

111 FERC ¶ 61,181
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Entergy Services, Inc.

Docket Nos. ER03-851-001
ER03-851-002

ORDER DENYING REHEARING AND ACCEPTING COMPLIANCE FILING

(Issued May 6, 2005)

1. This order addresses Entergy Services, Inc.'s (Entergy)¹ request for rehearing of the Commission's order that accepted a revised interconnection agreement (Revised IA) between Entergy Gulf States, Inc. (Entergy Gulf States) and ExxonMobil Oil Corporation (ExxonMobil).² In the July 15 Order, the Commission directed Entergy to provide transmission credits with interest for all network facilities, defined as all facilities at or beyond the point where ExxonMobil, the interconnection customer, connects to Entergy's transmission grid.
2. As discussed below, the Commission denies Entergy's request for rehearing of the July 15 Order and accepts Entergy's compliance filing made in response to that order. This order benefits customers by requiring that the interconnection customer receive transmission credits for payments it made for network upgrades, consistent with Commission policy.

¹ Entergy Services, Inc. made the filing on behalf of Entergy Gulf States, Inc.

² *Entergy Services, Inc.*, 104 FERC ¶ 61,084 (2003) (July 15 Order).

Background

3. The original interconnection agreement (Original IA) between Entergy Gulf States and ExxonMobil³ established the rights, obligations, and costs associated with ExxonMobil's interconnection to Entergy's transmission system of a 165 MW facility in Beaumont, Texas (Beaumont Facility) and the facilities necessary to accomplish the interconnection (Original Transmission Facilities).⁴

4. Entergy later filed the Revised IA, which provided for ExxonMobil to interconnect an additional 324 MW of generation at the Beaumont Facility to Entergy's transmission system. The Revised IA reflects the additional transmission facilities (New Transmission Facilities) required to accommodate the expansion of the Beaumont Facility, as well as ExxonMobil's election of certain Optional System Upgrades. The Revised IA was filed unexecuted because ExxonMobil objected to certain of the proposed rates, terms and conditions, including the Revised IA's direct assignment to ExxonMobil of cost responsibility, without eligibility for transmission credits, for the New Transmission Facilities.

5. In the July 15 Order, the Commission accepted the Revised IA for filing, conditioned upon Entergy's refiling it in compliance with Commission policy. Specifically, the Commission found that the New Transmission Facilities are actually network facilities eligible for transmission credits, since they are located at or beyond the point where ExxonMobil connects to the grid, and thus rejected the direct assignment of their costs to ExxonMobil. The Commission explained that since the facilities at issue were "at or beyond" the point where the customer connects to the grid, Commission policy⁵ required that the customer receive credits against its transmission rates to reflect

³ ExxonMobil was then called "Mobil Oil Corporation." For clarity, we will refer to it as ExxonMobil throughout this order.

⁴ The Original IA was accepted by the Commission in *Entergy Services, Inc.*, Docket No. ER02-144-000, Letter Order, issued December 7, 2001.

⁵ *Consumers Energy Company*, 95 FERC ¶ 61,233, *order on reh'g*, 96 FERC ¶ 61,132 (2001) (*Consumers*); *Entergy Gulf States, Inc.*, 98 FERC ¶ 61,014 (*Entergy Gulf States*), *reh'g denied*, 99 FERC ¶ 61,095 (2002) (*Entergy Gulf States rehearing order*), *aff'd*, *Entergy Services, Inc. v. FERC*, 391 F.3d 1240 (D.C. Cir. 2004) (*Entergy Court Opinion II*).

its payment for these network facilities.⁶ Therefore, the Commission directed Entergy to reclassify the disputed facilities as network upgrades, eligible for transmission credits, with interest.

Discussion

A. Request for Rehearing

1. Challenges to Classification of Facilities

6. Entergy contends that the Commission erroneously reclassified the facilities at issue without further analysis of the facilities in a hearing. Entergy argues that the Commission has previously set for hearing disputes involving the proper classification of facilities. According to Entergy, an analysis (through investigation and hearing) of the relevant facilities would show that these facilities are not network upgrades, as defined in the Commission's *pro forma* open access transmission tariff (OATT). Entergy maintains that the Commission gave no explanation as to how these facilities benefit Entergy's transmission system or Entergy's other transmission customers.

7. Moreover, Entergy argues, the Commission's treatment of the facilities at issue here as network upgrades effectively eliminates the existence of interconnection facilities (as defined in its *pro forma* IA), which had been directly assigned to generators by Entergy in its IAs before *Entergy Gulf States*.

8. We deny Entergy's request for rehearing of this issue. Entergy cites various cases, including *Commonwealth Edison*⁷ in support of its position. As we explained in the *Entergy Gulf States* rehearing order, in *Commonwealth Edison*, we set the filings for hearing to determine "whether the costs at issue are for enhancements to network resources [since] it is unclear as to the precise *location of the point* at which the generator

⁶ In *Consumers*, the Commission rejected the direct assignment of improvements to grid facilities (network upgrades) even if those improvements would not have been made but for a particular request for interconnection service. In *Entergy Gulf States*, the Commission clarified that network facilities include all facilities at or beyond the point where the generator connects to the grid because these are facilities that provide system-wide benefits. See also *Entergy Services, Inc.*, 95 FERC ¶ 61,437, *reh'g denied*, *Entergy Services, Inc.*, 96 FERC ¶ 61,311 (2001), *aff'd*, *Entergy Services, Inc. v. FERC*, 319 F.3d 536 (D.C. Cir. 2003) (*Entergy Court Opinion I*).

⁷ *Commonwealth Edison Co.*, 97 FERC ¶ 61,123 (2001) (*Commonwealth Edison*).

interconnects to the grid and thus whether the costs are for enhancements on the network side of that point.”⁸ That is not the case here. The point of interconnection is not in dispute, as it was in the *Commonwealth Edison* case.

9. Another case cited by Entergy is *Appalachian*⁹ where we did set for hearing whether certain facilities that need to be upgraded to accommodate the interconnection should be treated as system upgrades or directly assigned. As we also explained in the *Entergy Gulf States* rehearing order, *Appalachian* contained neither a description stating that the facilities being upgraded were already network facilities nor any discussion of where the facilities in question were located.¹⁰ To the extent that *Appalachian* is factually similar to this case, a hearing was unnecessary – here, there is no dispute over the location of the facilities. The existence of some cases in which the issue of whether facilities were network upgrades was set for hearing does not undermine the validity of thirty years of precedent which clearly states that the network is a single piece of machinery.

10. Moreover, in *Entergy Court Opinion I*, the court rejected many of the very arguments raised here by Entergy.¹¹ For instance, the court rejected the argument that our pricing policy imposes on all users of the grid costs that benefit only the new generator; the court found reasonable the Commission's view that all customers benefit from a truly competitive market, which requires comparable access to transmission.¹²

⁸ See *Entergy Gulf States* rehearing order, 99 FERC ¶ 61,095 at P 18, citing *Commonwealth Edison*, 97 FERC at 61,590 (emphasis added).

⁹ *Appalachian Power Co.*, 97 FERC ¶ 61,199 (2001) (*Appalachian*).

¹⁰ *Entergy Gulf States* rehearing order, 99 FERC ¶ 61,095 at P 19.

¹¹ 319 F.3d 536. The court also recently affirmed this policy in *Entergy Court Opinion II*, 391 F.3d at 1247-48.

¹² 319 F.3d at 544.

11. Furthermore, as the court discussed in *Entergy Court Opinion I*¹³ and recently reaffirmed in *Entergy Court Opinion II*,¹⁴ Entergy's view of "benefit" is too narrow. As the court stated, system expansion is a "benefit" sufficient to support the Commission's pricing policy. Furthermore, the court in *Entergy Court Opinion II* had no objection to the fact that the Commission in *Consumers* did not make a case-specific analysis of benefit to other users of the transmission grid; it endorsed the Commission's use of a purely locational test. It said that *Consumers* "set forth an overarching defense of at least a 'from' test" (*i.e.*, all facilities from the point where the generator connects to the grid.)¹⁵ Further, the court pointed out that in *Entergy Court Opinion I*, it had found that "the Commission had reasonably explained its crediting pricing policy," as spelled out in *Consumers*, generally.

2. Challenges to the "at" portion of the "at or beyond" test for identifying Network Upgrades

12. On rehearing, Entergy argues that the Commission's use of the "at or beyond the point of interconnection" test for identifying which facilities are network facilities (as opposed to interconnection facilities, which can be directly assigned to the generator) improperly departs from precedent. Entergy contends that the "at or beyond" interconnection pricing policy is a relatively new one introduced in *Entergy Gulf States* and that that case departed without any justification from the Commission's previous interconnection precedents. Entergy asserts that under the Commission's precedent before *Entergy Gulf States*, facilities located precisely *at* the point of interconnection – such as the New Transmission Facilities at issue here – were directly assigned to the interconnecting generator, without credits. Under that precedent, Entergy argues, network facilities were those facilities beyond, or from, a generator's point of interconnection. Entergy contends that the Commission has never justified the "at" part of the "at or beyond" policy or reconciled this policy with its prior interconnection policy and, therefore, should grant rehearing of the July 15 Order.

¹³ *Id.* at 543.

¹⁴ 391 F.3d at 1247-48,

¹⁵ *Id.*

13. For the reasons discussed in *Nevada Power Co.*,¹⁶ we will deny Entergy's request for rehearing. As we explain in *Nevada Power*, when the Commission first articulated the locational test in *Consumers* for determining whether a facility is a network facility, we used the vague term "from" the point of interconnection instead of the more precise "at or beyond" the point of interconnection. However, our adoption of the clearer terminology was not a change in policy. The network begins *at* the point where the interconnection customer's facilities connect to the transmission system, not somewhere *beyond* that point. It would be irrational to treat a facility that is "from" the point of interconnection (that is, further *into* the network) as a network facility but not to so treat an upgrade that is "at" the point of interconnection, and thus squarely *on* the network.¹⁷

3. Energy Policy Act and Order No. 2000

14. Entergy argues that the July 15 Order violates the Energy Policy Act of 1992, which amended section 212 of the Federal Power Act (FPA),¹⁸ because the order requires Entergy's transmission customers and captive ratepayers to subsidize the interconnection of independent power production facilities that may not be needed by or intended to serve these customers.

15. We deny rehearing on this issue. We find that the section of the FPA on which Entergy relies applies only to orders by which the Commission *compels* interconnection by a utility. Thus, the section Entergy cites is irrelevant to this proceeding, which involves no such order. Likewise, in Order No. 2003-A,¹⁹ in response to arguments that the Commission's pricing policy violated section 212 of the FPA, we stated that section 212 applies only to transmission service ordered under section 211. In reviewing Entergy's filing, we are acting under section 205, not section 211. Even if section 212 applied here, the Commission's policy would not violate section 212 because it promotes

¹⁶ 111 FERC ¶ 61,161 (2005) (*Nevada Power*).

¹⁷ *Id.* at P 15-16.

¹⁸ 16 U.S.C. § 824k (a)(2000).

¹⁹ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs., ¶ 31,146 (2003) (Order No. 2003), *order on reh'g*, Order No. 2003-A, 69 Fed. Reg. 15,932 at P 580 (Mar. 26, 2004), FERC Stats. & Regs., ¶ 31,160 (2004) (Order No. 2003-A), *order on reh'g*, Order No. 2003-B, 109 FERC ¶ 61,287 (2004) (Order No. 2003-B), *reh'g pending*; see also *Notice Clarifying Compliance Procedures*, 106 FERC ¶ 61,009 (2004).

economic efficiency, is just and reasonable, and is needed to prevent transmission providers that have an incentive to discourage competitors from unduly discriminating against those competitors. Moreover, we found in Order No. 2003-A that the legislative history of the Energy Policy Act of 1992 did not support a conclusion that section 212 was intended to require a particular type of transmission pricing.²⁰ In addition, as we discussed in Order No. 2003-A, the court in *Entergy Court Opinion I* also clearly affirmed the Commission's reasoning underlying rolled-in transmission rates and its view that all transmission customers benefit from an expanded, and thus more reliable, transmission system.²¹ Further, in Order No. 2003-B, we reaffirmed that an important objective of our interconnection pricing policy is the protection of existing transmission customers, including the transmission provider's native load, from adverse rate implications associated with interconnection facilities and network upgrades required to interconnect a new generating facility.²²

16. Furthermore, Entergy asserts, the interconnection pricing policy is inconsistent with Order No. 2000,²³ which recognized the importance of sending locational pricing signals to generators. Entergy argues that the July 15 Order's requirement that Entergy treat the New Transmission Facilities as network facilities diverges from the market expansion signals endorsed in Order No. 2000.

17. In Order No. 2003-A, the Commission responded to arguments such as the ones Entergy raises here concerning the importance of sending locational pricing signals to interconnecting generators. We recognized the need for such price signals, but balanced that need with the need to promote competition and infrastructure development, protect the interests of interconnection customers, and protect native load and other transmission customers. We modified our interconnection pricing policy in several ways to help ensure that the interconnection customer makes efficient and cost-effective siting decisions. First, we required that transmission providers provide the interconnection

²⁰ Order No. 2003 at P 723; Order No. 2003-A at P 582-83, 612-18.

²¹ Order No. 2003-A at P 602; *Entergy Court Opinion I*, 319 F.3d at 543-44.

²² Order No. 2003-B at P 56.

²³ *Regional Transmission Organizations*, Order No. 2000, 65 Fed. Reg. 809 (January 6, 2000), FERC Stats. & Regs. P 31,089 (1999), *order on reh'g*, Order No. 2000-A, 65 Fed. Reg. 12,088 (March 8, 2000), FERC Stats. & Regs. P 31,092 (2000), *aff'd sub nom. Public Utility District No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

customer with credits only for the transmission service taken on the system that includes the generating facility at issue in the relevant interconnection agreement as the source of the power transmitted.²⁴ In addition, in Order No. 2003-A, as modified by Order No. 2003-B, we gave the transmission provider the option to either fully reimburse the interconnection customer for its upfront payment for network upgrades within five years from the commercial operation date of the interconnection customer's generating facility or provide dollar-for-dollar credits to the interconnection customer, or develop an alternative schedule that is mutually agreeable and provides for the return of all amounts advanced for network upgrades not previously repaid. However, we stated, full reimbursement shall not extend beyond twenty years from the commercial operation date.²⁵ Both of these provisions were adopted to ensure that the generator receive price signals to encourage it to site its project in a way that makes sense for the grid as a whole. Accordingly, the goals of our interconnection pricing policy are consistent with the market goals in Order No. 2000.

B. Compliance Filing

18. In the July 15 Order, the Commission directed Entergy to modify the Revised IA to reclassify the New Transmission Facilities as network upgrades for which ExxonMobil is entitled to transmission credits with interest. The Commission also permitted the parties to modify the Revised IA to reflect the removal of the metering and telemetering equipment from Appendix C and to clarify that the reports of the two meters at the point of interconnection will be netted.

19. In its compliance filing, Entergy has removed the New Transmission Facilities from ExxonMobil's Interconnection Facilities responsibilities in Appendix A of the Revised IA. Those New Transmission Facilities have now been added as Required System Upgrades in Appendix B, with transmission credits and interest provided to ExxonMobil in return for ExxonMobil's financing these facilities. In addition, Entergy has revised the total charges for the Interconnection Facilities and Required System Upgrades in the Revised IA. Furthermore, it has revised Appendix C to delete the generator metering facilities identified in the Revised IA and to clarify that the readings at the ExxonMobil facility's two points of interconnection with Entergy's transmission system will be netted by Entergy in its determination of the output of the ExxonMobil facility. Entergy requests a May 17, 2003 effective date, as already provided by the July 15 Order.

²⁴ Order No. 2003-A at P 614-15.

²⁵ *Id.* at P 615-616, *Id.* at P 35.

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20. Notice of Entergy's compliance filing was published in the *Federal Register*, 68 Fed. Reg. 51,771 (2003), with comments, protests or interventions due on or before August 28, 2003. None was filed.

21. Upon review of Entergy's compliance filing, we find that it complies with our July 15 Order, and we will accept it, to become effective May 17, 2003.

The Commission orders:

(A) Entergy's request for rehearing of the July 15 order is hereby denied.

(B) Entergy's compliance filing is accepted, to become effective May 17, 2003, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.