

114 FERC ¶ 61,286
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Entergy Services, Inc.

Docket No. ER01-2214-004

ORDER CONDITIONALLY ACCEPTING IN PART AND REJECTING IN PART,
WITHOUT PREJUDICE, COMPLIANCE FILING

(Issued March 17, 2006)

1. In this order, we conditionally accept some of the revisions to the rates, terms and conditions proposed for the Entergy Corporation's Operating Companies'¹ ancillary services offered under Schedule 3 (Regulation and Frequency Response Service), Schedule 4 (Energy Imbalance Service), Schedule 5 (Spinning Reserve Service), and Schedule 6 (Supplemental Reserve Service) of Entergy's Open Access Transmission Tariff (OATT). In addition, we reject without prejudice some of the proposed revisions and we order a further compliance filing as discussed below.

Background

2. On June 1, 2001, Entergy Services, Inc., on behalf of the Entergy Corporation Operating Companies, (collectively Entergy) filed revisions to the ancillary services provisions of Schedules 3 through 6 of its OATT. The Commission accepted the proposed revisions, suspended them for a nominal period, allowed them to become effective August 1, 2001, subject to refund, and set the filing for hearing.²

3. The presiding administrative law judge (presiding judge) issued an Initial Decision that found some aspects of the filing to be unjust and unreasonable.³ The Commission summarily affirmed and adopted the presiding judge's findings on the majority of issues. The Commission addressed the remaining issues: (1) energy imbalance settlements;

¹ The Entergy Corporation Operating Companies include Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, LLC, Entergy Mississippi, Inc., and Entergy New Orleans, Inc.

² *Entergy Services, Inc.*, 96 FERC ¶ 61,113 (2001).

³ *Entergy Services, Inc.*, 102 FERC ¶ 63,016 (2003) (Initial Decision).

(2) the percentage of Load Following Capacity (LFC) that a customer must purchase; (3) the amount of operating reserves a customer must purchase; (4) the appropriate penalties for under-supply or over-supply of energy under certain circumstances; and (5) Entergy's proposed summer rate.⁴

4. On rehearing, the Commission clarified certain issues and directed Entergy to submit a compliance filing.⁵ In an effort to comply with the October 28 Order, on November 29, 2004, Entergy submitted proposed revised tariff sheets for the ancillary services contained in Schedules 3 through 6 of the Entergy OATT.

Notice of Compliance Filing and Pleadings

5. Notice of Entergy's compliance filing was published in the *Federal Register*, 69 Fed. Reg. 71,809 (2004), with interventions and protests due on or before December 20, 2004. The Allied Intervenors⁶ filed a timely protest. Entergy filed an answer to the Allied Intervenors' protest.

Discussion

A. Procedural Matters

6. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Entergy's answer, notwithstanding the general prohibition on the filing of an answer to a protest,⁷ as the answer has provided information that assisted us in our understanding and resolution of the issues raised.

⁴ *Entergy Services, Inc.*, 105 FERC ¶ 61,319 (2003) (December 22 Order), *errata*, 106 FERC ¶ 61,108 (2004).

⁵ *Entergy Services, Inc.*, 109 FERC ¶ 61,095 (2004) (October 28 Order).

⁶ The Allied Intervenors are: Arkansas Electric Cooperative Corporation, Mississippi Delta Energy Agency and its members, Clarksdale Public Utilities Commission, the Public Service Commission of Yazoo City, and the South Mississippi Electric Power Association.

⁷ *See* 18 C.F.R. § 385.213(a)(2) (2005).

B. Compliance Filing**Schedule 3 – Regulation and Frequency Response Service**

7. The December 22 Order approved the use of a customer's coincident peak load as the billing determinant and approved Entergy's development of rates using a non-levelized methodology for all months.⁸ The Commission affirmed in its October 28 Order its previous decision to: (1) adopt a 1.41 percent LFC purchase obligation for use in all hours and directed Entergy to reduce its LFC purchase obligation to 1.41 percent; and (2) rejected Entergy's proposed additional capacity charges.⁹

8. In compliance with the Commission's directives in the December 22 and October 28 Orders, Entergy proposes the following modifications to Schedule 3 of its OATT. First, Entergy incorporates a 1.41 percent LFC purchase obligation. Second, Entergy eliminates the additional capacity purchase requirement. Third, Entergy clarifies that a transmission customer's monthly coincident peak load will be used as the billing determinant. Fourth, Entergy adopts a rate of \$1.94/kW-month for all months based on a non-levelized methodology. Fifth, Entergy includes rates for durations shorter than one month. Finally, Entergy adds language relating to self-supply consistent with paragraph 71 of the October 28 Order.

9. We find that Entergy's proposed revisions to Schedule 3 are consistent with the requirements of the December 22 and October 28 Orders. Accordingly, we accept for filing Entergy's proposed revised Schedule 3.

Schedule 4 – Energy Imbalance Service

10. The October 28 Order permitted Entergy to: (1) utilize the same penalties approved for out-of-the-bandwidth energy shortfalls during non-emergency service periods; and (2) drop the requirement that Entergy provide 24 hours advance notice of a Curtailment Risk Period. Entergy was given two options to address the bandwidth issue. The first option was a Schedule 4 compliance filing that adopts the +/- 2 percent bandwidth, with return-in-kind payments for imbalances within the bandwidth, and with 125 percent, 80 percent, and 70 percent penalties for imbalances outside the bandwidth. The second option was to reinstate the 1.5 percent penalty-free bandwidth from the *pro forma* OATT with the provision for return-in-kind payments and the approved 125

⁸ See December 22 Order at P 4.

⁹ See October 28 Order at P 13, 16, 19, 24.

percent, 80 percent, and 70 percent penalties. The Commission noted that, if this second option were chosen, Entergy must implement this option prospectively in its compliance filing.¹⁰

11. The October 28 Order also affirmed that Entergy must credit penalty revenues to non-offending transmission customers, including its affiliates.¹¹

12. Entergy proposes several modifications and clarifications to Schedule 4 in order to comply with the October 28 Order. First, Entergy restores the return-in-kind provision that existed under the *pro forma* OATT. Second, Entergy opts to reinstate a 1.5 percent bandwidth. Third, Entergy removes the Low Load Event and Curtailment Risk Period penalties. Fourth, Entergy revises the definition of Entergy System Incremental Cost. Finally, Entergy proposes a mechanism to credit penalty revenues to non-offending transmission customers.

The Allied Intervenors' Protest

13. The Allied Intervenors object to proposed changes to Schedule 4 that they argue were not addressed in the October 28 Order. They point out that Entergy: (1) removed the phrase “or within such other reasonable period of time as is generally accepted in the region and consistently adhered to by the Transmission Provider”;¹² (2) revised the time period within which the parties should attempt to eliminate energy imbalances before

¹⁰ See October 28 Order at P 34, 45, 47.

¹¹ See October 28 Order at P 61, 65 (citing *Carolina Power & Light Co.*, 97 FERC ¶ 61,048 at 61,279 (2001) *reh'g denied*, 103 FERC ¶ 61,209, *order on compliance filing*, 104 FERC ¶ 61,276 (2003) (*CP&L*)).

¹² Entergy's OATT previously provided in relevant part:

Parties should attempt to eliminate energy imbalances within the limits of the deviation band within thirty (30) days or within such other reasonable period of time as is generally accepted in the region and consistently adhered to by the Transmission Provider. If an energy imbalance is not corrected within thirty (30) days or a reasonable period of time that is generally accepted in the region and consistently adhered to by the Transmission Provider, the Transmission Customer will compensate the Transmission Provider for such service.

they become liable to compensate the Transmission Provider for that service;¹³ and (3) added language that imposed rates for in-kind balances that were not a part of Entergy's OATT.¹⁴ Finally, the October 28 Order required Entergy to credit non-offending transmission customers with ancillary service penalty revenues plus interest,¹⁵

¹³ The Allied Intervenors point to proposed language which states:

Parties should attempt to eliminate energy imbalances within the limits of the deviation band within the calendar month. If an energy imbalance is not corrected within the calendar month, the Transmission Customer will compensate the Transmission Provider for such service.

¹⁴ Allied Intervenors point out that Entergy's OATT provides:

Customer shall eliminate energy imbalances within the "On Peak Account" and the "Off-Peak Account" by the end of the monthly billing period by purchasing or selling such energy in accordance with the rates set forth in Section A, above.

They contrast the above OATT provision with proposed Schedule 4, Section II.D, which states:

For any Excess Energy remaining in the on-peak account, that energy will be purchased at 70% of the average of the hourly on-peak Avoided Cost in that month. For any Excess Energy remaining in the off-peak account, that energy will be purchased at 70% of the average of the hourly off-peak Avoided Cost in that month. For any Deficient Energy remaining in the on-peak account, that energy will be priced at 125% of the average of the hourly ESIC for the on-peak hours in that month. For any Deficient Energy remaining in the off-peak account, that energy will be priced at 125% of the average of the hourly ESIC for the off-peak hours in that month.

¹⁵ See December 22 Order at P 4.

but the Allied Intervenors claim that the crediting provisions contained in proposed Schedule 4 are unclear.¹⁶ The Allied Intervenors request that the Commission direct Entergy to supplement its compliance filing with a concrete example.¹⁷

Entergy's Answer

14. First, Entergy explains that there is no period of time that is generally accepted in the region and consistently adhered to by Entergy. Therefore, Entergy argues that the OATT language that it proposes to remove is superfluous.¹⁸

15. Second, Entergy explains that it changed the period of time reference from “thirty days” to “calendar month” because the bills for Schedule 4 are based on each calendar month. Entergy states that, in order to process timely and accurate bills, energy imbalances within the bandwidth need to be remedied by the end of the billing cycle or at the end of the calendar month.¹⁹

16. Third, Entergy recognizes that Schedule 4 of its OATT provides that: “Customer shall eliminate energy imbalances within the ‘On Peak Account’ and ‘Off-Peak Account’ by the end of the monthly billing period by purchasing or selling such energy in accordance with the rates set forth in section A.” However, Entergy points out that section A of the OATT’s Schedule 4 does not contain any rates. Consequently, Entergy’s proposal adds a description of the rates that will be used when Excess or Deficient Entergy remains in the on-peak or off-peak account at the end of the month.

17. Finally, Entergy disputes that the proposed crediting provisions are unclear. It asserts that the proposal is consistent with Commission precedent and that the Allied Intervenors have not identified any specific provision that is unclear.²⁰ In addition, Entergy states that the penalty revenues will be disbursed at the end of each calendar year as long as the accumulated penalty revenues have reached \$100,000.²¹

¹⁶ See Allied Intervenors Protest at 4-5.

¹⁷ See Allied Intervenors Protest at 5.

¹⁸ See Entergy Answer at 3.

¹⁹ *Id.*

²⁰ See *Id.* at 4.

²¹ *Id.*

Commission Determination

18. We will reject, without prejudice, Entergy's proposal to delete the phrase "or within such other reasonable period of time as is generally accepted in the region and consistently adhered to by the Transmission Provider" and to change "thirty days" to "calendar month." These proposed changes go beyond the compliance filing required by the October 28 Order. Entergy may make a separate section 205 filing that proposes these rejected revisions.

19. The October 28 Order specifically allowed Entergy to include the approved 125 percent, 80 percent, and 70 percent penalties in its compliance filing if Entergy chose the option to reinstate its pre-existing *pro forma*-conforming OATT.²² The rates outlined in section II.D of Schedule 4 comply with the Commission's directive in the October 28 Order.

20. We disagree with the Allied Intervenors' assertion that Entergy's proposed language is unclear. In its compliance filing, Entergy has provided tariff sheets that detail the distribution of penalty revenues. In addition, Entergy has described the distribution of penalty revenues associated with Deficient Energy in excess of the deviation band, Excess Energy in excess of the deviation band, monthly net Deficient Energy and monthly net Excess Energy. For each type of penalty, the revenues are returned to customers that did not incur a penalty during the relevant period.

21. We will deny the Allied Intervenors' request that Entergy provide an example of how the crediting provision will work. This is unnecessary because Entergy has adequately explained its crediting provisions in the compliance filing.

22. The Allied Intervenors also question whether the accumulated penalty revenues will be paid out at the end of each calendar year. In Entergy's answer, Entergy states that the revenues will be disbursed at the end of each calendar year as long as the total accumulated penalty revenues have reached \$100,000. We will require Entergy to file a report with the Commission within 60 days of the date of the disbursement of penalty revenues. This is consistent with Commission precedent.²³

23. The October 28 Order directed Entergy to implement the 1.5 percent *pro forma*-conforming bandwidth on a prospective basis, if it chose this option. Instead, Entergy proposes an effective date of August 1, 2001.²⁴ Consistent with the October 28 Order,

²² See October 28 Order at P 47.

²³ See *supra* note 10 (citing *CP&L*).

²⁴ See October 28 Order at P 47.

we find that the effective date for this change should be the date of this order. Therefore, we direct Entergy to revise its tariff sheets in Schedule 4 (section II, Return In-Kind and Imbalance Pricing) to reflect an effective date of the date of this order.

Schedules 5 and 6 – Spinning Reserve and Supplemental Reserve Services

24. The December 22 Order approved the use of the customer's coincident peak load as the billing determinant and approved Entergy's development of rates using a non-levelized methodology for all months.²⁵ The December 22 Order also approved an operating reserve requirement of 4.35 percent, to be divided in two – 2.18 percent for Spinning Reserves and 2.17 percent for Supplemental Reserves.²⁶ In the October 28 Order, the Commission denied Entergy's rehearing request to include summer capacity purchases in the summer rates for Schedules 3, 5 and 6. The Commission also affirmed its previous decision to reject Entergy's proposed rate design for non-summer months.²⁷

25. In compliance with the Commission's directives in the December 22 and October 28 Orders, Entergy proposes the following modifications to Schedules 5 and 6 of its OATT. First, Entergy clarifies that a transmission customer's monthly coincident peak load will be used as the billing determinant. Second, Entergy incorporates a purchase obligation for Spinning Reserves of 2.18 percent and for Supplemental Reserves of 2.17 percent. Third, Entergy adopts a rate of \$1.94/kW-month for all months based on a non-levelized methodology. Fourth, Entergy includes rates for durations shorter than one month. Fifth, Entergy removes the audit right and penalty provisions for failure to self-supply reserves.

26. We find that Entergy's proposed revisions to Schedules 5 and 6 are consistent with the requirements of the December 22 and October 28 Orders. Accordingly, we accept for filing Entergy's proposed revised Schedules 5 and 6.

The Commission orders:

(A) Entergy is hereby directed to revise Schedule 4 (section II, Return In-Kind and Imbalance Pricing) to reflect an effective date of the date of this order. Entergy's compliance filing as modified by this order is hereby accepted, to become effective on August 1, 2001.

²⁵ See December 22 Order at P 4.

²⁶ *Id.* at P 42.

²⁷ See October 28 Order at P 52, 55-56.

(B) Entergy is hereby directed to make refunds of the penalty revenues provided for in Schedule 4, within 30 days of the date of this order and to file a refund report within 30 days thereafter, consistent with the terms of this order. These refunds should include interest as prescribed by 18 C.F.R. § 35.19 a (2005) of the Commission's regulations.

(C) Each calendar year that Entergy's penalty revenues exceed \$100,000, Entergy is hereby directed to disburse those penalty revenues within 60 days of the end of said calendar year, and to file a refund report with the Commission within 30 days of the date of the disbursement of those penalty revenues.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.