accordingly, Entergy is required to revise its tariff provisions to provide for a rollover of penalty revenues to the following year and for distribution of the penalty revenues once the \$100,000 threshold is met, in a compliance filing due within 30 days of the date of this order.

²² Entergy's August 20, 2007 Answer at 8, n.40.

²³ Entergy's August 20, 2007 Answer at 8 (citing Carolina Rehearing Order, 103 FERC ¶ 61,209 at P 35).

²⁴ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 859.

²⁵ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 475.

44. In its answer, Entergy agreed to include unreserved use penalties for non-firm transmission service customers and the same crediting language in section 14.5 that it did in sections 13.7 and 28.6. We agree with this clarification, and direct Entergy to file, within 30 days of the date of this order, a compliance filing that includes provisions for non-firm transmission service unreserved use penalties, consistent with Order No. 890.

3. Entergy Must Clarify the Time Period to Identify Non-Offending Customers

a. Entergy's Proposal

45. Entergy proposes that unreserved use penalty revenues will be credited to customers that did not exceed their firm reserved capacity at any point during the annual period. Further, Entergy proposes that the revenues will be credited by dividing them equally among all long-term firm and short-term firm customers during the annual period.

b. Responsive Pleadings

46. L-M Municipals question whether a year is too long a period. They recommend a monthly compliance period that identifies complying customers entitled to revenues. L-M Municipals argue that, at the end of each month, Entergy should determine the penalties to be assessed, and in the month following the month in which payments are due (for each category of penalty), it should distribute penalty revenues on a *pro rata* megawatt hour basis to those customers that were not assessed the category of penalty in the month in which the penalties were assessed. At the very least, there must be an annual informational filing that informs the Commission and the public as to Entergy's implementation of the penalty provisions.

c. Commission Determination

47. In Order No. 890-A, the Commission determined that the unreserved use penalty distribution mechanism should not be based on an entire calendar year, but rather the particular period used to identify non-offending customers (e.g., quarterly, monthly, etc.), will be considered on a case-by-case basis.²⁶ Entergy's use of an annual compliance period is not consistent with or superior to the *pro forma* OATT. Accordingly, we reject Entergy's proposed annual period for identifying non-offending customers. Entergy is directed to propose a time period that complies with Order No. 890 for identifying non-offending customers, in a compliance filing due within 30 days of the date of this order.²⁷

²⁶ Order 890-A, FERC Stats. & Regs. ¶ 31,261 at 473.

²⁷ See, e.g., *Arizona Pub. Serv. Co.*, 121 FERC ¶ 61,247, at P 19 (2008).

4. Entergy Must Distribute Penalty Revenues Proportionately

a. Entergy's Proposal

48. In sections 13.7 and 28.6, Entergy proposes to distribute unreserved use penalties on an equal basis among all non-offending customers. Entergy states that it will credit the revenues by dividing them equally among all transmission customers during the annual period that did not exceed their firm or network reserved capacity at any point during the annual period.²⁸

b. Responsive Pleadings

49. Union/Suez argue that under Entergy's proposal, a customer that has reserved and paid for 100 Megawatts (MW) of transmission service receives the same credit as a customer that reserved and paid for 100,000 MW. Credits should be based on the use of transmission service during the period for which credits are determined.

c. Commission Determination

50. In Order No. 890, the Commission provided transmission providers with flexibility in developing their distribution methodologies. Nevertheless, Entergy's proposal is not reasonable because it does not differentiate between small and large customers. Instead, Entergy must use a distribution mechanism that will proportionately credit revenues based on the amount of transmission service reserved or the amount transmission service revenues collected.²⁹ Therefore, we order, within 30 days of this order, an additional compliance filing that outlines a distribution mechanism that will proportionately credit revenues based on the amount of transmission service reserved.

5. Unreserved Use of Network Service

a. Responsive Pleadings

51. Union/Suez argue that Entergy fails to address many instances of unreserved use of transmission service. For example, section 30.3 of Entergy's OATT provides for the termination of a network resource, and as proposed under section 28.6, it appears that a

²⁸ See Entergy's OATT at Original Sheet Nos. 65-66.

²⁹ See, e.g., Carolina Rehearing Order, 103 FERC ¶ 61,209 at P 24, 27-28. There, the Commission approved Carolina Power's procedure that credited penalty revenues based on the ratio of the transmission revenues collected from each Network Transmission Customer or Point-to-Point Transmission customer that did not make unreserved use in an hour to the sum of the transmission revenues collected from all transmission customers who did not make unreserved use in the hour.

network integration transmission service customer can use a terminated network resource to serve its load without penalty. They argue that the same customer can exceed the restrictions on operation of network resources under section 30.4 (Operation of Network Resources) without penalty. Accordingly, Union/Suez argue that penalties for unreserved use of network integration transmission service should extend to all unreserved use, not just unreserved use of point-to-point transmission service.

52. Entergy objects to Union/Suez's request that it clarify when network customers will be subject to unreserved use penalties. Entergy argues that Order No. 890 did not extend the application of unreserved use penalties to these scenarios. It further notes that the Order No. 890 *pro forma* OATT does not include any language that reflects Union/Suez's suggested revisions and that the revision is a collateral attack on Order No. 890.

b. Commission Determination

53. We find that Entergy complies with Order No. 890's requirements. Sections 28.6, 30.3, and 30.4 of Entergy's tariff contain the language found in the Order No. 890 *pro forma* OATT. Accordingly, we will reject Union/Suez's request.

54. However, we also clarify that in Order No. 890-A, the Commission disagreed with commenters that a network customer's use of firm transmission capacity reserved for a designated network resource to deliver power from a non-designated resource causes no harm to other customers. The Commission has long required network customers to use secondary network service to deliver energy from non-designated resources to serve network load. To allow network customers to use the firm transmission capacity reserved for designated network resources in such circumstances would unduly prefer the network customer over other potential users of that firm capacity. In such a case, the transmission customer could avoid potential curtailments because the purchased energy is scheduled with a higher curtailment priority under NERC guidelines than it would receive had the transmission customer used secondary network or non-firm point-to-point transmission service. Accordingly, and as discussed above, all unreserved uses of the transmission provider's system, including inappropriate use of network transmission service to support off-system (third party) sales, are to be considered uses of firm point-to-point transmission service, even if the customer is taking network service or non-firm point-to-point service for the reserved portion of its service.

D. Criteria Manuals

1. Proposal

55. The Commission has conditionally approved the Southwest Power Pool as Entergy's ICT, and also accepted Entergy's pricing and Weekly Procurement Process

proposals, with certain modifications.³⁰ Among its responsibilities, the ICT grants or denies requests for interconnection and transmission service on Entergy's transmission system. In evaluating requests for long-term transmission service, the ICT performs System Impact Studies and reviews and validates Facilities Studies that Entergy conducts. For short-term transmission service requests, the ICT oversees the AFC process.³¹ In the order approving the ICT, the Commission stated that any criteria developed by Entergy to be used by the ICT to grant or deny transmission service, including calculating AFC, must be filed under section 205 of the FPA and accepted by the Commission.³² The Commission, however, did not specify a specific deadline by which Entergy had to file the transmission service criteria.

56. On November 16, 2006, Entergy filed the transmission service criteria to be used by the ICT in determining whether to grant or deny a request for transmission service under Entergy's OATT. Entergy's filing included the transmission-related Criteria Manuals, which consist of the Available Flowgate Capability Manual, the System Impact and Facilities Study Manual, and the Transmission Service Request Manual. The Commission ordered Entergy to file the revised transmission service criteria resulting from the stakeholder consultation process within 120 days or, if unable to do so, report to the Commission on the progress it is making in revising the criteria through the stakeholder process.³³ Entergy's last progress report on the status of the Criteria Manuals was filed September 28, 2007.

57. Because the stakeholder process is ongoing, Entergy has requested that the Commission defer consideration of the substantive issues with the Criteria Manuals. These issues include clustering, penalties for the failure to meet study deadlines, and the designation of new network resources. Entergy filed a new version of the Criteria Manuals because of the requirements in Order No. 890, but warns that these versions will ultimately be superseded by the stakeholder-reviewed versions. Nevertheless, Entergy

³⁰ *Entergy Servs., Inc.*, 115 FERC ¶ 61,095, at P 110 (2006) (Order Approving ICT), errata notice, May 4, 2006, *order on reh'g*, 116 FERC ¶ 61,275, *order on clarification*, 119 FERC ¶ 61,013 (2007), *order on reh'g and compliance*, 119 FERC ¶ 61,187, *order on reh'g and clarification*, 122 FERC ¶ 61,216 (2008).

³¹ AFC is a flow-based approach for calculating available transfer capability. A flowgate is a set of facilities that constrain power transfers and therefore are determining elements for the calculation of available transfer capability. AFC values are calculated automatically, with the ICT reviewing and evaluating the AFC software and requiring any modifications to the software or data inputs that it feels are necessary.

³² Order Approving ICT, 115 FERC ¶ 61,095 at P 66.

³³ *Entergy Servs., Inc.*, 119 FERC ¶ 61,009, at P 24 (2007).

notes that it has made changes throughout its Criteria Manuals to comply with Order No. 890.

58. In addition, through the stakeholder process, Entergy has agreed to support deferred action on Attachment T (Recovery of New Facilities Costs) because of its relationship with the transmission-related Criteria Manuals.³⁴

59. Entergy requests that the Commission accept the revised Criteria Manuals for filing, subject to the outcome of the Commission proceeding that will be initiated once the stakeholder review process is completed. Entergy states that if any issues have not been resolved, individual stakeholders or the ICT may raise those issues with the Commission at the time of the subsequent filing.

2. Responsive Pleadings

60. Several commenters filed a similar motion for extension of time to file comments regarding the Criteria Manuals and Attachment T. L-M Municipals and Union/Suez state that providing comments on the Criteria Manuals prior to completion of the stakeholder process would be counterproductive.

3. Commission Determination

61. We agree that it is premature to make a finding on whether the Criteria Manuals and Attachment T comply with Order No. 890. Entergy will make a compliance filing once it has completed the stakeholder process, and parties will be able to comment on the Criteria Manuals and Attachment T at that time, including the provisions that are affected by Order No. 890.

62. However, considering the delay in Entergy's completion of its Order No. 890 requirements, we order Entergy to file an informational report, within 30 days of the date of this order, detailing why the delay has occurred, the current status of the stakeholder process, and a date by which Entergy will complete the stakeholder process and file revisions to the Criteria Manuals and Attachment T resulting from that process. After the initial informational report is filed, we direct Entergy to submit bi-monthly informational updates every 60 days detailing its progress in the stakeholder process. These informational updates will be due within 60 days of Entergy's initial 30-day informational filing, and every 60 days afterwards, until the Criteria Manuals are filed with the Commission.

³⁴ Entergy's August 20, 2007 Answer at P 5, n.17.

E. Ancillary Services

63. In Order No. 890, the Commission revised the OATT to provide that Schedule 3 (Regulation and Frequency Response Service), Schedule 5 (Operating Reserve and Spinning Reserve Service), and Schedule 6 (Operating Reserve – Supplemental Reserve Service) services are provided by the transmission provider, but can also be provided by other non-generation resources capable of providing this service. In its filing, Entergy does not propose changes to Schedule 3, Schedule 5, or Schedule 6 to permit those services to be provided by other non-generation resources.

1. Responsive Pleadings

64. Union/Suez and L-M Municipals state that Entergy does not discuss in its July 13 filing in this proceeding why it omitted these important additions. Accordingly, they argue that Entergy should be directed to include the added language to its schedules. In its answer, Entergy acknowledges the need to revise its OATT in this regard and commits to revising Schedules 3, 5, and 6 to indicate that the services in those schedules can be provided “by other non-generation resources capable of providing this [sic] services.”³⁵

2. Commission Determination

65. Consistent with Order No. 890, we direct Entergy to file, within 30 days of the date of this order, a further compliance filing to include the *pro forma* reference to non-generation resources, consistent with Order No. 890.

F. Application Procedures

66. Union/Suez state that section 29.2(v) (Application Procedures for Initiating Service) of Entergy’s OATT keeps language replaced by the Order No. 890 *pro forma* OATT without any explanation. They argue that section 29.2(v) of Entergy’s OATT should be conformed to section 29.2(v) of the Order No. 890 OATT to remove any conflict between the retained language and the Order No. 890 revision.

67. In its answer, Entergy agrees to revise section 29.2 to remove the now superseded reference to the provision of power purchase agreements in the network service application process.

68. We direct Entergy to file, within 30 days of the date of this order, a compliance filing that removes the reference to the superseded language, consistent with Order No. 890.

³⁵ Entergy’s August 20, 2007 Answer at 12.

G. Late Study Penalties

69. Entergy has not complied with our requirement in Order 890-A that each transmission provider “submit a one-time compliance filing under FPA section 206 proposing the transmission provider’s methodology for distributing revenues from late study penalties and, if applicable, unreserved use penalties.”³⁶ Thus, Entergy must submit its one-time compliance filing under FPA section 206 prior to the first distribution of operational penalties.³⁷

H. Index of Customers

1. Entergy’s Proposal

70. Entergy states that it has consolidated its list of point-to-point and network service customers formerly included in previous versions of Attachment E and Attachment I into Attachment I. Further, Entergy indicates that it complies with the requirement in Order No. 2001³⁸ to specifically identify its OATT customers in the Electronic Quarterly Reports.

2. Responsive Pleadings

71. Union/Suez state that, in lieu of the Order No. 888 *pro forma* OATT’s Attachment E (Index of Point-to-Point Transmission Service Customers) and Attachment I (Index of Network Integration Transmission Service Customers), both of which the Commission reproduced without revision in the Order No. 890 *pro forma* OATT’s Attachments E and I, Entergy has consolidated the two attachments into its Attachment I. They state that this change violates Order No. 890 and should be rejected.

³⁶ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 472.

³⁷ *Id.*

³⁸ *Revised Public Utility Filing Requirements*, Order No. 2001, FERC Stats. & Regs. ¶ 31,127, *reh’g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reh’g denied*, Order No. 2001-B, 100 FERC ¶ 61,342, *order directing filing*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002), *order directing filing*, Order No. 2001-D, 102 FERC ¶ 61,334 (2003).

3. Commission's Determination

72. Order No. 890 did not require transmission providers to consolidate their index of customers; however, we have approved similar consolidations in the past,³⁹ and we accept Entergy's proposal here. We note that the merits of the change were not protested and that the change does not affect the rates, terms or conditions of Entergy's OATT.

I. Motion for Extension of Time

1. Proposal

73. On July 13, 2007, Entergy filed a motion for extension of time to comply with Order No. 890 requirements concerning the evaluation of pre-confirmed transmission service requests under its OATT. Entergy stated that the necessary software modifications could not be completed in time to comply with the July 13, 2007 compliance deadline. Entergy asked for an extension until December 1, 2007 to comply with this requirement.

74. On November 30, 2007, Entergy made an informational filing in the instant proceeding to inform the Commission that it has complied with Order No. 890's requirements regarding the evaluation of pre-confirmed transmission service requests. Entergy states that it made an upgrade to its OASIS Automation software to comply with Order No. 890.

2. Responsive Pleading

75. Union/Suez state that Order No. 890 requires that transmission providers give priority to pre-confirmed non-firm and short-term firm point-to-point transmission service requests, with compliance required by July 13, 2007. They note that Entergy requested an extension of time until December 1, 2007 for implementation of the reservation priority for qualifying pre-confirmed point-to-point transmission service requests. Union/Suez argue that Entergy's extension request is not within the scope of this compliance filing. Without addressing the merits of Entergy's extension request or motion for extension in Docket No. RM05-25-000, Union/Suez argue that, given the inconsistency between the requested effective date of the Entergy's compliance filing and the request to defer the date with respect to portions of that Entergy Order No. 890 OATT, Entergy should have made a separate section 205 filing proposing a revision to the definition of "Pre-Confirmed Application" to reflect a December 1, 2007 effective date.

³⁹ *NorthWestern Corp.*, 117 FERC ¶ 61,293 (2006); *Virginia Elec. and Power Co.*, 108 FERC ¶ 61,108 (2004).

3. Commission Determination

76. In its request for an extension of time to comply with this Order No. 890 requirement, Entergy explained its inability to implement an automated process by July 13, 2007. Entergy also states that a manual process would not be feasible or reliable for the same reasons that made an automation process necessary in the first place. Specifically, the complexity of the AFC process and the number of transmission service requests that the ICT processes daily. Entergy worked with the ICT and its software vendor, AREVA, to fulfill its Order No. 890 responsibility concerning the evaluation of pre-confirmed TSRs. Now, Entergy's OASIS will automatically grant pre-confirmed non-firm and short-term firm point-to-point transmission service request reservation priority. Accordingly, Entergy complies with this Order No. 890 requirement.

77. We disagree with Union/Suez that this extension is not within the scope of Order No. 890. Entergy needed additional time to develop its software. This extension is no different than Entergy's extension regarding its Criteria Manuals.

The Commission orders:

(A) Entergy's compliance filing is hereby accepted, as modified, effective July 13, 2007, as discussed in the body of this order.

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

(C) Entergy is hereby directed to submit an informational filing regarding the status of the stakeholder process to review the Criteria Manuals, within 30 days of the date of this order, with updates every 60 days thereafter, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.