

129 FERC ¶ 61,219
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Entergy Services, Inc.

Docket No. OA08-59-002

ORDER DENYING REHEARING

(Issued December 11, 2009)

1. The Commission issued an order¹ accepting, subject to modification, Entergy's transmission planning process filed in compliance with Order No. 890.² Lafayette Utilities System, the Louisiana Energy and Power Authority, the Municipal Energy Agency of Mississippi and the Mississippi Delta Energy Agency (collectively, L-M Municipals) and Union Power Partners (Union Power) separately filed requests for rehearing. In this order, we deny both rehearing requests.

I. Background

2. In Order No. 890, the Commission reformed the *pro forma* open access transmission tariff (OATT) to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a non-discriminatory basis. One of the Commission's primary reforms was designed to address the lack of specificity regarding how customers and other stakeholders should be treated in the transmission planning process. To remedy the potential for undue discrimination in planning activities, the Commission directed all transmission providers to develop a transmission planning process that satisfies nine principles and to clearly describe that process in a new attachment to their OATT (Attachment K).

¹ *Entergy Services, Inc.*, 124 FERC ¶ 61,268 (2008) (Entergy Planning Order).

² *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

3. The Commission in Order No. 890 directed each transmission provider to address in its Attachment K planning process the following nine planning principles: (1) coordination; (2) openness; (3) transparency; (4) information exchange; (5) comparability;³ (6) dispute resolution; (7) regional participation; (8) economic planning studies; and (9) cost allocation for new projects. The Commission also directed transmission providers to address the recovery of planning-related costs. The Commission explained that it adopted a principles-based reform to allow for flexibility in implementation of and to build on transmission planning efforts and processes already underway in many regions of the country. The Commission also explained, however, that although Order No. 890 allows for flexibility, each transmission provider has a clear obligation to address each of the nine principles in its transmission planning process, and that all of these principles must be fully addressed in the tariff language filed with the Commission. The Commission emphasized that tariff rules, as supplemented with web-posted business practices when appropriate,⁴ must be specific and clear to facilitate compliance by transmission providers and place customers on notice of their rights and obligations.

4. On December 7, 2007, in Docket No. OA08-59-000, Entergy submitted a new Attachment K to its OATT in compliance with Order No. 890's transmission planning requirements. Attachment K outlined the process that Entergy and its Independent Coordinator of Transmission (ICT)⁵ will use to develop Entergy's transmission plans.⁶ In the Entergy Planning Order, the Commission accepted the compliance filing setting forth Entergy's planning process, as modified, to be effective December 7, 2007. The

³ In Order No. 890-A, the Commission clarified that the comparability principle requires each transmission provider to identify, as part of its amended Attachment K planning process, how it will treat resources on a comparable basis and, therefore, how it will determine comparability for purposes of transmission planning. *See* Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 216.

⁴ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1649-55.

⁵ Southwest Power Pool, Inc. (SPP) acts as Entergy's ICT.

⁶ The process consists of two plans that both span three-year horizons. The first is the Base Plan, which is used for cost allocation on the Entergy system and is developed by the ICT. The second is the Construction Plan, which is the list of projects that will actually be built, and is developed by Entergy. Both plans are vetted through the stakeholder working group, and regional and inter-regional opportunities are included in the respective plans as they are identified. Additional background information and a detailed description of Entergy's planning process are provided in the Entergy Planning Order.

Commission found that Entergy had complied with the Order No. 890 requirements related to information exchange, dispute resolution, and recovery of planning costs. However, the Commission directed Entergy to file, in a compliance filing due within 90 days of the date of the order, revisions to Entergy's Attachment K to address requirements related to the principles of coordination, openness, transparency, comparability, regional participation, economic planning studies, and cost allocation.⁷

II. Discussion

A. Cost Allocation

1. Entergy Planning Order

5. In the Entergy Planning Order, the Commission found that Entergy's proposed Attachment K, which applied its existing rate structures under Attachment T, complied with the cost allocation principle set forth in Order No. 890, with the exception of the cost allocation methodology in Entergy's regional and inter-regional planning processes.⁸ Entergy proposed applying its existing Attachment T (Recovery of New Facilities Costs) rate structures to all upgrades on the Entergy system identified in the transmission planning process. Under Attachment T, reliability upgrades, known as Base Plan Upgrades, are rolled into base rates, and economic upgrades, known as Supplemental Upgrades, are directly assigned. The Commission had already approved the cost allocation methodologies in Attachment T for upgrades on Entergy's system identified through the joint Entergy-ICT planning process.⁹ In Order No. 890, the Commission stated that it did not intend to modify existing cost-allocation mechanisms, but would give guidance for projects that did not fit under the existing rate structure, such as regional projects or economic projects identified through the study process.¹⁰

⁷ Entergy subsequently submitted a revised compliance filing on December 17, 2008, in Docket No. OA08-59-003, and a regional planning process on February 9, 2009, in Docket No. OA08-59-004. The Commission accepted these filings, as modified, subject to a further compliance filing. *See Entergy Services, Inc.*, 127 FERC ¶ 61,272 (2009) (June 18 Order).

⁸ Entergy Planning Order, 124 FERC ¶ 61,268 at P 151. However, the Commission directed Entergy to provide additional detail regarding cost allocation for projects developed through the regional and inter-regional planning processes. *Id.* P 152.

⁹ *Entergy Services, Inc.*, 115 FERC ¶ 61,095 (2006).

¹⁰ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 558.

2. Request for Rehearing

6. Union Power and L-M Municipals argue that the Commission erred in finding that Entergy's proposed cost allocation methodology complies with the cost allocation principle set forth in Order No. 890. They note that the Commission identified three factors to consider in determining whether a proposal satisfies the cost allocation principle: (1) whether the proposal fairly assigns costs among participants; (2) whether the proposal provides adequate incentives to construct new transmission; and (3) whether the proposal is supported by state authorities and participants across the region.¹¹ They assert that the Commission failed to consider these principles, and that Entergy's existing cost allocation methodology does not satisfy them. Moreover, Union Power and L-M Municipals assert that the Commission's acceptance of Entergy's existing methodology constitutes an exemption from evaluation under the cost allocation principle in Order No. 890. L-M Municipals and Union Power request that the Commission direct Entergy to develop a cost allocation methodology consistent with the principles set forth in Order No. 890.

7. Further, L-M Municipals argue that Entergy does not actually have an existing cost allocation methodology in effect, so the Commission need not defer to Entergy's Attachment T. L-M Municipals contend that the Commission has barred Entergy from implementing its direct assignment cost allocation approach until Entergy has filed and placed into effect a method for allocating short-term point-to-point transmission service revenues to parties that fund the upgrade of the system. L-M Municipals argue that since Entergy has yet to fulfill that condition, any revisions to its Attachment K cost allocation proposal would not require modifying a mechanism that now is being used to bill under existing rate structures. To the extent the Commission relied on the premise that evaluating Entergy's proposal would require modification of existing rate structures, L-M Municipals argue that the Commission's decision to forgo the evaluation of Entergy's cost allocation proposal against the three cost allocation factors was in error.

3. Determination

8. We deny Union Power's and L-M Municipals' requests for rehearing. As noted above, the Order No. 890 cost allocation principle was not intended to modify existing mechanisms to allocate the costs for projects that are constructed by a single transmission owner and billed under existing rate structures, but was intended to apply to projects that do not fit under the existing cost allocation structure.¹²

¹¹ Entergy Planning Order, 124 FERC ¶ 61,268 at P 138 (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 557-61).

¹² Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 558.

9. Projects on Entergy's system are covered by the cost allocation methodology set forth in Attachment T, which was incorporated into Entergy's Attachment K, and provides for Base Plan Upgrades (reliability) and Supplemental Upgrades (economic). As such, all projects on Entergy's system fit under existing rate mechanisms.¹³ For this reason, we deny L-M Municipals' and Union Power's requests for rehearing.

10. We also find unavailing L-M Municipals' argument that Entergy's provisions in Attachment T do not constitute an existing cost allocation methodology. The Commission has accepted Entergy's cost allocation methodology; however, Entergy cannot implement this methodology until it develops the necessary software. Although Entergy is not yet permitted to implement the change in payment obligations, the provisions in Attachment T have been accepted by the Commission.¹⁴

B. Three-Year Base Plan Horizon

1. Entergy Planning Order

11. In the Entergy Planning Order, the Commission rejected arguments by Union Power that Entergy should develop a planning process with a ten-year horizon that distinguishes between reliability upgrades and economic upgrades during that period. Union Power further argued that, under the proposed Attachment K, Entergy would treat any upgrade after the three-year period as an economic upgrade in an attempt to avoid the rolling-in of costs for long-term facilities needed for reliability and requiring direct assignment of those costs. The Commission stated in the Entergy Planning Order that, to the extent stakeholders believe that the scope of studies and transmission plans performed pursuant to Entergy's Attachment K do not comply with NERC reliability standards, stakeholders should address those concerns in the first instance through NERC's compliance procedures.

¹³ In the June 18 Order, the Commission accepted Entergy's proposals to identify the methodologies that will be used for allocating costs for projects developed in response to its regional and inter-regional planning processes. Under both the Regional Planning Process with SPP and the Southeast Inter-Regional Participation Process (SIRPP), if the parties do not agree to a different cost allocation, the cost of any upgrade will be allocated to the transmission owner that constructs that upgrade. The transmission owner will then allocate the costs of the upgrade pursuant to its own OATT. For Entergy, the costs will be allocated to Entergy's customers in accordance with Attachment T. June 18 Order, 127 FERC ¶ 61,272, at P 163 (2009).

¹⁴ *Entergy Services, Inc.*, 119 FERC ¶ 61,187 at P 41 (2007), *order on reh'g*, 122 FERC ¶ 61,216 (2008).

2. Request for Rehearing

12. Union Power and L-M Municipals again argue that the Commission should not allow Entergy to limit its Base Plan to a three-year planning horizon. L-M Municipals argue that Entergy's use of a three-year planning horizon allows it to allocate costs for reliability upgrades initiated more than three years in the future, the same way it allocates costs for upgrades that are purely economic in nature, that is, by directly assigning the full cost of the upgrade to the service-requesting customer. L-M Municipals argue that the Commission failed to evaluate the three-year Base Plan horizon under the Order No. 890 criteria that seek to promote adoption of cost allocation methods that are fair, provide incentives for construction, and are supported by stakeholders.

13. L-M Municipals and Union Power further argue the Commission should not have referred the matter to NERC. They state that their argument is not that Entergy is not in compliance with the NERC standards, but that Order No. 890 required Entergy's Attachment K to comport with NERC transmission planning standards, and that Entergy's Attachment K is not in compliance with Order No. 890. Moreover, they argue that NERC focuses on reliability standards, not the cost allocation methods associated with transmission upgrades to comply with those reliability standards. Thus, NERC is unlikely to involve itself in disputes over Entergy's Base Plan, which, as noted above, is used for cost allocation purposes. Even if NERC compliance were pertinent, L-M Municipals argue that NERC cannot be expected to address whether Entergy's Attachment K comports with NERC criteria.

3. Determination

14. We deny as speculative the requests for rehearing that Entergy's use of a three-year planning horizon allows it to allocate costs for reliability upgrades initiated more than three years in the future, the same way it allocates costs for upgrades that are purely economic in nature, that is, by directly assigning the full cost of the upgrade to the service-requesting customer. If Union Power, L-M Municipals or any other stakeholder believes that Entergy is actually allocating costs for reliability upgrades in a way that conflicts with its OATT, either by assigning such costs directly or otherwise, they may seek to resolve the issue through the dispute resolution process found in Entergy's Attachment K or file a complaint making a specific allegation with the Commission under section 206 of the Federal Power Act.¹⁵

15. We also deny the requests for rehearing that Entergy's Attachment K is not in compliance with Order No. 890 because it does not comport with NERC transmission planning standards, as the requests are beyond the scope of Order No. 890 and this

¹⁵ 16 U.S.C. § 824e (2006).

proceeding. NERC requires that assessments be performed on a six-year or greater time horizon, but the Commission does not have the same requirement. Nevertheless, there is no evidence that Entergy has failed to comply with this requirement. The Base Plan is only part of the assessment performed on Entergy's system, and is not the sole basis for compliance with NERC standards. Entergy and the ICT evaluate the transmission system at least annually for: (1) the near-term planning horizon, covering years one through five; and (2) the longer-term planning horizon, covering years six through ten.

C. Base Case Modeling Issues

1. Entergy Planning Order

16. The Commission declined to direct Entergy in the Entergy Planning Order to adopt the alternative Base Case modeling proposals that Union Power and Suez Energy North America presented. The Commission stated that these proposals were better suited for resolution, in the first instance, through the stakeholder process. Unresolved concerns could be dealt with through Entergy's dispute resolution process or through the filing of a complaint with the Commission.

2. Request for Rehearing

17. Union Power argues that the Base Case modeling issues had already been vetted through the stakeholder process, but that Entergy filed a version of the proposed Attachment K that it alone believes satisfies the requirements of Attachment K, and the Base Case modeling issues were thus ripe for review in this proceeding. It requests that the Commission correct this error by directly addressing the Base Case modeling issues on their merits and directing Entergy to revise its Attachment K accordingly.

3. Determination

18. We will deny rehearing on this matter. Contrary to Union Power's contention that the ICT stakeholder process has run its course, the ICT reported that it will continue working with Entergy and the stakeholders towards a solution.¹⁶ Accordingly, because this issue will continue to be vetted in the long-term transmission issues and near-term transmission issues working group meetings, we deny Union Power's request for rehearing on this issue.

¹⁶ See, e.g., Southwest Power Pool, Inc., Quarterly Performance Report, Docket No. ER05-1065-000, at §§ 3.2.7-3.2.10 (filed June 30, 2009). We also note that Base Case modeling issues are currently before the Commission in Docket Nos. ER05-1065-011 and OA07-32-007.

The Commission orders:

The requests for rehearing of the Entergy Planning Order are hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.