

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.

Mississippi Delta Energy Agency and  
Clarksdale Public Utilities Commission

v.

Docket No. EL04-99-000

Entergy Services, Inc. and Entergy Operating  
Companies

ORDER ON COMPLAINT

(Issued June 11, 2007)

1. On May 5, 2004, Mississippi Delta Energy Agency (MDEA) and the Clarksdale Public Utilities Commission (Clarksdale)<sup>1</sup> (collectively, Complainants) filed a complaint against Entergy Services, Inc. and the Entergy Operating Companies<sup>2</sup> (collectively, Entergy) requesting that the Commission: (1) determine that certain facilities are network upgrades; (2) order Entergy to modify the facilities charge incurred by MDEA under its Interconnection and Operating Agreement (IA) to eliminate the direct assignment of certain construction oversight costs associated with network facilities; (3) order Entergy to pay interest on funds paid for certain facilities classified as Optional System Upgrades under the IA; and (4) order Entergy to grant MDEA and Clarksdale as-available point-to-point transmission service from the generation plant associated with

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<sup>1</sup> Clarksdale, along with the Public Service Commission of Yazoo City, Mississippi (Yazoo City), is a member of MDEA, a joint action agency in Mississippi.

<sup>2</sup> The Entergy Operating Companies are Entergy Arkansas, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., Entergy New Orleans, Inc., and Entergy Gulf States, Inc.

the facilities charge at no additional cost for as long as MDEA pays the facilities charge. For the reasons discussed below, we will grant in part, and deny in part, Complainant's complaint.

## **I. Background**

2. In 1998, Clarksdale and Yazoo City withdrew as members of the Municipal Energy Agency of Mississippi (MEAM) and formed MDEA. At that time, Clarksdale, which owns a municipal electric system serving customers in Clarksdale, Mississippi, was planning the development of the 320 MW Crossroads Energy Center generating station (Crossroads Plant), necessitating the construction of additional interconnection facilities.<sup>3</sup> Since May 1, 2001, the date Complainant's existing interconnection agreement with MEAM and Mississippi Power and Light Company (currently, Entergy Mississippi, Inc.) terminated, Complainants have received network transmission service from Entergy pursuant to the terms of the Network Operating Agreement (NOA), Network Integration Transmission Service Agreement (NITSA), and IA. The Commission approved a settlement regarding such service, by letter order, on February 13, 2002.<sup>4</sup>

3. The Clarksdale system has two interconnection points with Entergy's system. One interconnection point is at the Entergy Clarksdale Substation end of a 115 kV line between Entergy's Clarksdale Substation and the Clarksdale Municipal Substation, which is on Entergy's side of a disconnect switch, inside the Entergy Clarksdale Substation (Clarksdale Station). The other interconnection point is at the 230 kV Moon Lake Switching Station on Entergy's Ritchie-Batesville transmission line, which is at a bus side disconnect switch at the MDEA breaker in the Moon Lake Switching Station (Moon Lake Station).

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<sup>3</sup> Complainants state that Clarksdale uses portions of the output from its generating facilities to serve the needs of Clarksdale's native load customers and sells the remainder for resale in the power markets in the south-central part of the country. Clarksdale has sold all of the capacity of the Crossroads Plants to MEP Clarksdale Power, LLC, subject to recall provisions.

<sup>4</sup> *Entergy Services, Inc.*, 98 FERC ¶ 61,131 (2002). This letter order approved an uncontested settlement agreement between Entergy and MDEA, Yazoo City, Clarksdale, and Aquila, Inc.

## II. Complaint

4. Complainants state that, under section 11.1 of the IA, they have the right to seek changes to the rates, charges, or terms of service pursuant to section 206 of the Federal Power Act (FPA).<sup>5</sup> Accordingly, Complaints request that the Commission grant them the following relief in regard to the IA with Entergy.

5. First, Complainants explain that the IA classifies the Interconnection Facilities, listed in Appendix A, and the Moon Lake Station Metering Facilities, listed in Appendix C, as direct assignment facilities.<sup>6</sup> However, they contend that those facilities are at or beyond the interconnection points between the Entergy system and the Clarksdale system which, consistent with Commission policy, means that these facilities are network upgrades, not direct assignment facilities.<sup>7</sup> Thus, Complainants assert that the IA should be revised to classify those facilities as network upgrades.

6. Second, Complainants explain that article 9.3.2 of the IA provides that Complainants are entitled to transmission credits associated with Optional System Upgrades, but it does not provide for the payment of interest on the costs funded on their behalf. Accordingly, Complainants argue that the provisions in the IA regarding transmission credits for Optional System Upgrades should be modified to require the accrual of interest, consistent with Commission policy. Complainants state that the Commission should make clear that interest should be calculated in accordance with section 35.19(a) of the Commission's regulations, effective as of April 26, 2004, the date that the Order No. 2003-A requirements are deemed to have been incorporated into Entergy's Open Access Transmission Tariff (OATT).

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<sup>5</sup> 16 U.S.C. § 824e (2000).

<sup>6</sup> Complaints explain that Appendix A to the IA identifies the facilities classified as Interconnection Facilities, Appendix B identifies those facilities classified as Required System or Optional System Upgrades, and Appendix C identifies Metering Equipment.

<sup>7</sup> *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs. ¶ 31,146 at P 746 (2003) (Order No. 2003), *order on reh'g*, Order No. 2003-A, 69 Fed. Reg. 15,932 (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), *order on reh'g*, 111 FERC ¶ 61,401 (2005) (Order No. 2003-C), *see also Notice Clarifying Compliance Procedures*, 106 FERC ¶ 61,009 (2004), *aff'd*, *National Association of Regulatory Utility Commissioners v. FERC*, 475 F.3d 1277 (D.C. Cir. Jan. 12, 2007).

7. Third, Complainants explain that the IA provides that they are responsible for the costs of Entergy's facilities installed for the interconnection of the Crossroads Plant. Complainants explain that Entergy recovers the costs of these facilities over time through a monthly Dedicated Facilities Charge, which is computed based on Entergy's gross investment in the Interconnection Facilities (including construction oversight costs). The Dedicated Facilities Charge, Complainants contend, also includes other expenses for the Interconnection Facilities listed in Appendix A, as well as the Moon Lake Station metering facilities identified in Appendix C, which results in the direct assignment of construction oversight costs and expenses associated with owning, maintaining, repairing, and replacing the Interconnection Facilities.<sup>8</sup>

8. Complainants explain that, pursuant to the IA, they sold the Moon Lake Station to Entergy at their costs upon completion. Complainants state that Entergy not only included these costs in its gross investment used to calculate the Dedicated Facilities Charge, but also included Entergy's construction oversight costs associated with the Moon Lake Station metering facilities. Complainants state that Order No. 2003-A makes clear that a transmission provider may not charge the interconnection customer for construction oversight costs when the customer constructs facilities. Accordingly, Complainants argue that the IA should be revised to modify the Dedicated Facilities Charge to eliminate the direct assignment of such construction and oversight costs for the Moon Lake Station metering, as well as expenses associated with owning and maintaining the Interconnection Facilities listed in Appendix A and Metering Facilities listed in Appendix C that should be classified as network facilities, effective April 26, 2004.

9. Fourth, Complainants state that the IA should be revised to provide that, for as long as Complainants pay the Dedicated Facilities Charge, they will be entitled to as-available point-to-point transmission service for the output of the Crossroads Plant at no additional cost. Complainants state that, since they will compensate Entergy for the full capital costs associated with the facilities subject to the charge, they would be subject to "and" pricing if they had to pay Entergy's OATT rate.

10. Finally, Complainants state that, because the issues raised in the complaint do not provide a basis for any dispute of material fact, no evidentiary hearing is necessary, and fast track processing and summary disposition granting the Complaint is appropriate.

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<sup>8</sup> Complaint at 6. Complainants state that Entergy has calculated the Monthly Dedicated Facilities Charge as \$74,929.58 per month, based on total costs for the Interconnection Facilities of \$8,247,800.

### **III. Notice and Responsive Pleadings**

11. Notice of Complainant's filing was published in the *Federal Register*, 69 Fed. Reg. 27,914 (2004) with interventions and protests due on or before May 25, 2004. The Mississippi Public Service Commission filed a notice of intervention. NRG Energy, Inc., Calpine Corporation, and the East Texas Electric Cooperative, Inc. filed timely motions to intervene. Entergy filed an answer on May 25, 2004 (Answer). Southern Company Services, Inc. (Southern) filed a motion to intervene out-of-time on June 3, 2004. Complainants filed a reply to Entergy's Answer on June 9, 2004 (Reply). Entergy filed an answer to the Complainants' Reply on June 22, 2004. Complainants responded on June 29, 2004.

12. On September 3, 2004, Complainants filed a renewed motion for summary judgment (Renewed Motion). Entergy filed a request for extension of time to respond to Complainants Renewed Motion on September 17, 2004. On that same day, the Commission issued a notice granting Entergy's motion for an extension to and including September 24, 2004, as requested. On September 24, 2004, Entergy filed its response to the Renewed Motion (September Reply). On October 1, 2004, Complainants filed a response to Entergy's September Reply. Entergy filed a further response on November 18, 2004.

### **IV. Discussion**

#### **A. Procedural Matters**

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>9</sup> the timely, unopposed motions to intervene and notice of intervention serve to make the entities that filed them parties to this proceeding. We will grant Southern's motion to intervene out-of-time given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

14. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure<sup>10</sup> prohibits an answer to an answer unless otherwise ordered by the decisional authority. We will accept Complainants' Reply because it has provided information that assisted us in our decision-making process. We are not persuaded to accept Entergy and Complainants subsequently filed answers and will, therefore, reject them.

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<sup>9</sup> 18 C.F.R. § 385.214 (2006).

<sup>10</sup> 18 C.F.R. § 385.213(a)(2) (2006).

**B. Nature of the IA and Applicable Pricing Policy****1. Complaint**

15. Complainants assert that the IA contemplates that any party may propose revisions to the terms of the IA pursuant to the just and reasonable standard.<sup>11</sup> Article 11.1 of the IA states:

Except as provided in Article 9, nothing in this Agreement shall be construed as affecting in any way the right of either Party to unilaterally make application to the FERC for a change in the rates, charges, or terms and conditions of service provided in this Agreement . . . pursuant to 205 or 206 of the Federal Power Act [FPA] . . . provided, however . . . no party shall propose a change to this Agreement that is inconsistent with the rates, terms and conditions of the Tariff.

Complainants contend that, consistent with the Commission's decision in *Duke Hinds II*,<sup>12</sup> this language allows revision of the IA's cost assignment terms for facilities that should be classified as network upgrades.

16. Complainants also argue that the IA requires revision to conform to current Commission policy. Article 1.1 of the IA provides that "[t]his Agreement . . . incorporates by reference all the provisions and definitions of the Tariff, *as the Tariff may currently exist or as it may be subsequently amended or superseded.*"<sup>13</sup> Complainants claim that, pursuant to Order Nos. 2003 and 2003-A, Entergy's OATT was deemed to be revised to include the interconnection policies of Order No. 2003. Complainants argue that because article 1.1 of the IA incorporates Entergy's currently effective OATT, the IA should be modified to incorporate the policies in Order No. 2003 (including the policy that all facilities at or beyond the point where the customer or generator connects to the grid without regard to the purpose of the upgrade are network facilities). Therefore, they assert that Entergy should be required to refund them with transmission credits for the costs Complainant's financed for network facilities.

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<sup>11</sup> Complaint at 9, *citing* IA § 11.1.

<sup>12</sup> *Duke Energy Hinds, LLC v. Entergy Services, Inc.*, 102 FERC ¶ 61,068 (2003) (*Duke Hinds II*), *order on reh'g*, 117 FERC ¶ 61,210 (2006) (*Duke Hinds III*).

<sup>13</sup> Complaint at 11, *quoting* IA § 1.1 (emphasis added in Complaint).

## 2. Responsive Pleadings

17. In its Answer, Entergy argues that the IA is a system-to-system interconnection agreement, not a generator interconnection agreement and, thus, the Commission's generator interconnection pricing policies do not apply. Entergy explains that the IA memorializes the agreement between Complainants and Entergy to interconnect their respective transmission and distribution systems and to permit power to flow in and out of MDEA/Clarksdale's systems; the IA does not solely deal with the interconnection of Clarksdale's generation with the Entergy system. Entergy argues that, because this system-to-system IA is fundamentally different from a typical generation interconnection agreement, the Commission cannot apply its generator interconnection pricing policies announced in Order Nos. 2003 and 2003-A to the IA. At a minimum, it states, the Commission should scrutinize in a hearing the implications of a change in policy to expand its generator interconnection pricing policies to apply to system-to-system IAs.

18. Entergy also asserts that nothing in the IA permits reopening the IA to reclassify the facilities. It argues that article 1.1 of the IA recites generally that the IA is a service agreement under the Entergy OATT, but that this provision does not provide a basis to reclassify the facilities. Entergy states that, because the IA is a service agreement under the OATT, the IA reflects the terms and conditions of the OATT as it may change over time, but that article 1.1 was not intended to serve otherwise as an automatic reopener of the IA with respect to each and every OATT amendment that might be made.

19. In addition, Entergy argues that article 18.7 of the IA<sup>14</sup> demonstrates that the parties intended negotiated terms and conditions to prevail in the event of any conflict with a competing, inconsistent term or condition. Entergy also cites to article 18.5 of the IA, which states that mutual agreement is required to amend the IA "to comply with changes or alterations made necessary by a valid applicable order of any governmental authority." According to Entergy, even if Order Nos. 2003 and 2003-A would require a conforming change to the IA to allow Complainants to receive transmission credits, the parties would have to mutually agree to such a change and Entergy has not done so.

20. Entergy claims that, while articles 11.1 and 18.4 of the IA preserve the parties' rights under FPA sections 205<sup>15</sup> and 206, article 18.4 expressly provides that the IA "may

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<sup>14</sup> Article 18.7 of the IA states that, "[i]n the event of conflict between the body of this Agreement and any attachment, appendix or exhibit hereto, the terms and provisions of the body of this Agreement shall prevail and be deemed to be the final intent of the Parties."

<sup>15</sup> 16 U.S.C. § 824d (2000).

be amended by and only by a written instrument duly executed by all the Parties hereto.”<sup>16</sup> Thus, Entergy argues that the conflict between articles 11.1 and 18.4 of the IA with the provision that permits amendments only be made by mutual agreement “at least raises a question of contract interpretation that the Commission must resolve through further inquiry at a hearing.”<sup>17</sup>

21. Entergy also contends that the Commission’s generator interconnection pricing is inapplicable to the IA because it became effective only after the interconnection facilities at issue were classified as ineligible for credits and that the Commission has stated that its pricing policy does not apply retroactively.<sup>18</sup> Entergy contends that granting Complainants’ request would require a retroactive application of the generator interconnection policies. Further, it asserts that the Commission expressly disclaimed retroactive application of Order Nos. 2003 and 2003-A.

22. In their Reply, Complainants agree that the IA is a system-to-system interconnection, but they contend that the policies set forth in Order Nos. 2003 and 2003-A still apply. They state that the “at or beyond” test for identifying network facilities in the generator interconnection context also applies in the context of a system-to-system interconnection. They state that “it remains to be seen whether or not the distinction between a system to system interconnection and a generator interconnection may lead to some difference in application of Commission policy.”<sup>19</sup> Complainants argue that the fact that the IA provides for a system-to-system interconnection strengthens their claim for relief from the direct assignment of costs because, as a network customer, MDEA pays a load ratio share of the embedded cost of the Entergy transmission system. Complainants claim that, under the IA, MDEA also pays on a direct assignment basis the costs for facilities that should be identified as network facilities, which violates the Commission’s prohibition against “and” pricing.

23. Complainants also dispute Entergy’s claim that its consent is needed for any modification of the IA and assert that article 18.7 of the IA supports their Complaint. They state that, under article 1.1 of the IA, the OATT, as amended, is incorporated into

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<sup>16</sup> Answer at 18.

<sup>17</sup> *Id.* at 18.

<sup>18</sup> *Id.* at 14, citing *Consumers Energy Company*, 95 FERC ¶ 61,233 (2001), *reh’g denied*, 96 FERC ¶ 61,132 (2001); and Order No. 2003 at ¶ 911.

<sup>19</sup> Reply at 4.

the body of the IA and, therefore, this controls the outcome under article 18.7. Complainants contend that Entergy's reading of articles 18.4 and 18.5 of the IA would preempt the exercise of Commission authority over the IA. They also point to other provisions in the IA that preserve the parties' FPA sections 205 and 206 rights.<sup>20</sup>

24. Complainants further contend that they are not seeking retroactive application of Order Nos. 2003 and 2003-A, but are asking for a prospective implementation of current Commission policy. Complainants state that, while Order Nos. 2003 and 2003-A do not require revision of a previously accepted interconnection agreement, they do not prohibit such revision when it is consistent with the terms of the particular interconnection agreement.

### **3. Commission Determination**

25. Under the contractual provisions of the IA here either party to the IA has the unilateral right, under sections 205 and 206 of the FPA, to file an application with the Commission requesting a change in the rates, charges, or terms and conditions of service provided in the IA. We reject Entergy's argument that article 18 of the IA requires a different interpretation in the case of a conflict and that mutual agreement is required to amend the IA. Article 18.4 of the IA states that "nothing contained herein" shall affect the right of either party to make a unilateral application to the Commission for a change to the IA.

26. We find that, because article 11.1 of the IA specifically preserves the rights of both parties, either party may seek Commission review of the IA based on the just and reasonable standard of review.<sup>21</sup> Therefore, we will evaluate the IA using the just and reasonable standard of review.

27. While similar pricing issues are presented, the case here does not involve a standard generator interconnection agreement; the generator here does not connect directly to Entergy's system. Therefore, the Commission's ruling in Order Nos. 2003 and 2003-A, *Duke Hinds III*, and *PG&E III*<sup>22</sup> do not apply as specific case precedent. We

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<sup>20</sup> Complainant Reply at 8. Complainants cite IA articles 2.2.3; 11.1; and 18.4 as also preserving the parties' FPA sections 205 and 206 rights.

<sup>21</sup> See, e.g., *Reliant Energy Choctaw County, LLC*, 107 FERC ¶ 61,141, at P 15 (2004); *InterGen Services, Inc.*, 107 FERC ¶ 61,143 (2004).

<sup>22</sup> *Pacific Gas and Electric Company*, 117 FERC ¶ 61,294 (2006) (*PG&E III*). *Duke Hinds III*, 117 FERC ¶ 61,210 at P 22-26 (upholding the Commission's long-

find, however, that the situation here, involving a transmission dependent utility embedded within Entergy's system, is a system-to-customer arrangement to which our rules prohibiting "and" pricing apply (just as such rules apply in system-to-generator interconnection arrangements).<sup>23</sup>

28. The Commission's transmission pricing guidelines provide that a public utility is entitled to charge either: (1) an average-cost transmission rate reflecting the average cost of the transmission grid, including the costs of expanding the grid, or (2) an incremental-cost transmission rate reflecting the costs of the particular service involved. In addition to an embedded cost rate or an incremental cost rate, the public utility may charge directly assignable, non-grid costs (such as interconnection or radial line costs).<sup>24</sup> However, the utility is not entitled to charge for both the incremental costs of the grid expansion "and" the embedded costs of the grid.

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standing transmission service pricing policy and that when a generator pays for upgrades located "at or beyond" the point of interconnection to the transmission grid, it is entitled to credits, with interest, because these are network upgrades).

<sup>23</sup> We disagree with Entergy's claim that *Dayton Power & Light Company*, 107 FERC ¶ 61,195 (2004), is dispositive. Entergy cites that case in support of its contention that the IA is a system-to-system interconnection agreement not subject to the Commission's generator interconnection pricing policies. As an initial matter, we do not believe that this case involves a typical system-to-system interconnection agreement because MDEA and Entergy do not have reciprocal obligations for use of each other's facilities. Moreover, the Dayton case cited by Entergy involved a delegated letter order which found that credits were due based on an erroneous assumption that the agreement at issue involved a generator interconnection. On rehearing, the Commission acknowledged that, in fact, the arrangement did not involve a generator interconnection and, accordingly, revoked the requirement of credits. In that order, the Commission did not overturn the prohibition on "and" pricing. See *United States v. Shabani*, 513 U.S. 10, 16 (1994) (questions which merely lurk in the record are not resolved, and no resolution may be inferred); *Illinois Board of Elections v. Socialist Workers Party*, 440 U.S. 173, 183 (1979) (same); *Webster v. Fall*, 266 U.S. 507, 511 (1925) (same).

<sup>24</sup> See *Southern Company Services, Inc.*, 60 FERC ¶ 61,273, at 61,297 (1992), citing *Pennsylvania Electric Company*, 60 FERC ¶ 61,034, at 61,130 n.49 (1992). See also *Western Massachusetts Electric Company*, 63 FERC ¶ 61,222, at 62,615 (1993), *reh'g denied*, 66 FERC ¶ 61,167, at 61,334-35 (1994) (*Western Massachusetts*); Opinion No. 409, 77 FERC ¶ 61,268, at 62,119 (1996), *reh'g denied*, Opinion No. 409A, 81 FERC ¶ 61,152 (1997).

29. Moreover, even though the IA at issue in this proceeding does not effectuate a generator interconnection agreement and the generator interconnection policies of Order Nos. 2003 and 2003-A do not apply; it is still our long-standing policy, as it has been for many years, to prohibit the direct assignment of network facilities.<sup>25</sup> Network facilities include all facilities at or beyond the point where the customer or generator connects to the grid. This prohibition is without distinction or regard as to the purpose of the upgrade (*e.g.*, to relieve overloads, to remedy stability and short circuit problems, to maintain reliability, or to provide protection and service restoration).<sup>26</sup> Due to the integrated nature of the transmission network, network facilities benefit all network users; it does not matter whether the facilities were installed to meet a particular customer's request for service.<sup>27</sup> The Commission allows direct assignment to the customer of only non-grid facilities, such as radial lines and generator interconnection facilities (on the generator's side of the point of interconnection with the grid), that do not serve a system-wide function.<sup>28</sup>

30. Therefore, to the extent that any of the facilities at issue in the IA are improperly classified as Interconnection Facilities, as discussed below, we will require Entergy to reclassify them as Network Upgrades, and provide transmission credits and related

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<sup>25</sup> See, *e.g.*, *Consumers Energy Company*, 95 FERC ¶ 61,233 (*Consumers I*), *order on reh'g*, 96 FERC ¶ 61,132 (2001) (*Consumers II*).

<sup>26</sup> See *Entergy Gulf States, Inc.*, 98 FERC ¶ 61,014, at 61,023 (2002); *Public Service Company of Colorado*, 59 FERC ¶ 61,311 (1992), *reh'g denied*, 62 FERC ¶ 61,013, at 61,061 (1993) ("even if a customer can be said to have caused the addition of a grid facility, the addition represents a *system* expansion used by and benefiting *all* users due to the integrated nature of the grid" (emphasis in original)).

<sup>27</sup> See *Northeast Texas Electric Cooperative, Inc.*, Opinion No. 474, 108 FERC ¶ 61,084, at P 47 (2004), *order on reh'g*, 111 FERC ¶ 61,189, at P 34 (2005) (*Northeast Texas*). See also *San Diego Gas & Electric Co.*, 98 FERC ¶ 61,332, at 62,408 (2002).

<sup>28</sup> See *Entergy Services, Inc.*, 89 FERC ¶ 61,079, at 61,235-36 (1999).

interest to Complainants.<sup>29</sup> Otherwise, Entergy would be charging Complainants twice for the same service, which is a violation of the Commission's long-standing rule prohibiting "and" pricing.<sup>30</sup>

31. Further, in response to Entergy's arguments regarding our rule against retroactive ratemaking, we note that for previously approved rates on file such as this one, this rule forbids us from ordering retroactive rate changes; we cannot order a utility to give back to a customer money the utility has already collected under the rate on file. However, this filed rate doctrine does not mean that the utility is entitled to continue charging a transmission rate that is contrary to Commission policy. Thus, consistent with the discussion below, we will only order prospective rate relief, ensuring that Entergy's rates for transmission service under Entergy's OATT going forward are just and reasonable.

### C. Classification of Facilities

#### 1. Complaint

32. Complainants include one-line diagrams in their complaint that show the electric layout of the Moon Lake Station (Attachment 3) and the Clarksdale Substation (Attachment 4). In addition, Attachment 5 provides a map showing the locations of other facilities classified in the IA as Interconnection Facilities or System Upgrades. Complainants claim that, as demonstrated by Attachments 3-5, all of the facilities characterized as Interconnection Facilities, in IA Appendix A, portions of Appendix C of the IA, and those characterized as Optional System Upgrades in Appendix B are at or beyond the interconnection points between the Entergy system and the Clarksdale system.<sup>31</sup> Thus, consistent with Commission precedent and policy, they state that all of these facilities are network upgrades, not direct assignment facilities.

#### 2. Responsive Pleadings

33. Entergy argues that Complainants do not specifically identify which of the Interconnection Facilities they want Entergy to reclassify. Therefore, it claims, the

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<sup>29</sup> *Northeast Texas*, 108 FERC ¶ 61,084 at P 48; *Duke Hinds III*, 117 FERC ¶ 61,210 at P 22-26; *PG&E III*, 117 FERC ¶ 61,294 at P 56-59.

<sup>30</sup> *See Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Power Act; Policy Statement, FERC Statutes and Regulations Preambles January 1991-June 1996* ¶ 31,005 (1994).

<sup>31</sup> *See also* Complaint at 7-8.

Commission would need to conduct a hearing to determine which facilities governed by the IA, if any, constitute network upgrade facilities eligible for transmission credits. Moreover, Entergy argues that all the IA facilities both permit Complainants to import power from the Entergy system to serve loads and permit Clarksdale to wheel power from its generating facilities off-system. It claims that, under these circumstances, the Commission cannot apply the “at or beyond” test, but needs to set this issue, as well as the amount of any credits ordered, for hearing.

34. Complainants argue in their Reply that Entergy has not met the requirements for demonstrating that an evidentiary hearing is necessary. They state that Entergy has not identified any evidence that would support a conclusion that the facilities are not network facilities and has not offered any evidence contradicting factual assertions in the Complaint. In addition, Complainants contend that a party requesting a hearing must provide evidence of an actual controversy regarding a material fact and cannot rely on general assertions.<sup>32</sup>

### 3. Commission Determination

35. In its Answer, Entergy lists four groups of facilities as Interconnection Facilities, the cost of which are directly assigned to Complainants.<sup>33</sup> These include: (1) the 230-kV Moon Lake Substation; (2) improvements in Entergy’s 230 kV substations at Batesville and Ritchie; (3) improvements in the 115 kV Clarksdale Substation; and (4) improvements in Entergy’s 115 kV substations at the Tunica and Delta.<sup>34</sup>

36. We find that all four groups of facilities are network facilities that benefit all transmission customers. The cost of upgrades to these facilities should not be directly assigned to Complainants. The Moon Lake substation sectionalized the then existing Ritchie-Batesville 230 kV transmission line – a network transmission line – via a ring bus configuration and is a network facility. The substation is similar to other network transmission substations on Entergy’s system where transmission lines connect.<sup>35</sup> In addition, the station is arranged so future circuit breakers and disconnect switches can be

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<sup>32</sup> Reply at 10 (*citing Cajun Electric Power Cooperative*, 28 F.3d 173, 177 (D.C. Cir. 1994) and *Cerro Wire & Cable Co.*, 677 F.2d 124, 129 (D.C. Cir. 1982)).

<sup>33</sup> Answer at 9-10.

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

<sup>35</sup> See *e.g.*, *Duke Energy Corporation*, 95 FERC ¶ 61,279, at 61,980 (2001) (*Duke*).

added with minimum outages to facilitate the addition of future lines.<sup>36</sup> With one exception described below, the other groups of facility improvements all involve upgrades to Entergy's network transmission substations. These facilities were network facilities before the Applicant's interconnection request; there is no reason, and none is offered by Entergy, that the nature of these facilities changed post-interconnection. The upgrades and improvements at these facilities are, therefore, Network Upgrades. However, our review of the single line diagrams of the Moon Lake Station and the Clarksdale Substation indicates that the metering facilities described in Appendix C of the IA appear to be located on Complainant's side of the point of interconnection and should be directly assigned. Accordingly, we will deny Complainant's complaint with respect to those facilities.

37. Accordingly, we will grant Complainant's complaint in part and order Entergy to revise the IA to reclassify the facilities described above, with the exception of the metering facilities, as Network Upgrade facilities and to provide for the payment of credits for the Network Upgrades. Further, we will direct Entergy to describe, in its compliance filing, how it will provide Complainants credits during the appropriate refund periods and the amounts Entergy collected and will collect for transmission service. We will direct Entergy to file revisions to the IA reflecting these revisions within 30 days of the date of this order.

38. In cases where, as here, the Commission institutes an investigation on a complaint under section 206 of the FPA, section 206(b), as it was in effect at the time that Complainant filed their complaint, requires that the Commission establish a refund effective date that is no earlier than 60 days after the date a complaint was filed, but no later than five months after the expiration of such 60-day period.<sup>37</sup> Consistent with our general policy of providing maximum protection to customers, we will set the refund effective date at the earliest date possible, *i.e.*, 60 days after the filing of the complaint, which is July 4, 2004.

39. Section 206 of the FPA states that the Commission may order refunds of any amounts paid, for the period after the refund effective date through a date 15 months after

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<sup>36</sup> Complaint, Attachment 2, Facility Study for MDEA Plant at Clarksdale, at 9.

<sup>37</sup> Section 206(b) of the FPA was amended by the Energy Policy Act of 2005, Pub. L. No. 109-58, § 1285, 119 Stat. 594, 980-81 (2005), to require that in the case of a proceeding instituted on a complaint, the refund effective date shall not be earlier than the date of the filing of such complaint or later than five months after the filing of such complaint.

such refund effective date.<sup>38</sup> Therefore, we will direct Entergy to provide Complainants any credits that would have been accrued from the refund effective date, July 4, 2004, through October 4, 2005, which is 15 months after the refund effective date, with interest calculated in accordance with 18 C.F.R. § 35.19(a)(2)(ii). Further, we will require Entergy to provide Complainants credits on a prospective basis from the date of this order and to revise the IAs accordingly. Entergy must file a compliance report, within 15 days after making the required credits.

40. Credits are to be calculated as follows: For the period from commercial operation until July 4, 2004, any credits that would have been earned are not recoverable, and interest on those credits will not be paid.<sup>39</sup> From July 4, 2004, through and including October 4, 2005, the credits earned are recoverable, and Entergy must pay Complainants credits for this period with interest, as discussed above. From the end of the 15-month refund effective period until the date of the Commission order, any credits that would have been earned are not recoverable, and interest on those credits would also not be paid. Finally, if there are periods during which credits were recoverable but Complainants did not receive transmission service, Entergy nevertheless must provide the Complainants credits for such periods with interest, as discussed above.

#### **D. Interest for Optional System Upgrades**

##### **1. Complaint**

41. Complainants contend that current Commission policy requires the payment of interest on funds paid by generators for network facilities until such funds are returned through credits or other payments.<sup>40</sup> The IA currently does not provide for payment of interest on amounts that have not been credited. Complainants argue that the interest requirement was deemed to be included in Entergy's OATT pursuant to Order No. 2003-A and that, pursuant to article 1.1 of the IA, these requirements are now incorporated into the IA. Therefore, Complainants request that the Commission direct Entergy to begin

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<sup>38</sup> 16 U.S.C. § 824e (b).

<sup>39</sup> In *Duke Hinds III*, we provided an example of how the dollar amount of the credits was to be reduced to account for transmission service payments made before the refund effective date. *Duke Hinds III*, 117 FERC ¶ 61,210 at P 34. In this case, this example would also apply to the period from the end of the 15-month refund effective period until the date of the Commission order.

<sup>40</sup> Complaint at 14.

accruing interest on all amounts paid on MDEA's behalf for Optional System Upgrades effective as of April 26, 2004, the date that the requirements of Order No. 2003-A were deemed to be incorporated into Entergy's OATT.

## 2. Responsive Pleadings

42. For the same reasons articulated above, Entergy states that the Commission should deny the Complainant's request for interest on Optional System Upgrades, stating that the Complainants cannot rely on Order Nos. 2003 and 2003-A to reopen the IA to earn interest on amounts paid for Optional System Upgrades.

## 3. Commission Determination

43. In *PG&E III*,<sup>41</sup> the Commission discussed the requirement that a utility must provide credits and interest on both Required and Optional System Upgrades, starting on the refund effective date, consistent with *Duke Hinds III*, and directed Entergy to revise the IA at issue there accordingly. We find that, consistent with our discussion in *PG&E III*, Entergy must provide Complainants with interest on any amounts paid for the Optional System Upgrades that have not yet been credited. Consistent with section 206 of the FPA and our discussion in *PG&E III*, we will not require interest to be paid for any credits for Optional System Upgrades that were earned for the period from commercial operation through July 3, 2004. Interest calculated in accordance with 18 C.F.R. § 35.19a(a)(2)(iii) must be paid on any credits for Optional System Upgrades that were earned from the refund effective date, July 4, 2004, up to and including October 4, 2005, which is 15 months after the refund effective date. Interest must then be paid on any remaining uncredited amount of the upfront payment for the Optional System Upgrades prospectively from the date of this order.

## E. Dedicated Facilities Charge

### 1. Complaint

44. Complainants explain that Entergy's Dedicated Facilities Charge, described in Appendix E of the IA, includes construction oversights costs, operation and maintenance, administrative and general, and other expenses for the Appendix A and relevant

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<sup>41</sup> *PG&E III*, 117 FERC ¶ 61,294 at P 56-59 (discussing Entergy's compliance filing in response to *PG&E II* and the Commission's requirements that Entergy revise the IA at issue and provide credits and interest on both Required and Optional System Upgrades, starting on the refund effective date, consistent with *Duke Hinds III*).

Appendix C facilities. They assert that Order No. 2003-A makes clear that a transmission provider may not charge the interconnection customer for construction oversight costs when the interconnection customer constructs facilities. In addition, Complainants argue that Order No. 2003-A states that a transmission provider may not directly assign to an interconnecting generator the “expenses associated with owning, maintaining, repairing, and replacing” network upgrades.<sup>42</sup>

45. Complainants argue that, because MDEA is a network transmission customer of Entergy, it already pays a *pro rata share* of system-wide transmission expenses (including those associated with network upgrades) through Entergy’s OATT formula rate. Therefore, they assert, unless the Dedicated Facilities Charge in the IA is modified to exclude expenses associated with the network upgrades, Entergy will be collecting such expenses twice. Complainants request that the Commission require Entergy to revise the Dedicated Facilities Charge to eliminate construction oversight costs and “expenses associated with owning, maintaining, repairing, and replacing” the Appendix A and relevant Appendix C facilities, effective as of April 26, 2004.

## 2. Responsive Pleadings

46. Entergy argues that, just as Complaints cannot rely on Order Nos. 2003 and 2003-A to gain reopening of the IA to reclassify Interconnection Facilities and render them eligible for transmission credits, Complainants cannot rely on the recently promulgated policy in Order No. 2003-A to require a change to the IA’s Dedicated Facilities Charge to exclude the cost of Entergy Services’ construction oversight activities.<sup>43</sup>

## 3. Commission Determination

47. The Commission has previously found that, upon a determination that facilities are Network Upgrades, as opposed to Interconnection Facilities, direct assignment of charges is inappropriate.<sup>44</sup> Here, as we discussed above, we are requiring Entergy to reclassify certain facilities as Network Upgrades, and it is inappropriate to include costs associated with Network Upgrades in the Dedicated Facilities Charge. Therefore, we will direct

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<sup>42</sup> Complaint at 13, *citing* Order No. 2003-A at P 424.

<sup>43</sup> Answer at 16.

<sup>44</sup> *Duke*, 95 FERC ¶ 61,279 at 61,980; *Tenaska Alabama II Partners, L.P. v. Alabama Power Company*, 118 FERC ¶ 61,037, at P 27 (2007); *Southern Company Services, Inc.*, 108 FERC ¶ 61,229 (2004).

Entergy to eliminate from the Dedicated Facilities Charge the costs associated with Network Upgrades. Additionally, in regard to the construction oversight costs, we note that the Commission's policy is that the Transmission Provider not be reimbursed for those costs.<sup>45</sup> Accordingly, we direct Entergy to prospectively remove these costs from the calculation of the Dedicated Facilities Charge.

**F. As Available Point-to-Point Service**

**1. Complainant's Complaint**

48. According to Complainants, under the Dedicated Facilities Charge, MDEA and Clarksdale compensate Entergy for the full capital costs associated with certain facilities. They contend that, if Entergy also charges them the system average OATT rates for delivery of the output of the Crossroads Plant, MDEA and Clarksdale will be subjected to "and" pricing, contrary to Commission policy.<sup>46</sup> Complainants explain that, in Docket No. ER04-699-000, Entergy proposed to provide as-available, point-to-point transmission service for no additional charge for the output of the associated generating resources where an interconnection customer bears the costs for supplemental upgrades. They request that the Commission require Entergy to modify the IA to provide an allowance for point-to-point transmission service on an as-available basis at no additional charge for delivery of the output of the Crossroads Plant, as long as the Dedicated Facilities Charge is in effect.

**2. Responsive Pleadings**

49. In its Answer, Entergy states that it should not be required to provide free transmission service to Complainants on the Entergy system. It claims that, under Entergy's treatment of transmission revenue from customers that have funded interconnection-related facilities, MDEA and Clarksdale are not subject to "and" pricing. In addition, it asserts that the applicant's entitlement to any form of transmission pricing relief or alternative transmission pricing under Attachment T in Entergy's filing in Docket No. ER04-699-000 should be determined pursuant to the OATT revisions that finally result from that proceeding.

50. Complainants state, in their Reply, that they are merely seeking relief from "and" pricing for network facilities. They claim that a transmission provider may charge a

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<sup>45</sup> See, e.g., Order No. 2003-A at P 218-219.

<sup>46</sup> Complaint at 15.

customer for the costs of the network upgrades necessary to provide requested service or the embedded costs of the entire network, but not both. Complainants claim, that even if Entergy excludes the facilities subject to the Direct Facilities Charge from the transmission rate base used to develop its OATT charges, Complainants will still pay 100 percent of the costs for a portion of the integrated transmission network plus a full load ratio share of the costs for the remainder of the network. They also argue that Entergy can charge the higher of the embedded cost rate under the OATT or the incremental cost of the network upgrades at issue, but not both.

### 3. Commission Determination

51. We will dismiss Complainants' request for an allowance for point-to-point transmission service as moot. As discussed above, we are directing Entergy to remove costs associated with Network Upgrades from the Dedicated Facilities Charge. This action should alleviate any concerns that Complainants' have about "and" pricing resulting from the Dedicated Facilities Charge and further remedial action is not necessary.

52. Moreover, on June 30, 2005, the Commission issued an order accepting Entergy's withdrawal of the modifications to its OATT proposed in Docket No. ER04-699-000 and terminating that docket.<sup>47</sup> Entergy had made a new filing to establish an Independent Coordinator of Transmission (ICT), subsequently conditionally approved by the Commission, in Docket No. ER05-1065-000 on April 24, 2006.<sup>48</sup> The ICT proposal includes procedures for granting and denying transmission service in OATT Attachment S, Independent Coordinator of Transmission. MDEA is free to seek transmission service through the procedures that are now in place in Attachment S of the Entergy OATT.

53. Further, the Commission approved Entergy's proposal to allow the ICT to reevaluate the previously-incurred interconnection costs in certain contracts that contain provisions that allow either party to unilaterally request changes to the interconnection

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<sup>47</sup> See *Entergy Services, Inc.*, 111 FERC ¶ 61,503 (2005).

<sup>48</sup> *Entergy Services, Inc.*, 115 FERC ¶ 61,095 (2006), *errata notice* May 4, 2006 (ICT Order), *order on reh'g*, 116 FERC ¶ 61,275 (2006).

agreement under sections 205 or 206 of the FPA. We note that the IA would be subject to such review and determination by the ICT of whether facilities are properly classified as Base Plan or Supplemental Upgrade.<sup>49</sup>

The Commission orders:

(A) The complaint is hereby granted in part and denied in part, as discussed above.

(B) Entergy is hereby directed to file, within 30 days of this order, a revised IA reflecting the provision of credits for Network Upgrades, as discussed in the body of this order.

(C) Entergy is hereby directed to file, within 30 days of this order, a revised IA eliminating from the Dedicated Facilities Charge the assessment of construction oversight costs and expenses associated with owning, maintaining, repairing, and replacing Network Upgrade facilities, as discussed in the body of this order.

(D) Within 30 days of this order, Entergy is hereby directed to provide Complainants any credits that would have accrued from the refund effective date, July 4, 2004, through and including October 4, 2005, with interest calculated in accordance with 18 C.F.R. § 35.19a(a)(2)(iii). Further, Entergy is required to provide Complainants credits on a prospective basis from the date of this order, as discussed in the body of this order.

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<sup>49</sup> ICT Order at P 237-245. As part of the ICT package approved by the Commission, Entergy's OATT now includes various rights, including financial compensation and waiver of congestion charges, that a customer funding a Supplemental Upgrade may be entitled to if its facilities are used by other customers.

(E) Entergy is each hereby directed to file a compliance report, within 15 days after providing credits.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.