

133 FERC ¶ 61,130  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
John R. Norris, and Cheryl A. LaFleur.

Entergy Services, Inc.

Docket No. OA08-59-008

ORDER ACCEPTING COMPLIANCE FILING

(Issued November 10, 2010)

1. On June 1, 2010, Entergy Services, Inc. (Entergy) submitted a revised Attachment K (Transmission Planning Process) to its Open Access Transmission Tariff (OATT), as required by the Commission in its March 31, 2010 order.<sup>1</sup> In this order, we will accept Entergy's filing.

**I. Background**

2. In Order No. 890,<sup>2</sup> the Commission reformed the *pro forma* 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).

3. The Commission in Order No. 890 directed each transmission provider to address in its Attachment K planning process the following nine planning principles:

---

<sup>1</sup> *Entergy Services, Inc.*, 130 FERC ¶ 61,264 (2010) (March 31, 2010 Order).

<sup>2</sup> *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).

(1) coordination; (2) openness; (3) transparency; (4) information exchange; (5) comparability;<sup>3</sup> (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,<sup>4</sup> 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, Entergy submitted a new Attachment K to its OATT in compliance with Order No. 890's transmission planning requirements.<sup>5</sup> On September 18, 2008, in the Entergy Planning Order,<sup>6</sup> the Commission accepted the compliance filing, as modified, to be effective December 7, 2007. The 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.

5. On December 17, 2008, Entergy submitted a revised Attachment K to its OATT, as required by the Commission in the Entergy Planning Order. On February 6, 2009, Entergy submitted an additional compliance filing to address the Commission's requirements in the Entergy Planning Order related to regional participation. In the

---

<sup>3</sup> In Order No. 890-A, the Commission clarified that the comparability principle requires each transmission provider to identify, as part of its 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.

<sup>4</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1649-655.

<sup>5</sup> Entergy's Attachment K outlines the process that Entergy and its Independent Coordinator of Transmission (ICT) will use to develop Entergy's transmission plans. Southwest Power Pool, Inc. (SPP) acts as Entergy's ICT.

<sup>6</sup> *Entergy Services, Inc.*, 124 FERC ¶ 61,268 (2008) (Entergy Planning Order).

June 18, 2009 order, the Commission accepted Entergy's compliance filings, as modified.<sup>7</sup> The Commission found that Entergy had complied with the Order No. 890 requirements related to openness and cost allocation. However, the Commission directed Entergy to file, in a compliance filing due within 60 days of the date of the order, revisions to Entergy's Attachment K to address requirements related to the principles of coordination, transparency, comparability, regional participation, and economic planning studies.

6. On August 17, 2009, Entergy submitted a revised Attachment K to its OATT, as directed by the Commission in the June 18, 2009 Order. In the March 31, 2010 Order, the Commission accepted Entergy's compliance filing, as modified. The Commission found that Entergy had complied with the Order No. 890 requirements related to coordination, transparency, and comparability. However, the Commission directed Entergy to file, in a compliance filing due within 60 days of the date of the order, revisions to Entergy's Attachment K to address requirements related to the principles of regional participation and economic planning studies. This fourth compliance filing, submitted on June 1, 2010, is the subject of the instant proceeding.

7. Entergy's transmission planning process consists of two plans. 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 a list of projects that will actually be built, and is developed by Entergy. Both plans receive input from the stakeholder working group<sup>8</sup> and, as regional and inter-regional opportunities are identified, they will be included in the respective plans.

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

8. Notice of Entergy's filing in Docket No. OA08-59-008 was published in the *Federal Register*, 75 Fed. Reg. 33,291 (2010), with interventions and protests due on or before June 22, 2010. Lafayette Utilities System, Louisiana Energy and Power Authority, Municipal Energy Agency of Mississippi, Union Power Partners, L.P., and Mississippi Delta Energy Agency and its members, the Clarksdale Public Utilities Commission of the City of Clarksdale, Mississippi and the Public Service Commission of the City of Yazoo City, Mississippi, (collectively, Joint Commenters), which are already parties to this proceeding, filed a joint protest. Entergy filed an answer to the protest.

---

<sup>7</sup> *Entergy Services, Inc.*, 127 FERC ¶ 61,272 (2009) (June 18, 2009 Order).

<sup>8</sup> The stakeholder working group is also known as the Long-Term Transmission Issues Working Group.

### **III. Discussion**

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

9. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Entergy's answer because it has provided information that assisted us in our decision-making process.

#### **B. Entergy's June 1, 2010 Compliance Filing**

##### **1. Regional Participation and Economic Planning Studies**

10. We will accept Entergy's June 1, 2010 filing as being in compliance with the March 31, 2010 Order. With respect to regional participation, in the March 31, 2010 Order the Commission accepted Entergy's agreement to revise the definitions of "Approved Expansion Plan" in section 2.1 and "Regional Stakeholder Meeting" in section 2.17 and directed Entergy to amend its Attachment K accordingly.<sup>9</sup> The Commission also required Entergy to add itself to the list of parties, set forth in section 13.1.1.1, that participate in regional planning.<sup>10</sup> Entergy has complied with the March 31, 2010 Order by making the required changes to its Attachment K. We find that, as revised, Entergy's Attachment K satisfies Order No. 890's regional participation principle.

11. With respect to economic planning studies, the March 31, 2010 Order required Entergy to revise section 14.5.6.3 to clearly state that the criteria used to perform customer-requested economic studies shall also include the criteria specified in sections 14.3.1 and 14.3.2.<sup>11</sup> Entergy has complied with the March 31, 2010 Order by revising Attachment K as required. We find that, as revised, Entergy's Attachment K satisfies Order No. 890's economic planning studies principle.

##### **2. Confidentiality Agreement**

12. In its June 1, 2010 filing, Entergy also deleted Appendix 8 to Attachment K, which includes a confidentiality agreement applicable to Critical Energy Infrastructure Information (CEII) related to planning models and data developed in accordance with the

---

<sup>9</sup> March 31, 2010 Order, 130 FERC ¶ 61,264 at P 31.

<sup>10</sup> *Id.* P 33.

<sup>11</sup> *Id.* P 53.

Regional Planning Process.<sup>12</sup> Although the Commission did not require the deletion of Appendix 8 in the March 31, 2010 Order, Entergy points out that, in the June 18, 2009 Order, the Commission did require Entergy to eliminate the Attachment K provisions that required a stakeholder in the Regional Planning Process to demonstrate that it had been authorized by the Commission to receive CEII before the stakeholder could receive such information.<sup>13</sup> Entergy argues that, in complying with the June 18, 2009 Order, it had to develop new procedures to ensure that parties seeking CEII had been properly vetted. Entergy states that it proposed to post such procedures and the applicable confidentiality agreements on its Open Access Same-Time Information System (OASIS) rather than in its OATT.<sup>14</sup> Entergy notes further that, in its answer in the proceeding that led to the March 31, 2010 Order, Entergy stated that Appendix 8 to Attachment K should have been deleted because a new confidentiality agreement had been posted on its OASIS, and that it would delete the Appendix in a subsequent compliance filing.<sup>15</sup>

13. Entergy acknowledges that the Commission did not address the statement regarding the proposed deletion of Appendix 8 in the March 31, 2010 Order, but claims that the Commission agreed with its approach. Thus, Entergy states that deleting Appendix 8 is consistent with the March 31, 2010 Order and the Commission's statements regarding the filing of confidentiality provisions.

**a. Protest**

14. Joint Commenters argue that Entergy's deletion of Appendix 8 exceeds the scope of the March 31, 2010 Order. Joint Commenters also assert that it is not obvious that the Commission intended for Entergy to remove the proposed confidentiality agreement from the OATT. Consistent with their argument that Entergy should have followed the

---

<sup>12</sup> The Regional Planning Process is the planning process that Entergy conducts with SPP and any other transmission owners that participate in the Regional Planning Process pursuant to coordination agreements with Entergy. *See* Attachment K at section 13.1.

<sup>13</sup> Entergy June 1, 2010 Transmittal Letter at 3 (citing June 18, 2009 Order, 127 FERC ¶ 61,272 at P 149-54).

<sup>14</sup> *Id.* (citing Entergy August 17, 2009 Transmittal Letter at 7). Entergy states in its transmittal letter and response that it will post the confidentiality agreement on OASIS. However, Entergy's proposed tariff language states that it will post the confidentiality agreement on its website. Consistent with Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1652, we interpret Entergy's filings to mean that it will post the confidentiality agreement on its website and post a link to that agreement on OASIS.

<sup>15</sup> Entergy June 1, 2010 Transmittal Letter at 3 (citing Entergy September 23, 2009 Answer at 3, n. 2).

Commission's express directives in the March 31, 2010 Order, Joint Commenters contend that the Commission merely intended for Entergy to modify the confidentiality agreement in Entergy's OATT to remove the CEII-approval agreement, not to remove the confidentiality agreement from the OATT. As Joint Commenters read the March 31, 2010 Order, the Commission accepted the view that a new section 205 filing would not be required *while the new procedures were being developed*.<sup>16</sup>

15. Joint Commenters further argue that the terms and conditions governing stakeholder access to planning information should be set forth in the OATT rather than in unfiled business procedures. In addition, Joint Commenters assert that Entergy should be directed to file a replacement confidentiality agreement under section 205 if such an agreement is developed through the stakeholder process.

**b. Answer**

16. Entergy answers that the Commission will approve a compliance filing that is consistent with the intent of the original order, even when it is not consistent with the literal words of the order.<sup>17</sup> Further, Entergy argues that the Commission intended to permit Entergy to post its CEII procedures on OASIS rather than in its OATT, citing the Commission's acceptance in the March 31, 2010 Order of Entergy's proposals to delete Attachment K references to Appendix 8 and to add language referring to a confidentiality agreement posted on OASIS. Entergy reiterates that, in a filing prior to the issuance of the March 31, 2010 Order, Entergy stated that it would delete Appendix 8 in a compliance filing.

17. Entergy disagrees with Joint Commenters' assertion that the Commission's only statement in the March 31, 2010 Order that related to the confidentiality agreement was to agree that Entergy could wait until it completed the stakeholder process before filing its new procedures under section 205. Entergy argues that the Commission also found in the March 31, 2010 Order that Entergy need not include the confidentiality provisions applicable to CEII in the OATT at that time and that deleting Appendix 8 is consistent with that finding.

**c. Commission Determination**

18. We will accept Entergy's proposal to delete Appendix 8, the Confidentiality Agreement for CEII related to planning models and data developed in accordance with

---

<sup>16</sup> Joint Commenters June 22, 2010 Protest at 3 (citing March 31, 2010 Order, 130 FERC ¶ 61,264 at P 57).

<sup>17</sup> Entergy July 7, 2010 Answer at 3 (citing *California Indep. Sys. Operator Corp.*, 104 FERC ¶ 61,128, at P 8 (2003)).

the Regional Planning Process, from its Attachment K. The Commission in the March 31, 2010 Order specifically accepted, over protestors' objection, Entergy's proposal to modify section 13.1.5.9.6.3 to state that stakeholders in the Regional Planning Process can obtain CEII data by following the confidentiality procedures posted on Entergy's website.<sup>18</sup> The Commission was persuaded by Entergy's explanation that the changes the Commission had required Entergy to make to the process for obtaining CEII data necessitated the development of new processes for access to CEII, and that flexibility would be needed as those processes were developed.<sup>19</sup>

19. Retaining Appendix 8 in the OATT would conflict with the Commission's acceptance of language in the Entergy OATT stating that the confidentiality procedures would be posted on Entergy's website. In addition, deletion of Appendix 8 will avoid any confusion that might result from two possibly varying confidentiality agreements in the OATT and on website. Thus, we find that deletion of the confidentiality agreement in Appendix 8 is in accord with the Commission's conclusions in the March 31, 2010 Order.

20. Finally, we disagree with Joint Commenters' argument that that the confidentiality agreement should be set forth in the OATT rather than in unfiled business procedures. Consistent with Order No. 890, the Commission accepts Entergy's proposal to post its confidentiality agreement on its website to supplement its tariff rules.<sup>20</sup>

---

<sup>18</sup> Section 13.1.5.9.6.3 of Attachment K states:

A Regional Participant may be certified to obtain CEII data used in the Regional Planning Process by following the confidentiality procedures posted on the Transmission Provider's website (e.g., making a formal request for CEII, authorizing background checks, executing the CEII Confidentiality Agreement).

<sup>19</sup> March 31, 2010 Order, 130 FERC ¶ 61,264 at P 57.

<sup>20</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1649-655. Other transmission providers have also put their CEII confidentiality agreement related to regional planning processes on their regional websites. *See, e.g., Southern Companies*, 132 FERC ¶ 61,091, at P 16 and n.9 (2010) (citing CAISO Tariff § 20.4(e)(i)). Entergy will retain in its tariff Appendix 3, the confidentiality agreement for CEII related to planning models and data developed in accordance with the ICT and Entergy's planning processes under Entergy's Attachment K (i.e., the Base Plan and the Construction Plan, discussed above). *See Entergy Services, Inc.*, OA08-59-007 Compliance Filing (filed Aug. 17, 2009) (Appendix 3, Third Substitute Original Sheet No. 326-XX – YY).

The Commission orders:

Entergy's compliance filing is hereby accepted, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.