

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.

Arkansas Public Service Commission

v.

Entergy Services, Inc.  
Entergy Louisiana, L.L.C.  
Entergy Arkansas, Inc.  
Entergy Mississippi, Inc.  
Entergy New Orleans, Inc.

Docket No. EL06-76-000

ORDER DENYING COMPLAINT

(Issued June 1, 2007)

1. The Arkansas Public Service Commission (Arkansas Commission) filed a complaint on June 7, 2006, against Entergy Services, Inc. and the following Entergy Operating Companies: Entergy Louisiana, L.L.C., Entergy Arkansas, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, Entergy or the Entergy Operating Companies) pursuant to sections 205, 206, and 207 of the Federal Power Act (FPA).<sup>1</sup> In this order, the Commission finds that the issues the Arkansas Commission raises are premature and denies the complaint without prejudice.

**I. The Complaint**

2. The Arkansas Commission requests that the Commission “institute an investigation into the prudence of Entergy’s practices affecting the wholesale rates that flow through its System Agreement.”<sup>2</sup> The Arkansas Commission also requests that the Commission investigate, pursuant to section 207 of the FPA, “the adequacy of Entergy’s

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<sup>1</sup> 16 U.S.C. §§ 824d, 824e, and 824f (2000).

<sup>2</sup> Complaint at 1.

transmission system and direct [Entergy] to make all necessary upgrades to ensure that [Entergy's] transmission facilities provide reliable, adequate, and economic service.”<sup>3</sup>

3. The Arkansas Commission explains that its complaint was necessitated by the Commission's Opinion Nos. 480 and 480-A, in which the Commission ruled that under the system agreement between the Entergy operating companies, it is appropriate to equalize production costs among the companies to be within +/-11 percent of the system average production cost.<sup>4</sup> The Arkansas Commission asserts that as a result of these opinions, lower-cost jurisdictions, such as Arkansas, have little ability to reduce production costs to retail customers because the benefits of such reductions would flow primarily to higher-cost jurisdictions in the form of higher payments.

4. The Arkansas Commission states that it does not seek any change to Opinion Nos. 480 and 480-A, but that it seeks to reduce the Entergy system's overall production costs, because that is the only means of reducing production costs to Entergy customers in Arkansas. The Arkansas Commission further asserts that the Commission should not wait until the appeals of Opinion Nos. 480 and 480-A have been resolved before acting on this complaint.

5. Stating that Entergy's production costs are “unnecessarily and imprudently inflated because of the inadequacy of Entergy's interstate transmission system,”<sup>5</sup> i.e., operating companies with above-average production costs are unable to access lower-cost purchased power available in the wholesale market,<sup>6</sup> the Arkansas Commission asks the Commission to act under section 207 of the FPA to order Entergy “to make all necessary upgrades to ensure that its transmission facilities provide reliable, adequate and economic service.”<sup>7</sup>

6. The Arkansas Commission requests that the Commission institute an investigation, including a trial-type evidentiary hearing, into the prudence of all of Entergy's practices affecting production costs, and establish a refund-effective date at the earliest possible date. The Arkansas Commission asserts that there are at least three areas in which

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<sup>3</sup> *Id.*

<sup>4</sup> *See Louisiana Pub. Serv. Comm'n v. Entergy Servs., Inc.*, 111 FERC ¶ 61,311 (Opinion No. 480), *reh'g granted in part and denied in part*, 113 FERC ¶ 61,282 (2005) (Opinion No. 480-A), *appeal docketed*, No. 05-1462, *et al.* (D.C. Cir. Dec. 19, 2005).

<sup>5</sup> Complaint at 8.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 9.

Entergy's practices should be investigated: transmission, wholesale power purchasing, and generation.

### **Transmission**

7. The Arkansas Commission acknowledges that the Commission recently approved, subject to certain conditions, Entergy's proposal to contract with an Independent Coordinator of Transmission (ICT) to perform certain functions for its transmission system. The Arkansas Commission expects that the ICT will bring significant improvements to the regional transmission system, but argues that "implementation of the ICT will not, in and of itself, be sufficient to ensure that the production costs flowing under the Entergy system agreement are just, reasonable, and prudently incurred."<sup>8</sup>

8. The Arkansas Commission states that there is significant transmission congestion in the southern part of the Entergy footprint that not only affects reliability, but also production costs insofar as it forecloses opportunities for lower cost energy purchases.<sup>9</sup> While the Arkansas Commission "believes that the ICT's assumption of transmission planning responsibility for Entergy will ultimately lead to the alleviation of these constraints," it argues that ratepayers should not be required to bear any imprudent costs incurred in the interim.<sup>10</sup> It asks the Commission to investigate the prudence of Entergy's transmission expansion policies to date and disallow any costs determined to be imprudent.<sup>11</sup>

9. The Arkansas Commission further questions whether Entergy's provision of access to its transmission system is just, reasonable, and not unduly discriminatory.<sup>12</sup> It acknowledges that the Commission has instituted a section 206 investigation into this issue and other related concerns, but complains that the Commission has held this in abeyance pending the outcome of the ICT proposal.<sup>13</sup> Acknowledging that the ICT will

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<sup>8</sup> *Id.* at 10.

<sup>9</sup> *Id.* at 11. The Arkansas Commission claims that this congestion has been confirmed by studies by both the Louisiana Commission and the City Council of New Orleans.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> The Commission terminated that section 206 investigation by order issued on April 5, 2007. *Entergy Services, Inc.*, 119 FERC ¶ 61,018 (2007). See *infra* note 87.

significantly alleviate these access problems, the Arkansas Commission is concerned that implementation will take a significant amount of time and that customers should not be required to bear any imprudent costs incurred in the meantime. To this end, the Arkansas Commission asks the Commission to investigate whether Entergy has prudently operated its transmission system and to disallow any costs that were imprudently incurred prior to the ICT assuming full responsibility for those functions.<sup>14</sup>

### **Wholesale Power Purchases**

10. The Arkansas Commission questions whether Entergy is prudently taking advantage of the abundant competitive power generation in the Entergy region to produce the lowest cost, just, reasonable, and prudently incurred rates to its customers.<sup>15</sup> In particular, the Arkansas Commission points to Entergy's proposed Weekly Procurement Process (WPP), whereby Entergy would solicit competitive bids for its projected generation needs on a weekly basis. The Arkansas Commission asserts that Entergy has admitted that there is no reason that it could not have implemented the WPP even in the absence of an approved ICT.<sup>16</sup> The Arkansas Commission states that the WPP will not begin operations for fourteen months following approval of the WPP in April, 2006, that Entergy has offered no reason for the delay, and that customers should not be required to bear costs imprudently incurred in the interim.

11. The Arkansas Commission states that "Entergy's failure to obtain the benefits of the WPP raises questions as to whether its other wholesale purchasing practices have been prudently managed to obtain the benefits of competitive generation for its customers."<sup>17</sup> The Arkansas Commission alleges, for example, that certain independent power producers have maintained that significant production cost reductions could be achieved through the integration of independent generators into Entergy's economic dispatch.<sup>18</sup> The Arkansas Commission states that while it is not possible at this time to specifically calculate the benefits that may be obtained through such integration, the benefits of expanded pay-as-bid energy markets could result in significant cost savings. It asks the Commission to investigate the accuracy of these assertions and further

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<sup>14</sup> *Id.* at 12.

<sup>15</sup> *Id.*

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

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

examine whether Entergy has prudently managed its other wholesale purchases so as to result in just, reasonable, and prudently incurred costs.<sup>19</sup>

### **Generation**

12. The Arkansas Commission asks the Commission to closely scrutinize Entergy's generation planning practices to determine whether these practices result in production costs that are just, reasonable, and prudently incurred.<sup>20</sup> The Arkansas Commission asserts that Entergy failed to capture cost savings for its customers by not retiring "its aging, inefficient oil- and gas-fired generation,"<sup>21</sup> and asks the Commission to investigate Entergy's failure to capture these cost savings. The Arkansas Commission further asks the Commission to investigate whether the Entergy system should have begun construction or acquisition of a new coal plant in Louisiana to lower overall system production costs.<sup>22</sup>

13. Finally, the Arkansas Commission asks the Commission to investigate the prudence of two other generation-related practices: (1) gas-hedging and purchasing practices, and (2) demand-side management plans.<sup>23</sup> Acknowledging that these activities typically are considered the province of retail regulation, the Arkansas Commission argues that because the bandwidth requirement of Opinion Nos. 480 and 480-A will spread the costs and benefits among all the operating companies, the Commission should investigate Entergy's activities in these areas and disallow any costs determined to be imprudent.<sup>24</sup>

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

14. Notice of the Arkansas Commission's complaint was published in the *Federal Register*, 71 Fed. Reg. 34,909-10 (2006), with Entergy's answer, as well as interventions and protests, due on or before June 27, 2006. The Commission granted a motion by Entergy to extend the time to file responses until July 31, 2006. Entergy filed its answer on July 31, 2006.

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<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 14.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 15.

15. Notices of intervention and comments were filed by the Mississippi Public Service Commission (Mississippi Commission) and the Louisiana Public Service Commission (Louisiana Commission). Timely motions to intervene and comments were filed by the Attorney General of Arkansas (Arkansas AG); East Texas Electric Cooperative Inc., Sam Rayburn G&T Electric Cooperative, Inc. and Tex-La Electric Cooperative of Texas, Inc. (East Texas Cooperatives); Louisiana Energy and Power Authority and the Lafayette Utilities System (Louisiana Municipals); Southeast Electricity Consumers Association (SECA); Electric Power Supply Association (EPSA); Calpine Corporation, Suez Energy North America, Inc. and Union Power Partners LP (Generator Coalition); KGen Power Management, Inc. (KGen); NRG Companies (NRG); Coalition for Entergy Rate Relief (CERR);<sup>25</sup> LS Power Associates, L.P. (LS Power); and Williams Power Company, Inc. (Williams Power). Timely comments were filed by the Joint Insurance and Commerce Committee of the Arkansas General Assembly (Joint Committee) and Occidental Chemical Corporation (Occidental).

16. Timely motions to intervene, raising no substantive issues, were filed by Arkansas Electric Energy Consumers, Inc. (AEEC); Louisiana Energy Users Group; American Public Power Association; the Arkansas Cities; Arkansas Electric Cooperative Corporation; Mississippi Delta Energy Agency (and its members, the Clarksdale Public Utilities Commission of the City of Clarksdale, Mississippi and the Public Service Commission of Yazoo City of the City of Yazoo City, Mississippi) and the Lafayette Utilities System; City Water & Light Plant of the City of Jonesboro, Arkansas; Council of the City of New Orleans; and Cottonwood Energy Company, LP.

17. On September 15, 2006, answers were filed by Entergy; the Arkansas Commission; the Louisiana Commission; SECA; EPSA; AEEC; NRG; East Texas Cooperatives; and Generator Coalition. On September 22, 2006, East Texas Cooperatives filed an answer to Entergy's September 15 answer. On September 26, 2006, Lafayette Utilities System filed a response to Entergy's September 15 answer. On October 2, 2006, Entergy filed an answer.

### **III. Entergy's July 31 Answer**

18. Entergy responds that the Arkansas Commission's complaint should be denied without a hearing. It argues that while the Arkansas Commission's arguments requesting a hearing are wide-ranging and cover virtually every type of decision made by Entergy, the Arkansas Commission has done virtually nothing to support the relief it is seeking. It

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<sup>25</sup> CERR consists of the Arkansas Grocers & Retail Merchants Association, NRG Corporation and Southern Alliance for Clean Energy.

asserts that the Arkansas Commission has not satisfied the Commission's evidentiary standards applicable to complaints, particularly complaints raising prudence issues, and has provided virtually no evidence or has made assertions that often have been addressed in other proceedings. It further asserts that the Arkansas Commission has failed to meet the standard of section 206 that it must "creat[e] serious doubt as to the propriety of the challenged actions,"<sup>26</sup> and that its unsupported allegations and speculation of imprudence are not enough to justify a request to establish a hearing.

19. Entergy does agree with the Arkansas Commission that virtually all of the operating companies' production costs and Entergy's practices affecting those costs are subject to the Commission's jurisdiction. It disagrees, however, with the Arkansas Commission as to the effect of the Commission's jurisdiction. Entergy maintains that retail regulators would not retain jurisdiction for purposes of retail ratemaking over the production cost inputs used in the System Agreement bandwidth formula.<sup>27</sup>

20. Entergy asserts that the Arkansas Commission has not argued that Entergy reasonably can seek to displace its nuclear, hydroelectric, or coal facilities with third-party purchases, instead appearing to recognize that Entergy's oil and gas steam units are the most likely candidates for possible displacement.<sup>28</sup> Entergy explains that many of its oil and gas steam units have long cycling times, and cannot be committed and de-committed on a day-to-day basis; thus the maximum opportunity to displace those resources is on a week-ahead (or longer) basis.<sup>29</sup> Entergy states that, in an attempt to further increase economic displacement of its oil and gas steam units, Entergy started a Weekly RFP process in April 2002, under which Entergy solicits offers from merchant plant owners and other suppliers to potentially displace its own generation or other supplies in its purchased power portfolio on a short-term (weekly) basis.<sup>30</sup> As a result, according to Entergy, it has been able to significantly decrease the relative use of its oil

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<sup>26</sup> Answer at 3 (footnote omitted).

<sup>27</sup> Entergy states that while the bandwidth remedy imposed by the Commission necessarily will change the states' settled interests and expectations, this does not mean that the Commission cannot give any recognition to the states' interest in how it exercises its exclusive jurisdiction.

<sup>28</sup> Answer at 19-20.

<sup>29</sup> *Id.* at 20.

<sup>30</sup> *Id.* Entergy explains that it further supplements its Weekly RFP process with seasonal, monthly, daily, and hourly solicitations to purchase power and energy. *Id.*

and gas generating facilities.<sup>31</sup> The most notable initiative in this regard, states Entergy, is that as part of its ICT proposal Entergy will establish a WPP that is designed to further integrate merchant generation on the Entergy system, as well as increase the redispatch options available to transmission customers.<sup>32</sup>

21. Entergy argues that the Arkansas Commission provides no evidence that Entergy failed to solicit power from merchant generators, explaining that it integrates merchant generation and other suppliers into its procurement decisions by engaging in the Weekly RFP process, supplemented with, as described above, seasonal, monthly, daily, and hourly solicitations to purchase power and energy.<sup>33</sup> Entergy also states that the Arkansas Commission provides no evidence that Entergy ever failed to accept an economic offer of power, and responds that when it can make an economic and reliable purchase, it does so.<sup>34</sup> Entergy further states that the Arkansas Commission does not provide evidence regarding the price merchant generators offer to Entergy or the characteristics of the services they offer.<sup>35</sup> Entergy concludes that the Arkansas Commission's offer of a flawed theoretical calculation and lack of evidence that creates serious doubt as to the propriety of Entergy's purchasing practices is "nothing more than a repeat of the same flawed allegations the Commission has heard in the past" and is not sufficient to grant a hearing on this issue.<sup>36</sup>

22. Entergy disagrees with the Arkansas Commission's claim that the WPP has been unreasonably delayed.<sup>37</sup> Entergy responds that the Commission has provided active oversight, and that Entergy has engaged in an extended and continual process to develop the WPP and obtain all necessary approvals.<sup>38</sup> Entergy explains that carving out the WPP from the rest of the ICT is not as simple as the Arkansas Commission implies.<sup>39</sup>

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<sup>31</sup> *Id.* at 21.

<sup>32</sup> *Id.* at 22.

<sup>33</sup> *Id.* at 25.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 26.

<sup>36</sup> *Id.* at 26-28.

<sup>37</sup> *Id.* at 29-33.

<sup>38</sup> *See Id.* at 29-32.

<sup>39</sup> *Id.* at 32-33. According to Entergy, carving out the WPP from the rest of the ICT proposal would have required developing and filing a separate independence proposal with the Commission.

According to Entergy, attempting to separate the WPP from the rest of the ICT “would, at best, have had a *de minimis* impact on the start time for the WPP.”<sup>40</sup> Furthermore, according to Entergy, carving out the WPP would almost certainly have slowed approval and implementation of the full ICT proposal, thus delaying the transmission pricing and planning benefits of the full ICT package.<sup>41</sup>

23. Entergy rejects the Arkansas Commission’s claims regarding expanded “pay-as-bid energy markets.”<sup>42</sup> Entergy explains that it proposed a weekly process because such a process provides for the greatest “bang for the buck.”<sup>43</sup> To the extent that expanded short-term markets also should be in place, Entergy states that developing additional procurement processes would have required significant time and effort, and would have delayed implementation of the WPP.<sup>44</sup> Entergy argues that the Arkansas Commission has provided no basis to support its position that the Commission should investigate the prudence of implementing additional markets in the future.<sup>45</sup> Regardless of the strength of the Arkansas Commission’s argument, though, Entergy states that such an investigation would be premature.<sup>46</sup>

24. Entergy also rejects the Arkansas Commission’s claim that transmission congestion in the southern part of the Entergy footprint has adversely affected production costs by foreclosing economic purchases.<sup>47</sup> Entergy claims that the studies on which the

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<sup>40</sup> *Id.* at 33.

<sup>41</sup> *Id.* at 33.

<sup>42</sup> *Id.* at 34-37. Entergy is responding to the Arkansas Commission’s statement that “Entergy’s failure to obtain the benefits of the WPP raises questions as to whether its other wholesale power purchasing practices have been prudently managed to obtain the benefits of competitive generation for its customers,” and that expanded pay-as-bid energy markets could result in significant cost savings. *Id.* at 34.

<sup>43</sup> *Id.* at 34.

<sup>44</sup> *Id.* at 35. Entergy notes that, as part of the WPP approval process, the Commission rejected proposals to establish processes that operate on a shorter-term basis.

<sup>45</sup> *Id.* at 36. Entergy states that it already buys a significant amount of power in the day-ahead bilateral market. The breakdown of Entergy purchases by duration for 2005 is as follows: Hourly, 8 percent; Daily, 36 percent; Weekly, 11 percent; Monthly, 10 percent; Longer, 35 percent. *See id.*

<sup>46</sup> *Id.*

<sup>47</sup> *See generally id.* at 37-41.

Arkansas Commission relies do not show any imprudence on Entergy's part.<sup>48</sup> To the contrary, Entergy states that once the transmission studies began to show net benefits associated with transmission upgrades, Entergy agreed to fund and construct those upgrades.<sup>49</sup>

25. In response to the Arkansas Commission's request that the Commission investigate the retirement of older, gas-fired generating units, Entergy argues that the Arkansas Commission cites no evidence that suggests there has been any imprudence with respect to plant retirements.<sup>50</sup> Entergy states that the benefits of retiring the system's older gas-fired units are contingent upon the price of replacement capacity, and that its past and current approach to considering plant retirements includes "testing the market" through RFPs, as recommended by the Louisiana Public Service Commission.<sup>51</sup> In evaluating offers, Entergy states that it determines whether it would be cost effective to displace and/or retire existing resources with a proposed resource, and that it also considers plant retirements in its general planning process.<sup>52</sup> Entergy characterizes Arkansas Commission's request to scrutinize the prudence of Entergy's retirement practices as "nothing more than an improper 'fishing expedition.'"<sup>53</sup> Entergy refutes numerous conclusions in the report the Arkansas Commission cites for support, and states that the results in the draft report are "fraught with significant methodological problems."<sup>54</sup> Entergy states that, in fact, most of the scenarios considered by the Louisiana Public Service Commission staff produced a result in which the annual average system production costs increased, not decreased; thus, Entergy asserts that the Arkansas Commission cannot show that there will be any decreased system costs, let alone that there was any imprudence, resulting from any retirement practices.<sup>55</sup>

26. Entergy argues that the Arkansas Commission cites no evidence in support of its argument that the Commission should investigate whether Entergy should have built or acquired a new coal plant in Louisiana, and that the Arkansas Commission also does not

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<sup>48</sup> *See id.* at 38-41.

<sup>49</sup> *Id.* at 40.

<sup>50</sup> *Id.* at 42-49.

<sup>51</sup> *Id.* at 43-44.

<sup>52</sup> *Id.* at 44.

<sup>53</sup> *Id.* at 45.

<sup>54</sup> *Id.* at 46.

<sup>55</sup> *Id.*

allege that Entergy was imprudent in not adding a Louisiana coal plant.<sup>56</sup> In its defense on this point, Entergy states that developing new solid fuel resources was not warranted until the recent expectation that high gas prices will continue long term.<sup>57</sup> Entergy explains that it has had several initiatives in progress to develop solid fuel generation supply options, and that it has purchased energy and capacity from existing solid fuel resources available in the short-term market.<sup>58</sup> For long-term resources, Entergy states that it has been seeking new base load and load following generation resources through regular requests for proposals for new capacity resources available from the market.<sup>59</sup>

27. In response to the Arkansas Commission's complaint regarding Entergy's gas-hedging and demand side management, Entergy states that what the Arkansas Commission believes should be investigated is difficult to understand on the grounds that gas hedging is used to reduce the volatility of natural gas costs, not the total cost.<sup>60</sup> Further, Entergy explains, it only engages in gas hedging programs in jurisdictions that have approved the hedging program, and no retail regulator that has approved the hedging program has ever determined that Entergy should change its gas hedging practices in any way.<sup>61</sup> As for demand side management, Entergy responds that the Arkansas Commission fails to describe any potential imprudence related to demand side management costs, has provided no basis to require a hearing, and that the Arkansas Commission ignores its own experience with such programs.<sup>62</sup>

28. Entergy further argues that the Arkansas Commission has not supported its request for relief under FPA section 207.<sup>63</sup> Entergy states that it is in full compliance with the North American Electric Reliability Council and Southeastern Electric Reliability Council (SERC) reliability requirements, and that an audit by SERC in September, 2004,

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<sup>56</sup> *Id.* at 49-52.

<sup>57</sup> *Id.* at 50.

<sup>58</sup> *Id.* at 50-51.

<sup>59</sup> *Id.* at 51.

<sup>60</sup> *Id.* at 52. *See generally* Answer at 52-54.

<sup>61</sup> *Id.* at 52-53.

<sup>62</sup> *Id.* at 53. Entergy states that the Arkansas Commission has approved at least three specific tariffs designed to provide customers with economic alternatives to supply-side options, yet participation has been minimal "presumably because eligible customers do not find them to be economically attractive." *Id.*

<sup>63</sup> *See generally id.* at 54-57.

found that Entergy is fully compliant with the applicable standards and that SERC has no concerns with Entergy's transmission planning process or its transmission system.<sup>64</sup> Entergy further explains that the ICT will be operational in the near future, and that it will provide independent oversight of Entergy's transmission planning processes and the evaluation (granting or denying) of transmission services on the Entergy system.<sup>65</sup> That is, according to Entergy, the ICT will review and provide oversight over the very matters the Arkansas Commission is asking the Commission to review under FPA section 207.<sup>66</sup> Thus, the Commission should, at a minimum, defer acting on the Arkansas Commission's section 207 request until the ICT completes its first Base Plan. Entergy argues that doing so will provide all interested parties and the Commission the benefit of the ICT's evaluation of the Entergy transmission system.<sup>67</sup>

#### **IV. Other Comments**

29. The Louisiana Commission supports portions of the Arkansas Commission's complaint. However, the Louisiana Commission states that the Commission should dismiss those portions of the complaint that seek a prudence investigation related to decisions by Entergy to retire certain generating units and other decisions relating to construction of coal-fired units in Louisiana. It states that the complaint fails to sufficiently support such a prudence investigation.

30. EPSA states that the inclusion of existing independent generation in Entergy's dispatch could deliver millions of dollars of savings. It asserts that the failure of Entergy to dispatch the more efficient competitive gas-fired generation in its service area is a principal reason that Entergy's less efficient older units continue to run. It states that the Commission should order Entergy to show cause why it should not immediately institute a full-fledged weekly procurement regime, as it committed to do three years ago, and amend its System Agreement so that economic dispatch is applied without preference or undue discrimination to all generators in the Entergy control area.

31. Williams Power supports the Arkansas Commission's request for a review of Entergy's production costs and transmission system. It states that because production costs impact the Entergy transmission system, it is essential that Entergy's reliance on

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<sup>64</sup> *Id.* at 54-55.

<sup>65</sup> *Id.* at 55-56.

<sup>66</sup> *Id.* at 56.

<sup>67</sup> *Id.* at 57.

reliability must-run (RMR) units, purchasing practices and transmission facility investment be considered in one proceeding.

32. KGen supports the Arkansas Commission's complaint, stating that Entergy has failed to expand its transmission system to take full advantage of the most economic merchant generation in its control area and that Entergy makes it difficult for merchant generators to gain access to its transmission system.

33. Occidental supports the Arkansas Commission's complaint and states that Entergy has foreclosed competition through discriminatory underbuilding of its transmission infrastructure and its transmission allocation methodologies.

34. NRG states that the Commission's investigation should address: (1) the current utilization of the transmission system and whether Entergy has constructed adequate transmission upgrades to integrate the systems of its operating companies in a nondiscriminatory manner; and (2) whether Entergy's wholesale purchasing practices result in unjust and unreasonable wholesale rates. According to NRG, Entergy's transmission facilities are overloaded to 120 percent of their rating and this overloading leads to inefficient and imprudent dispatch and inefficient operation of the transmission grid. NRG also states that Entergy's investments in its own generation create powerful incentives to plan and operate its transmission system in a manner that favors the interests of its own generators and to adopt unreasonable power procurement practices. NRG also states that the Commission should exercise its authority under new section 217 of the FPA, which requires facilitation of planning and expansion of transmission facilities to meet the reasonable needs of load-serving entities.<sup>68</sup>

35. Generator Coalition states that the Arkansas Commission's complaint against Entergy provides the Commission with a long-awaited opportunity to address endemic problems on the Entergy system. Generator Coalition states that it not only allows the Commission to exercise its authority under section 206 of the FPA, but allows the Commission to exercise its authority under section 207 of the FPA to require Entergy to make necessary upgrades on its system, to address the modeling problems plaguing its system, and to ensure that ratepayers in the Entergy region are served reliably and on a least-cost basis. Generator Coalition states that expeditiously addressing the issues raised in the complaint will help mitigate the magnitude of the cost shifts resulting from Opinion Nos. 480 and 480-A.

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<sup>68</sup> See Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 957-60 (2005) (to be codified at 16 U.S.C. § 824q).

36. Generator Coalition states that the Commission should take specific measures to address the issues raised by the Arkansas Commission. It states that the Commission should determine how much money Entergy's ratepayers could save if transmission or other system constraints were not an issue. It states that the Commission could accomplish this by taking the most recent annual data available regarding Entergy's historical dispatch and, based on actual fuel costs, determine Entergy's operating costs for that year. It further states that the Commission should model the dispatch of all generators not already committed to another party on a least-cost basis, assuming transmission is available.

37. East Texas Cooperatives state that it well may be that the ICT, with its expanded responsibilities for regional planning, will provide the critical provisions necessary to ensure that there will be pro-active economic transmission planning.<sup>69</sup> However, they contend that the ICT is constrained as to exactly how much of the current Entergy planning process it can change and that the ICT has no authority over Entergy's construction plan.

38. SECA supports the Arkansas Commission's complaint and states that an evidentiary hearing is necessary to render a reasoned decision on the prudence of Entergy's actions, including Entergy's cost-inflating practices.<sup>70</sup> It states that although Entergy's ICT is intended to improve transparency of transmission information, enhance transmission access and relieve transmission congestion, it is not a silver bullet capable of resolving all the issues afflicting Entergy's customers.<sup>71</sup>

39. LS Power supports the Arkansas Commission's complaint. LS Power states that the cost of transmission is typically much smaller than the cost of generation and, therefore, investment in the transmission system creates the potential for overall cost savings. It states the Commission should investigate the Entergy system as a whole to determine the potential for cost savings with regard to transmission system upgrades.<sup>72</sup> It also states that the Commission should ensure that Entergy takes the necessary actions to procure the most competitive baseload capacity, and sufficient capacity to serve its load in the most efficient manner possible. It states that new baseload capacity would lower

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<sup>69</sup> East Texas Cooperatives Comments at 7.

<sup>70</sup> SECA Comments at 6.

<sup>71</sup> *Id.* at 11.

<sup>72</sup> LS Power Comments at 3-4.

overall system production costs, reduce ratepayer exposure to volatile natural gas prices, and produce significant benefits for the Entergy system and Entergy's ratepayers.<sup>73</sup>

40. Several parties argue that the ICT is limited in bringing about needed improvements to Entergy's transmission system. For example, Generator Coalition asserts that the ICT is not a fix; rather, the ICT will continue to implement Entergy's models, assumptions and rules. Generator Coalition states that while it is hopeful that the ICT may provide some improvement, the ICT will not, by its very design, contend with many of the most important issues in the Entergy region. Occidental states that from a transmission infrastructure perspective, the ICT cannot order Entergy to construct new facilities.

41. Louisiana Municipals state that they support the Arkansas Commission's complaint. They cite their petition for declaratory order in Docket No. TX06-1-000<sup>74</sup> and their comments and reply comments on the proposed rule in Docket No. RM04-7-000<sup>75</sup> as demonstrating the current inadequacy of Entergy's transmission system.<sup>76</sup>

42. The Arkansas AG states strong support for the Arkansas Commission's complaint and adopts the Arkansas Commission's arguments.

43. CERR states that it supports the Arkansas Commission's complaint. It argues that section 207 provides the Commission with broad remedial authority to rectify inadequacies in both generation and transmission.<sup>77</sup> Further, it argues that the Commission has authority to grant the relief requested in the complaint under section 206

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<sup>73</sup> *Id.* at 4.

<sup>74</sup> The petition of one of the Louisiana Municipals in Docket No. TX06-1-000 seeking approval to convert existing firm point-to-point transmission service agreements to network integration transmission service was denied. *Louisiana Energy and Power Authority v. Entergy Services, Inc.*, 116 FERC ¶ 61,284, reh'g denied, 117 FERC ¶ 61,258 (2006).

<sup>75</sup> *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,602 (2006).

<sup>76</sup> Louisiana Municipals Intervention at 4.

<sup>77</sup> CERR's Intervention and Comments at 9-10, citing *District of Columbia Public Service Commission*, 114 FERC ¶ 61,017 (2006).

of the FPA and under Order No. 888.<sup>78</sup> CERR also argues that, although the Commission has no direct authority over the environmental profile of jurisdictional assets, it should take administrative notice of the side benefit of the dramatic reduction in air emissions, caused by the non-operation or retirement of older, less efficient Entergy units and their replacement by new, super-efficient, state of the art low emission plants. CERR also argues that Entergy has failed to maintain or economically optimize its transmission system.<sup>79</sup>

## V. Discussion

### A. Procedural Matters

44. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the notices of intervention and the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

45. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure<sup>80</sup> prohibits an answer to a protest or an answer to an answer unless otherwise ordered by the decisional authority. We deny the answers to protests and the answers to answers.

### B. Commission Determination

46. As discussed below, we will deny the Arkansas Commission's complaint without prejudice to the Arkansas Commission raising its issues in other appropriate proceedings. We recognize the significance of a number of the Arkansas Commission's concerns and, as described below, have approved a number of significant reforms intended to address these issues. We expect that the Arkansas Commission and others will take active roles in these reform proceedings as they move forward. However, we believe that

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<sup>78</sup> *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in part and rev'd in part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

<sup>79</sup> CERR Intervention and Comments at 12-15 (citing various comments by other parties).

<sup>80</sup> 18 C.F.R. § 385.213(a)(2) (2006).

establishing, at this time, a prudence hearing on matters that are virtually identical to those at issue in other proceedings established by the Commission would be an inefficient use of the Commission's resources.<sup>81</sup> Accordingly, after careful consideration of the concerns raised by the Arkansas Commission, as well as by a number of intervenors, we will deny the Arkansas Commission's request to initiate an investigation into the prudence of Entergy's practices affecting the wholesale rates that flow through its System Agreement and the adequacy of Entergy's transmission system.

47. With respect to the prudence of Entergy's practices affecting the wholesale rates that flow through the System Agreement,<sup>82</sup> we note that in Opinion Nos. 480 and 480-A the Commission determined that a bandwidth is an appropriate remedy to assure that each Entergy Operating Company's customers pay no more than +/- 11 percent of Entergy's system average production cost on an annual basis.<sup>83</sup> Pursuant to those opinions, Entergy is required to make its first annual production cost equalization filing in June 2007. These annual filings, to be made pursuant to section 205 of the FPA, will contain information on all production-related costs of each of the Entergy Operating Companies for the year 2006, the first year of operation under Opinion Nos. 480 and 480-A. The annual filings will also contain production cost formulas under Service Schedule MSS-3 (MSS-3), which will be the basis for the Commission to implement the bandwidth remedy in order to mitigate disparities in production costs among the Entergy operating companies.<sup>84</sup> Energy costs drive total production cost disparities and ultimately are the

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<sup>81</sup> It is well established that the Commission has broad discretion in deciding how best to organize and manage its proceedings. *Michigan Public Power Agency v. FERC*, 963 F.2d 1574, 1579 (D.C. Cir. 1992); *Domtar Me. Corp. v. FERC*, 347 F.3d 304, 314 (D.C. Cir. 2003).

<sup>82</sup> Complaint at 1.

<sup>83</sup> Opinion No. 480-A, 113 FERC ¶ 61,282 at P 27-28.

<sup>84</sup> In anticipation of its June 2007 section 205 filing, Entergy recently modified MSS-3 to provide for payments and receipts under the bandwidth remedy in accordance with the provisions of Opinion Nos. 480 and 480-A, which the Commission accepted. The Commission found that MSS-3 will be used both for pricing energy exchanged among the operating companies and also to calculate and provide for any rough production cost equalization payments, if such payments are required. *See Louisiana Public Service Commission v. Entergy Services, Inc., et al.*, 117 FERC ¶ 61,203, at P 31 (2006). In addition, among other things, the Commission further directed Entergy to make transparent and separate in its billing the amounts applicable to each of the two functions of Service Schedule MSS-3. *Id.* at P 32.

primary reason the bandwidth payments will be triggered and made.<sup>85</sup> The annual section 205 filings thus provide the Commission and all interested parties the opportunity to analyze all production-related costs of each of the Entergy Operating Companies to make sure all such costs are just and reasonable and prudently incurred.<sup>86</sup> Addressing production costs and their effect on wholesale rates in this proceeding would be duplicative of the Commission's efforts in establishing these annual proceedings.

48. With respect to the Arkansas Commission's request that we investigate, pursuant to section 207 of the FPA, "the adequacy of Entergy's transmission systems and direct [Entergy] to make all necessary upgrades to ensure that [Entergy's] transmission facilities provide reliable, adequate, and economic service,"<sup>87</sup> we note that the Commission has already approved a new transmission planning process for Entergy that is designed to improve transparency of transmission information, enhance transmission access, and relieve transmission congestion. This new protocol should eliminate the need for the Commission to initiate a separate investigation, pursuant to section 207 of the FPA, of the adequacy of Entergy's transmission system.

49. Specifically, one aspect of the Commission-accepted Entergy ICT proposal is a new Transmission Planning Protocol that is currently being implemented. Under the Transmission Planning Protocol, the Commission has established a transparent transmission planning process for Entergy that provides all market participants and state regulators direct input into the planning process. The ICT is responsible for the Entergy planning process and has responsibility for the development of the Base Plan for Entergy's transmission system, which identifies the upgrades necessary to maintain reliability, including honoring existing long-term firm service commitments and network load growth. The ICT will determine and identify enhancements needed to address existing transmission constraints, including those that appear regularly in the Available Flowgate Capacity process. The Commission's April 24, 2006, Entergy ICT order stated:

We find that the ICT will independently develop the Base Plan. The development of the Base Plan begins with the ICT's creation of the Base Case Model. We find that it is reasonable for the ICT to begin with a Base Case Model that incorporates existing long-term, firm uses of the

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<sup>85</sup> See Entergy's June 10, 2006 Answer in Docket No. EL01-88-004 at 5.

<sup>86</sup> On May 29, 2007, Entergy made its first annual section 205 filing in Docket No. ER07-956-000. The Arkansas Commission may raise its concerns regarding production-related costs in that proceeding.

<sup>87</sup> Complaint at 1.

transmission system and uses NERC multi-regional and SERC regional models for purposes of reliability. We also find that the Planning Criteria in the proposed Planning Protocol are appropriate, with two modifications. In addition to using NERC reliability standards and SERC supplements to those standards, Entergy proposed that the ICT will use Entergy's local reliability criteria and business practices. It is to this latter part that intervenors object. We believe that both incentive and opportunity exist for vertically integrated transmission owners to inappropriately favor their own interests through the design of these business practices and local reliability criteria. Accordingly, we believe that Entergy's business practices and local reliability criteria (inputs, assumptions, and methodologies), if the ICT chooses to include this in the Base Plan, should be subject to the scrutiny of stakeholders whose interests may be affected. Accordingly, we will require that the ICT develop a process that makes transparent and takes into account stakeholder objections to any inputs, assumptions and methodologies relied upon in developing the Base Plan. The Planning Protocol provides that the ICT will post the local criteria and business practices on OASIS. Thus, the Commission expects the planning process to be transparent and well understood by market participants. In addition, the Planning Protocol lays out in detail procedures that will be followed for stakeholder and regulator input and for coordinated regional planning. We direct Entergy to modify its agreement accordingly and submit these modifications in the compliance filing required by this order.

We note that Entergy proposes to post the Base Plan on its OASIS. We are approving the guidelines and protocols that the ICT must use in developing the Base Plan, and Entergy may not modify these guidelines and protocols without Commission approval. Further, we note that any market participant may file a complaint if the Base Plan does not follow the requirements in Entergy's tariff.

With respect to the arguments raised by Calpine, Nucor, and Lafayette concerning differences between the Construction Plan and the Base Plan, we agree with Entergy. The Planning Protocol provides the ICT and affected regulators the opportunity to weigh in on divergences and for Entergy to revise its Construction Plan based on regulatory feedback. This will ensure that any upgrades needed for reliability purposes will be

accounted for in the Construction Plan, *i.e.* those reliability upgrades in the Base Plan that are not in the Construction Plan.<sup>88]</sup>

50. We believe that the above Transmission Planning Protocol will provide the Arkansas Commission and all other stakeholders a timely forum to explore and address Entergy's transmission system needs. However, we will be open to a renewed request to act pursuant to section 207 of the FPA if Entergy fails to implement the upgrades needed for reliability purposes, e.g., those reliability upgrades determined necessary in the Base Plan.

51. The Commission-approved Entergy ICT proposal contains two additional protocols to its Open Access Transmission Tariff that also help address the Arkansas Commission's concerns: the Transmission Service Protocol and the Interconnection Service Protocol. Under the Transmission Service Protocol, the ICT will be responsible for granting or denying requests for transmission service and will be responsible for performing the system impact studies and reviewing any facility study conducted to evaluate the customer's request for transmission service. The ICT will bring transparency to the process by posting on OASIS, in sufficient detail, the processing and study criteria used to evaluate transmission service requests. Finally, transparency will be improved through an ongoing stakeholder process to address Available Flowgate Capacity process issues. Under the Interconnection Service Protocol, the ICT will have similar responsibilities for evaluating interconnection requests as it does for transmission service requests. As the Arkansas Commission itself admits, the ICT will significantly alleviate transmission access problems.

52. In its order approving the ICT, the Commission noted that although the ICT will not have filing rights under section 205 of the FPA and therefore cannot itself propose to change criteria, any criteria used by Entergy to grant and deny transmission service, including calculating Available Flowgate Capacity, must be made under section 205 of the FPA and approved by the Commission. The Commission further stated that any interested party, including the ICT, may protest these filings or file a complaint under section 206 of the FPA.<sup>89</sup>

53. Under the ICT proposal, Southwest Power Pool (SPP) began serving as the Reliability Coordinator for the Entergy control area on November 1, 2006, and

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<sup>88</sup> *Entergy Services*, 115 FERC ¶ 61,095 at P 146-48 (footnotes omitted).

<sup>89</sup> *See Entergy Services, Inc.*, 115 FERC ¶ 61,095, at P 62 (2006), *order on reh'g*, 116 FERC ¶ 61,275 (2006), *order on reh'g*, 119 FERC ¶ 61,013 (2007) (*Entergy Services*).

performing the remaining functions as the ICT (such as evaluating service requests and calculating Available Flowgate Capacity) on November 17, 2006.<sup>90</sup> SPP submitted its First Quarterly Performance Report on March 9, 2007. The Commission found that the ICT's Report indicated that it has been evaluating Entergy's implementation of its Available Flowgate Capacity process and has made findings and recommendations as appropriate.<sup>91</sup> In the Report, the ICT explained that it has completed the Available Flowgate Capacity audit review, and as a result has made ten recommendations. The ICT notes that six of the recommendations have been resolved (mainly software issues) and that the remaining four issues, which include recommending upgrading facilities that limit Available Flowgate Capacity, will be addressed in the stakeholder process.<sup>92</sup> The ICT will also be responsible for identifying economic upgrades involving specific requests for point-to-point transmission service, network service or interconnection service.

54. In the order accepting the ICT, the Commission also approved, with modification, Entergy's WPP proposal and transmission pricing proposal.<sup>93</sup> Entergy's WPP proposal will allow merchant generators and other wholesale suppliers to compete to serve Entergy's network native load obligations, and the ICT's oversight of the transmission aspects of the WPP is intended to assure that transmission access would be granted on a fair and nondiscriminatory basis. Accordingly, the WPP, once implemented, will result in additional competition, which should serve to reduce Entergy's overall production costs.<sup>94</sup> In accepting the ICT, including the WPP, the Commission emphasized the significance of the stakeholder process in developing enhanced generation, transmission and system planning for the Entergy system.<sup>95</sup> The Commission also emphasized the importance of state commission participation.<sup>96</sup> We expect that the recommendations of the ICT, coupled with a meaningful stakeholder process, will not only provide the forum

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<sup>90</sup> See Entergy November 16, 2006 Compliance Filing, Docket No. ER05-1065-004, at n.3.

<sup>91</sup> See *Entergy Services, Inc.*, 119 FERC ¶ 61,018 (2007).

<sup>92</sup> Entergy November 16, 2006 Compliance Filing, Docket No. ER05-1065-004, at 5.

<sup>93</sup> See *Entergy Services*, *supra* note 86.

<sup>94</sup> According to the ICT's Quarterly Report filed with the Commission on March 9, 2007 in Docket No. ER05-1065-000, implementation of the WPP is scheduled for June 18, 2007.

<sup>95</sup> See *Entergy Services*, 115 FERC ¶ 61,095 at P 3.

<sup>96</sup> *Id.* at P 299.

in which the Arkansas Commission can raise its concerns but will also resolve many of the concerns raised by the Arkansas Commission here.

55. Finally, in response to claims that access to Entergy's transmission system is inadequate, we expect that the reforms adopted in Order No. 890<sup>97</sup> will address these concerns to the extent they are not resolved by the ICT. Under Order No. 890, Entergy is required to work with the North American Electric Reliability Council and the North American Energy Standards Board to develop consistent methodologies for the calculation of available transfer capability (ATC), to publish those methodologies to increase transparency, and to adhere to those methodologies in calculating ATC.<sup>98</sup> This reform is intended to eliminate the wide discretion of all transmission providers, including Entergy, in calculating ATC and ensure that customers are treated fairly in seeking alternative power supplies. Further, Order No. 890 required each transmission provider to amend its open access transmission tariff (OATT) to adopt a coordinated, open and transparent transmission planning process that complies with nine principles set forth by the Commission. Like all transmission providers, Entergy is subject to the planning reforms in Order No. 890 and will be required to amend its OATT to reflect these principles, and Entergy and the ICT will be required to adhere to the OATT provisions in conducting transmission system planning in the future.

56. Because all of these actions have recently been implemented or will be implemented in the near future, it is premature to assess their impact on alleviating generation and transmission problems on the Entergy system. If the reforms described above do not remedy the concerns expressed by the Arkansas Commission, we encourage it to renew its complaint.

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<sup>97</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241 (2007), *reh'g pending*.

<sup>98</sup> *Id.* at P 196.

The Commission orders:

The Arkansas Commission's complaint is hereby denied, without prejudice, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.