

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 No. ER06-1555-001

ORDER GRANTING CLARIFICATION

(Issued April 3, 2007)

1. On December 28, 2006, Lafayette Utilities System (Lafayette) filed a motion for clarification and conditional request for rehearing of the Commission's November 28, 2006 Order<sup>1</sup> accepting and suspending an executed Network Integration Transmission Service Agreement, establishing hearing and settlement judge procedures and accepting a Notice of Cancellation. Specifically, Lafayette seeks clarification of the portion of the November 28 Order addressing credits for customer-owned facilities. As discussed below, the Commission will grant the motion for clarification.

**Background**

2. The underlying rollover transaction is described in detail in the November 28 Order. Briefly, on September 29, 2006, Entergy Services, Inc. (Entergy) filed an executed Network Integration Transmission Service Agreement (NITSA) between Entergy and Cleco Power LLC (CLECO). Entergy also filed a Notice of Cancellation on behalf of Entergy Louisiana, LLC for a coordination agreement on file with the Commission as Rate Schedule No. 11 (Coordination Agreement). The NITSA established the rates, terms and conditions of CLECO's receipt of network service under Entergy's Open Access Transmission Tariff (OATT). It also identified CLECO's designated network resources and network loads. The NITSA is identical to the *pro forma* network service agreement included in Entergy's OATT, except for the addition of section 5 and Attachment B to reflect CLECO's eligibility for transmission credits for certain transmission facilities. All other provisions of the *pro forma* network service agreement remained unchanged. The NITSA was designed to supersede and replace the Coordination Agreement.

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<sup>1</sup> *Entergy Services, Inc.*, 117 FERC ¶ 61,236 (2006) (November 28 Order).

3. Lafayette opposed CLECO's entitlement to receive credits for certain transmission facilities that CLECO owns. Lafayette argued that there was no proof or indication that the CLECO facilities were integrated with the Entergy transmission systems, which is required under section 30.9 of Entergy's OATT. Lafayette stated that Entergy provided no proof that CLECO's facilities giving rise to the credit were integrated with Entergy's transmission system, as the Commission has applied that requirement in decisions applying section 30.9 of Entergy's OATT. Further, Lafayette noted the absence of proof that the facilities designated as eligible for the credit satisfy the test articulated in Opinion No. 430 for integration.<sup>2</sup> It questioned whether Entergy applied the same integration standard to CLECO that it applied to Lafayette in Opinion No. 430.

4. The Commission, in the November 28 Order, accepted the NITSA for filing, suspended it for a nominal period, to become effective December 1, 2006, as requested, subject to refund. In addition, the Commission instituted hearing and settlement judge procedures to address the issue of whether Entergy properly allowed the rollover of the Coordination Agreement without performing transmission studies, including whether Entergy included new receipt and delivery points. Relevant to Lafayette's request for clarification, the Commission rejected arguments by Lafayette concerning credits for CLECO transmission facilities and found that the credits were a continuation of the Facilities Adjustment Payments under the Coordination Agreement and the "facilities meet the same standard that was applied to Lafayette where its facilities were denied credits in Opinion No. 430."<sup>3</sup> Moreover, the Commission explained that "[u]nlike the facts underlying Opinion No. 430, where 'customer-owned facilities...*do not provide any support* to the Entergy system,' Entergy needs CLECO's facilities to reliably serve CLECO's load, Entergy's load and the load of other Entergy transmission customers."<sup>4</sup> Finally, the Commission found that Entergy provided proper notice of cancellation to CLECO and accepted the cancellation of the Coordination Agreement on file as FERC Rate Schedule No. 11.

5. Lafayette asks the Commission to clarify that it did not intend to foreclose Lafayette from demonstrating its eligibility to receive credits for its transmission facilities, based on updated facts and conditions, in another proceeding. It states that if the Commission declines to provide that clarification, it seeks rehearing.

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<sup>2</sup> Opinion No. 430, *Entergy Serv., Inc.*, 85 FERC ¶ 61,163 (1998), *reh'g denied*, 91 FERC ¶ 61,153 (2000) (Opinion No. 430).

<sup>3</sup> November 28 Order, 117 FERC ¶ 61,236 at P 43.

<sup>4</sup> *Id.* (footnotes omitted) (emphasis in original).

6. Lafayette explains that it is concerned that the November 28 Order forecloses Lafayette from seeking credits for its transmission facilities now or in the future. Lafayette expresses concern that the Commission's citation for Opinion No. 430, and its use of present-tense quotation from that opinion ("Unlike the facts underlying Opinion No. 430, where 'the customer-owned facilities...*do not provide any support* to the Entergy system'..."), could be read to suggest that it is the Commission's view that, even today, Lafayette's transmission facilities would not satisfy the integration standard in section 30.9 of the OATT.

7. Lafayette argues that if that was the Commission's intent, such a finding would not be supported by substantial evidence and would be arbitrary, capricious, an abuse of discretion and unlawful. Further, it asserts that the Commission's own statement that eligibility for credits must be examined on a case-by-case basis implies that the facts of each individual request must be examined based on the circumstances that exist at that time. It argues that a Commission finding that a customer's facilities that are not integrated based on one set of circumstances does not forever foreclose the customer from obtaining section 30.9 credits if the pertinent circumstances change. It adds that a finding by the Commission that Lafayette's facilities were not integrated in 1996 has no bearing beyond the specific factual circumstances presented in that record.

8. Lafayette requests that the Commission: (1) state that the November 28 Order does not purport to render a finding on whether Lafayette's transmission facilities now would satisfy the integration standard based on current factual circumstances and; (2) clarify that Lafayette remains free to seek section 30.9 credits for its transmission facilities in any future proceeding in which that issue is properly raised.

### **Discussion**

9. We will grant the clarification requested by Lafayette. In the November 28 Order the Commission made reference to the finding in Opinion No. 430 only in distinguishing the facts of this case from the "facts underlying Opinion No. 430, where 'the customer-owned facilities . . . *do not provide any support* to the Entergy system.'" Nothing more was intended. Indeed, as the Commission also pointed out in the November 28 Order, the Commission addresses "issues of transmission facility credits on a case-by-case basis."<sup>5</sup> The issue of Lafayette's eligibility for customer-owned transmission credits was not before the Commission in the November 28 Order, and the Commission made no findings with respect to Lafayette. Thus, we clarify that the November 28 Order does

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<sup>5</sup> Citing *E. Texas. Elec. Coop., Inc. v. Cent. & Southwestern Serv., Inc.*, 114 FERC ¶ 61,027, at P 28 (2006).

not render a finding on Lafayette's transmission facilities in any respect, including whether or not Lafayette's transmission facilities would qualify for customer-owned transmission credits based on facts different from those before the Commission in Opinion No. 430. In this regard, we also clarify that Lafayette is free to pursue customer-owned transmission credits in a future proceeding in which the issue is properly raised.

The Commission orders:

Clarification of the November 28 Order is hereby granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Philis J. Posey,  
Acting Secretary.