

124 FERC ¶ 61,134
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.

Entergy Services, Inc.

Docket Nos. ER08-572-001
ER08-1075-000

ORDER ACCEPTING AMENDMENT TO INDEPENDENT COORDINATOR OF
TRANSMISSION AGREEMENT AND DISMISSING REQUEST FOR REHEARING

(Issued August 4, 2008)

1. In this order, the Commission accepts Entergy Services, Inc.'s (Entergy) proposed amendment to the Independent Coordinator of Transmission (ICT) Agreement (ICT Agreement). The amendment eliminates indemnification language from the ICT Agreement that Entergy added in a previous filing.¹ The Commission also dismisses as moot Southwest Power Pool, Inc.'s (SPP) related request for rehearing in that earlier docket.

I. Background

2. In the Indemnification Filing, Entergy proposed a new section 6.3 of the ICT Agreement that provided that:

. . . SPP shall indemnify, defend, reimburse and hold harmless the Entergy Parties from and against any and all regulatory fines and penalties levied against *SPP* by any regulatory agency or body resulting from *SPP*'s failure to conform
(Emphasis added).

3. In a protest to Entergy's Indemnification Filing, L-M Municipals² argued that Entergy should correct section 6.3 to state that *SPP* would indemnify *Entergy* from all

¹ Entergy February 15, 2008 Filing, Docket No. ER08-572-000 (Indemnification Filing).

² L-M Municipals are the Lafayette Utilities System, the Louisiana Energy and Power Authority, the Mississippi Delta Energy Agency and its members (Clarksdale Public Utilities Commission and the Public Service Commission of Yazoo City), and the Municipal Energy Agency of Mississippi.

finances and penalties levied against *Entergy* (rather than SPP) resulting from SPP's failure to conform. Entergy agreed to L-M Municipals' proposed change, and the Commission conditioned its acceptance of the Indemnification Filing on Entergy making the proposed change to section 6.3.³

4. SPP filed a request for rehearing of the Indemnification Order, challenging the Commission's condition that Entergy make L-M Municipals' proposed change to section 6.3. SPP stated that it had interpreted the filed indemnification language as reflecting Entergy's intentions. SPP further stated that it had reached a tentative agreement with Entergy on further amendments to section 6.3 to more accurately reflect the parties' intent. Nevertheless, SPP filed the request for rehearing of the Indemnification Order as a precaution, and stated that it would withdraw the request if Entergy and SPP agreed on indemnification provisions and the Commission approved them.

5. Entergy filed a request for an extension of time to comply with the Commission's condition in the Identification Order to revise section 6.3. Entergy's request echoed the ICT's statement that the parties had reached an agreement on the indemnification provisions. Entergy stated that it planned to make a new filing under section 205 of the Federal Power Act⁴ in the near future. The Commission granted the extension.

II. Notice of Filing

6. Notice of Entergy's filing in Docket No. ER08-1075-000 was published in the *Federal Register*, 73 Fed. Reg. 34,285 (2008), with comments, interventions, and protests due on or before June 26, 2008. The Louisiana Public Service Commission filed a notice of intervention.

III. Discussion

A. Procedural Matters

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

³ *Entergy Services, Inc.*, 123 FERC ¶ 61,043, at P 20, n.12 (2008) (Indemnification Order).

⁴ 16 U.S.C. § 824d (2006).

B. Substantive Matters

8. Entergy now submits for filing proposed amendments to the ICT Agreement that it states was first executed on November 17, 2006. It states that the proposed amendments withdraw section 6.3 completely from the ICT Agreement and make certain ministerial corrections to the ICT Agreement that are ancillary to that withdrawal. The proposed amendments are necessary to reverse changes that had been made to the ICT Agreement that did not represent the intent of the parties. Entergy notes that the ICT agrees with these amendments.

9. Entergy requests an April 15, 2008 effective date on behalf of itself and the ICT, arguing that the Commission's acceptance of the proposed amendments is not a matter of retroactive approval, but rather reflects the position that Entergy and the ICT actually occupied as of April 15, 2008. Entergy states this effective date is reasonable because the proposed amendments make no substantive changes, but reverse revisions that had been made to the ICT Agreement due to the disagreement as to the intent and purpose of the proposed language.⁵

10. We accept Entergy's proposed amendment of the ICT Agreement. The proposed amendment eliminates the indemnification language that SPP and Entergy now agree never accurately reflected both parties' intent. Moreover, because the proposed amendment simply reestablishes the position that the parties would otherwise have occupied had Entergy's Indemnification Filing not included section 6.3, we find good cause⁶ to grant Entergy's request for waiver of the prior notice requirement and accept its filing, effective April 15, 2008.

11. Finally, we dismiss as moot SPP's request for rehearing in Docket No. ER08-572-001. The request is moot because, by accepting Entergy's proposed amendments to the ICT Agreement in Docket ER08-1075-000, the amended section 6.3 has been eliminated, effective April 15, 2008. Accordingly, the Commission's condition in the Indemnification Order to replace "SPP" with "Entergy" no longer applies.

⁵ In the alternative, Entergy requests a June 6, 2008 effective date, one day after the date of the filing.

⁶ See *Central Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

The Commission orders:

(A) Entergy's proposed amendment is hereby accepted for filing, as designated, effective April 15, 2008, as requested.

(B) SPP's request for rehearing is hereby dismissed, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.