

124 FERC ¶ 61,085  
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.

ConocoPhillips Company

Docket No. EL08-59-000

v.

Entergy Services, Inc.

ORDER ON COMPLAINT

(Issued July 24, 2008)

1. On April 24, 2008, ConocoPhillips Company (ConocoPhillips) filed a complaint and request for fast track processing against Entergy Services, Inc. (Entergy). ConocoPhillips alleges that Entergy unlawfully terminated two firm point-to-point transmission service agreements in violation of Entergy's Open Access Transmission Tariff (OATT). In this order, we find that termination of ConocoPhillips' confirmed, firm transmission service was improper.

**I. Background**

2. On March 12, 2007, ConocoPhillips requested 52 megawatts (MW) of short-term firm point-to-point transmission service on Entergy's system from June 1, 2007 to August 31, 2007 (June Transaction). On March 14, 2007, ConocoPhillips requested an additional 51 MW of short-term firm point-to-point transmission service on Entergy's system from July 1, 2007 to August 31, 2007 (July Transaction). Both requests were approved on March 14, 2007 and confirmed the next day.

3. In late May of 2007, a customer of Entergy's, NRG Power Marketing, LLC (NRG PML), became concerned that, based on public information available on Entergy's Open Access Same-Time Information System (OASIS), the total amount of confirmed reservations at the Entergy-Ameren interface exceeded the posted available transfer capability for that interface.<sup>1</sup> On or about May 30, 2007, NRG PML notified Entergy's

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<sup>1</sup> See NRG Companies at 3.

Independent Coordinator of Transmission (ICT) of its concern.<sup>2</sup> On June 15, 2007, Entergy notified the Commission, in the Commission's docket regarding approval of the ICT,<sup>3</sup> that it oversold service at the Entergy-Ameren interface because it miscalculated the Available Flowgate Capability (AFC), due to a software error.<sup>4</sup>

4. On June 26, 2007, the ICT posted a notice on Entergy's OASIS, which stated that there was an overselling of the Entergy-Ameren interface. The notice also warned that, if no transmission customer voluntarily terminated its transmission service on the interface, then the ICT would resolve the oversell by recalling (i.e., terminating) transmission service in reverse queue order. The notice did not state which customers' requests were in the queue or the order of their requests. No voluntary terminations were forthcoming. On June 29, 2007, at 5:51 p.m., after the close of business on a Friday, the ICT informed ConocoPhillips that its June and July Transactions were terminated, effective July 1, 2007.

## II. Complaint

5. ConocoPhillips contends that Entergy violated its OATT by terminating the June and July Transactions. It argues that Entergy's OATT excuses Entergy from providing firm transmission service under a confirmed reservation only for *force majeure*,<sup>5</sup> and that

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<sup>2</sup> See *id.*; see also ICT at 6.

<sup>3</sup> See Entergy June 15, 2007 Report of OASIS Software Error, Docket No. ER05-1065-000 (June 15 Report).

<sup>4</sup> Entergy is required to inform the Commission of any error related to software and AFC data, within 15 days of discovering the error. See *Entergy Services Inc.*, 115 FERC ¶ 61,095, at P 110 (2006), *errata notice* May 4, 2006, *order on reh'g*, 116 FERC ¶ 61,275 (2006) (Order Approving the ICT). Entergy has had numerous AFC software-related issues, which have affected Entergy's ability to accurately grant short-term transmission services. AFC values are calculated by software applications that use a model of the physical transmission system to simulate forecasted system conditions based on various data inputs.

<sup>5</sup> Section 10.1 of Entergy's OATT states that a *force majeure* includes "any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any Curtailment, order, regulation or restriction imposed by governmental military or lawfully established civilian authorities, or any other cause beyond a Party's control. A Force Majeure event does not include an act of negligence or intentional wrongdoing."

Entergy has not claimed *force majeure*. Instead, ConocoPhillips contends that Entergy simply states that it oversold its transmission system because of errors in its own AFC software.

6. ConocoPhillips argues that, if Entergy believed that it had oversold its capacity, Entergy was obligated under its OATT to: (1) have in place facilities sufficient to satisfy all firm transmission reservations; (2) curtail such reservations, including Entergy's native load, on a *pro rata* basis if it lacked sufficient capacity; or (3) offer to redispatch resources on a least-cost basis, without undue discrimination towards any particular customer, with the economic burden of any such procedures borne on a *pro rata* basis by all system users.<sup>6</sup> ConocoPhillips notes that, just as with the treatment of firm transmission service reservations with rollover rights where the system has become constrained, the obligation is on the transmission provider to either curtail service pursuant to the provisions of its OATT or to build more capacity to relieve the constraint.<sup>7</sup>

7. ConocoPhillips further argues that other longer-term requests could not have preempted the June and July Transactions. While it acknowledges that, under the OATT, longer-term service requests can preempt shorter-term service requests during the conditional period, it states that the conditional period had long expired, and that its transmission reservations were fully firm at the time of termination.

8. ConocoPhillips also distinguishes this case from those in which the Commission allowed transmission providers to terminate confirmed reservations when their systems were oversold.<sup>8</sup> ConocoPhillips contends that, in those cases, the Commission considered whether the transmission operators had offered alternatives to the customer before terminating service, or whether they had considered the customers' proposed remedies.<sup>9</sup>

9. As a result of the termination, ConocoPhillips states that it was denied the transmission it needed – and had duly reserved – to move the electrical output that ConocoPhillips purchases from SRW Cogeneration Limited Partnership (SRW), an

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<sup>6</sup> Complaint (citing Entergy OATT §§ 13.5, 13.6).

<sup>7</sup> *Id.* at 12 (citing *Exelon Gen. Co., Inc. v. Southwest Power Pool, Inc.*, 101 FERC ¶ 61,226, at P 9 (2002)).

<sup>8</sup> See *Williams Energy v. Southern Company Services, Inc.*, 101 FERC ¶ 61,144 (2002) (*Williams*); *Powerex Corp. v. U.S. Dept of Energy*, 95 FERC ¶ 61,241 (2001) (*Powerex*).

<sup>9</sup> Complaint at 14 (citing *Powerex*, 95 FERC ¶ 61,241 at 61,827; *Williams*).

indirect, wholly-owned subsidiary. Instead, SRW was required to sell its surplus energy to Entergy, at Entergy's avoided-cost rate, at prices lower than the Midwest ISO market rates that would have been available to ConocoPhillips at the Entergy-Ameren interface. ConocoPhillips calculates its damages to be approximately \$438,000.<sup>10</sup>

10. ConocoPhillips does not want Entergy to reinstate its transmission reservations, but requests that the Commission: (1) find that Entergy violated Commission policy and the OATT when it unilaterally terminated ConocoPhillips' reservations; (2) enjoin Entergy from delaying in discovering such errors in the future; (3) direct Entergy to provide immediate, meaningful corrective relief should such errors occur in the future; and (4) "take such other action and grant such other relief as may be consistent with these requests."<sup>11</sup> ConocoPhillips also requests fast track processing of its complaint.

### **III. Notice of Complaint and Responses**

11. Notice of ConocoPhillips's complaint was published in the *Federal Register*, 73 Fed. Reg. 24,966 (2008) with interventions and answers due on or before May 14, 2008. Motions to intervene and comments were filed by NRG PML, Bayou Cove Peaking Power LLC, Big Cajun I Peaking Power LLC, Louisiana Generating LLC, and NRG Sterlington Power LLC (collectively, NRG Companies), and Southwest Power Pool, Inc. (SPP), in its capacity as the ICT. South Mississippi Electric Power Association filed a motion to intervene. Entergy filed an answer to the original complaint on May 14, 2008. ConocoPhillips filed a reply to Entergy's answer and the ICT's comments on May 22, 2008. Entergy filed an answer to ConocoPhillips's answer on May 29, 2008, and the ICT filed an answer on June 2, 2008.

#### **A. Entergy's Answer**

12. Entergy states that it was the ICT that terminated ConocoPhillips' transmission service, not Entergy. It argues that the ICT independently and reasonably determined that no alternatives were available to address the specific reliability concerns that were presented by the oversubscription.

13. More specifically, Entergy explains that, when it became aware of the problem, its and the ICT's representatives discussed and analyzed viable alternatives for addressing the possible real-time effects of the oversell.<sup>12</sup> Entergy states that its view was that, in

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<sup>10</sup> *Id.* at 3, 9-10, and Appendix C.

<sup>11</sup> *Id.* at 21; *see also* at 19.

<sup>12</sup> Entergy also states that its and the ICT's attorneys also attempted to determine Commission policies and case law to offer guidance as to the appropriate action that should be taken under the circumstances.

absence of any countervailing considerations, service should be allowed to flow in real-time and, to the extent an overload arose, it should be resolved by relying on real-time curtailments on a *pro rata* basis. However, Entergy states, the ICT had reliability concerns with this approach, and made an independent decision that, in the absence of sufficient voluntary termination by customers, “the improperly granted transmission services would be terminated in reverse queue order prior to real-time operation.”<sup>13</sup>

14. Entergy argues that the transmission service at issue was granted to ConocoPhillips improperly because of an error in the software used to calculate AFC values. It argues that, even without a *force majeure*, improperly granted service can be terminated under Commission precedent.

15. In addition, Entergy argues that the ICT’s method of termination (in reverse queue order), was consistent with the Commission’s determinations in *Williams* and *Powerex*. It further argues that its OATT requires it to defer to the ICT’s decision to terminate service, and that these circumstances are precisely the type that the ICT had been developed to address.<sup>14</sup> Entergy concludes that it acted within the Commission’s guidelines, which state that Entergy must unambiguously give the ICT authority to grant or deny requests for transmission service.<sup>15</sup>

## **B. ICT’s Comments**

16. The ICT states that, on May 30, 2007, an Entergy customer (presumably NRG PML) notified the ICT that data on Entergy’s OASIS showed that the Entergy-Ameren interface was oversold by 206 MW. On June 1, 2007, the ICT discovered the error in the software that calculates AFC on the Entergy transmission system, resulting in the overselling.<sup>16</sup> After it discovered the software error, the ICT began analyzing whether all confirmed service reservations across the interface could be accommodated without a negative impact on other transmission customers or the reliability of Entergy’s transmission system. The ICT concluded that, due to reliability concerns, it was required to resolve the oversell prior to real-time operations.

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<sup>13</sup> Answer at 9.

<sup>14</sup> See Entergy OATT, Attachment S (outlining responsibilities of ICT to manage Entergy’s transmission scheduling).

<sup>15</sup> Answer at 12 (citing *Entergy Services, Inc.*, 116 FERC ¶ 61,275, at P 3 (2006)).

<sup>16</sup> Consistent with the Order Approving the ICT, Entergy submitted a report with the Commission on June 15, 2007 informing it of the AFC software error. See June 15, 2007 Report. The ICT and Entergy also state that they actively investigated the error and developed mechanisms to resolve the software problem on an ongoing basis.

17. When no customer agreed to voluntarily terminate service in response to the ICT's June 26, 2007 notice of potential involuntary termination, the ICT terminated 206 MW of transmission service transactions in reverse queue order, including ConocoPhillips' June and July Transactions (totaling 104 MW).<sup>17</sup>

18. The ICT contends that ConocoPhillips should have known that the June and July Transactions could be terminated because its reservations were near the back of the queue. Moreover, the June and July Transactions were on the service list in the docket in which Entergy notified the Commission of the software error and resulting oversell at the Entergy-Ameren interface. The ICT notes that, on June 29, 2007, it emailed ConocoPhillips at the email address listed on the transmission service reservation that the June and July Transactions had been terminated, effective July 1, 2007.

19. The ICT states that sections 13.5 and 13.6 of Entergy's OATT do not specifically address transmission system constraints that are due to erroneously accepted transmission requests. The ICT asserts that, in the absence of any clear tariff direction, it chose to terminate reservations in reverse queue order to recognize the priority status of earlier, properly accepted reservations. The ICT states that *Williams* and *Powerex* supported its decision to terminate in reverse queue order.

### **C. NRG Companies' Comments**

20. NRG Companies state that, like ConocoPhillips, a portion of one of their confirmed firm service reservations was terminated on June 29, 2007 by the ICT due to the oversell at the Entergy-Ameren interface. NRG Companies request that any determination the Commission makes as to ConocoPhillips' complaint apply also to NRG Companies and any other customer whose reservations were terminated due to the oversell at the Entergy-Ameren interface. NRG Companies also request that the Commission investigate the cause of the software error, and alleged continued overselling and increased curtailments at the interface.

## **IV. Discussion**

### **A. Procedural Matters**

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

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<sup>17</sup> On July 7, 2007, as amended on July 20, 2007, the ICT filed information in Docket No. ER05-1065-000, identifying ConocoPhillips, NRG Companies, and Cargill Power Markets, LLC, as the customers whose reservations were terminated.

22. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept the answers to answers filed by ConocoPhillips, Entergy, and the ICT and will, therefore, reject them.

**B. Analysis**

23. We will grant the complaint in part. The termination of ConocoPhillips' June and July Transactions was not consistent with Entergy's OATT, specifically the procedures established in Entergy's OATT for relieving a system constraint. On March 14, 2007, the ICT notified ConocoPhillips that short-term firm point-to-point service was available. Effective March 15, 2007, the date ConocoPhillips confirmed its requests, ConocoPhillips had a confirmed firm reservation for service on Entergy's system, subject to the provisions of Entergy's OATT.<sup>18</sup>

24. Although Entergy's OATT did not have a specific provision for terminating transactions due to software errors, section 13.6 (Curtailed of Firm Transmission Service) sets forth a procedure for making curtailments for system reliability.<sup>19</sup> Absent a specific provision addressing software errors, section 13.6 is the appropriate OATT provision to which Entergy and the ICT should have looked for addressing the constraint.

25. At the time the June and July Transactions were terminated, section 13.6 stated in relevant part:

In the event that a Curtailment on the Transmission Provider's Transmission System, or a portion thereof, is required to maintain reliable operation of such system and the system directly and indirectly interconnected with Transmission Provider's Transmission System, Curtailments will be made on a non-discriminatory basis to the transaction(s) that effectively relieve the constraint.

26. Relieving the system constraints through termination of reservations in the reverse order that the requests were accepted did not comply with section 13.6, and placed the

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<sup>18</sup> See *Open Access Same-Time Information System and Standards of Conduct*, Final Rule, Order No. 638, FERC Stats. & Regs. ¶ 31,093, at 31,417 (2000) ("Once a request has been 'CONFIRMED,' a transmission service reservation exists."). Thus, the ICT is correct that section 13.5 of the OATT, which deals with constraints prior to confirmation, is not relevant here because ConocoPhillips confirmed the June and July Transactions.

<sup>19</sup> We also note that, had Entergy and the ICT been uncertain as to how to proceed, they could have sought guidance from the Commission's Enforcement Hotline. See 18 C.F.R. § 1b.21 (2008).

entire burden of relieving the constraint on ConocoPhillips and the other last-in-queue firm-service customers. This unduly discriminated between customers even though they were similarly situated, each having confirmed firm service, and such action was unsupported by Entergy's OATT.

27. Entergy's argument that ConocoPhillips' requests would not have been accepted absent the software error has no bearing on our decision that Entergy and the ICT were obligated to follow Entergy's OATT once ConocoPhillips' request for service was confirmed. Once a constraint is identified, the OATT calls for curtailing all existing relevant reservations *pro rata*, pursuant to section 13.6.<sup>20</sup> As we stated above, nothing in Entergy's OATT allowed termination of firm point-to-point service in reverse queue order.

28. In addition, Entergy's and the ICT's reliance on *Williams* and *Powerex* is misplaced. In *Williams* and *Powerex*, the Commission approved transmission providers' terminations of improperly-accepted service reservations only after finding that the transmission providers offered the affected customers alternative ways to keep their service. In *Williams*, for example, the transmission provider restored the customer's terminated request to its original queue position. Similarly, the transmission provider in *Powerex* reopened the "conditional" period for short-term service on the oversubscribed transmission path, giving the customer the opportunity to submit a competing bid. In contrast, neither the ICT nor Entergy gave ConocoPhillips any alternatives to termination.<sup>21</sup>

29. Additionally, in both cases, the Commission noted that the transmission providers took action to correct the errors within a reasonable amount of time after the errors were discovered and the termination took place shortly after the service was confirmed and well before the service was to start. *Williams*' three-year redirect was terminated 21 days after confirmation, and nearly three years before commencement; *Powerex*'s six-month

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<sup>20</sup> See, e.g., *Louisville Gas and Electric Co.*, 114 FERC ¶ 61,282, at P 125 (2006) ("The *pro forma* OATT provides access to firm transmission service, subject to the availability of transmission capacity, for all transactions, regardless of receipt or delivery point, and provides equal curtailment priority for all firm service, including network and native load"); *Village of Freeport, NY v. Consolidated Edison Co. of NY*, 101 FERC ¶ 61,225, at P 14 (2002) (finding section 13.6 of a comparable OATT to be satisfied where the transmission provider interrupted all transmission services over the constrained area simultaneously and *pro rata*).

<sup>21</sup> We note that, according to Entergy, all holders of transmission rights across the interface were offered an opportunity to voluntarily give up their service. This was not an alternative to termination, but simply a request for voluntary termination.

reservation was cancelled four days after confirmation, and 16 days before commencement. By contrast, ConocoPhillips' service was terminated nearly a month after the software error was discovered and 106 days after the service reservations were confirmed. Moreover, the terminations took place 28 days after service on one reservation had begun and two days before service on the other reservation was to begin - much later in time than in *Williams* and *Powerex*. Therefore, we find that *Williams* and *Powerex* do not support termination of ConocoPhillips' service reservations.<sup>22</sup>

30. Thus, for the reasons stated above, we will grant ConocoPhillips' complaint in part, and find that termination of ConocoPhillips' June and July Transactions was improper. We will deny ConocoPhillips' remaining requests for relief as unnecessary. Specifically, the Commission will not enjoin Entergy from delaying in discovering such errors in the future because Entergy, as the transmission provider, is already required to correct any errors in its system that it discovers, and to report such errors within 15 days of discovery to the Commission and stakeholders under the Order Approving the ICT.<sup>23</sup> Similarly, the Commission will not direct Entergy to provide immediate, meaningful corrective relief should such errors occur in the future, because Entergy is already subject to such a requirement under its OATT.<sup>24</sup>

31. Finally, with respect to NRG Companies' request that any determination that the Commission makes as to ConocoPhillips' complaint also apply to NRG Companies and to any other customer whose reservations were terminated due to the oversell at the Entergy-Ameren interface, we conclude that it is inappropriate for us to address NRG Companies' request in this proceeding. Effectively, NRG Companies are requesting that they and any other such customer be joined with ConocoPhillips' complaint. That is improper; allowing a third party to join in a complaint by filing comments would circumvent our public notice requirements and deprive the "respondent" of the

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<sup>22</sup> Similarly, in an order not cited by the parties, the Commission ordered the transmission provider to terminate improperly-accepted service, but the Commission emphasized that the customer's terminated service should be reinstated into the queue and provided in part if possible. *Idaho Power Co. v. PacifiCorp.*, 95 FERC ¶ 61,148, at 61,277 (2001).

<sup>23</sup> *Entergy Services, Inc.*, 115 FERC ¶ 61,095, at P 110 (2006), *order on reh'g*, 116 FERC ¶ 61,275, *order on clarification*, 119 FERC ¶ 61,013 (2007), *order on reh'g and compliance*, 119 FERC ¶ 61,187, *order on reh'g and clarification*, 122 FERC ¶ 61,216 (2008).

<sup>24</sup> *See, e.g.*, Section 15.2, Determination of Available Transmission Capacity (in effect at the time), and Attachment C, Methodology to Assess Available Transmission Capability (in effect at the time).

opportunity to address the assertions of that third party.<sup>25</sup> If NRG Companies or other customers seek Commission action for a perceived violation against them, they are free to file their own complaint alleging each violation, presenting facts in support, and requesting specific relief, either here or in another forum. We will deny NRG Companies' request that the Commission investigate the cause of Entergy's software error and the alleged continued overselling and increased curtailments at the Entergy-Ameren interface. That request is beyond the scope of ConocoPhillips' complaint.

The Commission orders:

(A) The relief requested in the ConocoPhillips' complaint is hereby granted, in part, as discussed in the body of this order.

(B) NRG Companies' requests that the Commission investigate the cause of Entergy's software error and the alleged continued overselling and increased curtailments at the Entergy-Ameren interface are hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>25</sup> See 18 C.F.R. § 385.206 (2008).