

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. ER07-406-000
ER07-406-001

ORDER CONDITIONALLY ACCEPTING NETWORK OPERATING AGREEMENT

(Issued April 13, 2007)

1. In this order, we will conditionally accept an executed Network Operating Agreement (NOA) between Entergy Services, Inc. (Entergy)¹ and Cleco Power LLC (Cleco), to become effective December 1, 2006, as requested, subject to the outcome of the proceeding in Docket No. ER06-1555-000.

Background

2. Louisiana Power & Light Company (predecessor to ELL) and Central Louisiana Electric Company, Inc. (now Cleco) originally entered into Rate Schedule No. 11 on September 1, 1955. Rate Schedule No. 11 provided for the coordination of ELL's and Cleco Power's facilities in Louisiana. In particular, Rate Schedule No. 11 allowed Cleco and ELL to provide transmission and substation facilities for the use of the other party at specific rates. It also contained operational provisions to ensure operation of the Cleco Power and ELL systems in parallel.

3. Recently, Entergy and Cleco reviewed their existing agreements and decided to update their contractual relationship consistent with the Open Access Transmission Tariff (OATT). As a result, Entergy filed an executed Network Integration Transmission

¹ Acting as agent for the Entergy Operating Companies, which include: Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, LLC (ELL), Entergy Mississippi, Inc., and Entergy New Orleans, Inc.

Service Agreement (NITSA) between it and Cleco with the Commission on September 29, 2006 in Docket No. ER06-1555-000. The NITSA was designed to supersede and replace Rate Schedule No. 11. A Notice of Cancellation of Rate Schedule No. 11 was filed with the NITSA. The Commission accepted the Notice of Cancellation and accepted and suspended the NITSA, to become effective December 1, 2006, as requested, subject to refund.² In addition, the Commission established hearing and settlement judge procedures to address whether Entergy properly allowed the rollover of Rate Schedule No. 11 into the NITSA without performing any transmission studies, including whether Entergy included new receipt and delivery points.

4. Although the NITSA was filed with the Commission, Entergy states that the parties continued to negotiate the corresponding NOA until recently. On January 3, 2007, Entergy filed, in this proceeding, an unexecuted, nonconforming NOA at Cleco's request in order for the Commission to resolve the parties' dispute concerning the NOA.

5. Based on continued discussions between the parties, Entergy filed a revised executed version of the NOA on February 14, 2007. Entergy explains that while the revisions in this filing are relatively minor, it is refiling the entire NOA for administrative ease and in light of the fact that the NOA has now been executed by both parties. Entergy further explains that the parties have agreed to revise section 7.7 of the NOA to indicate that, unless otherwise agreed, they will provide each other 30 days notice before beginning any maintenance work on equipment or facilities that affect metering or system reliability.

6. Entergy requests that the NOA be made effective as of December 1, 2006, the date that Cleco began taking network service on the Entergy system.

Interventions and Protests

7. Notice of Entergy's January 3, 2007 filing was published in the *Federal Register*, 72 Fed. Reg. 1718 (2007), with interventions and protests due on or before January 24, 2007. On January 17, 2007, Cleco filed a timely motion to intervene and request for extension of time to file protest. On January 23, 2007, the Commission granted an extension of time to file protests until February 7, 2007. On February 1, 2007, Cleco requested another extension of time to February 21, 2007 and the Commission granted an extension of time up to and including February 14, 2007. On February 7, 2007,

² *Entergy Services, Inc.*, 117 FERC ¶ 61,236 (2006).

Louisiana Energy and Power Authority (LEPA)³ filed a timely motion to intervene and comments. On February 13, 2007, Lafayette Utilities System (Lafayette) filed a timely motion to intervene and conditional protest. Cleco filed an answer to LEPA's comments on February 13, 2007. On February 14, 2007, Entergy filed an executed NOA and a response to LEPA's consolidation request. Notice of Entergy's February 14, 2007 filing was published in the *Federal Register*, 72 Fed. Reg. 8374 (2007), with interventions and protests due on or before March 7, 2007. None were filed.

8. Lafayette explains that it is a party to Docket No. ER06-1555-000, where it has raised issues related to the permissibility of the service rollover there proposed by Cleco and Entergy in light of, among other things, the potential adverse impacts of the rollover (as proposed) on Lafayette. Lafayette asserts that given the direct relationship between the NOA filed in the instant docket and the NITSA at issue in Docket No. ER06-1555-000, resolution of the issues raised in Docket No. ER06-1555-000 may necessitate revision of the terms and conditions of the NOA filed in this proceeding.

9. LEPA suggests that this proceeding should be consolidated with the proceeding in Docket No. ER06-1555-000, which concerns the NITSA between Entergy and Cleco. It states that these proceedings have a common origin – they are the end result of the termination of Cleco's grandfathered agreement which allowed it to use the Entergy system. It also asserts that negotiation of a NITSA and a NOA go hand-in-hand. LEPA adds that consolidation would be the most efficient use of Commission resources and would produce a more complete solution to the general issue – when are transmission studies required in connection with rollover requests – and would help ensure non-discriminatory treatment of similarly situated entities.

10. In response to LEPA's suggestion to consolidate the instant proceeding with Docket No. ER06-1555-000, Cleco and Entergy assert that there is no reason for consolidation because LEPA did not object to any provision of the NOA, nor did it raise any issues of material fact that warrant hearing and settlement judge procedures in this proceeding. Cleco maintains that the factual similarities and common origin of the two proceedings are not grounds for consolidating them here, since the common issues are not contested or set for hearing. Cleco also refers to a previous order in which the Commission rejected a "virtually identical" LEPA request⁴ and states that LEPA's

³ The LEPA member communities are: Abbeville, Alexandria, Erath, Houma, 3 Jonesville, Kaplan, Lafayette, Minden, Morgan City, Natchitoches, New Roads, Plaquemine, Rayne, St. Martinville, Vidalia, Vinton, Welsh, and Winnfield, Louisiana.

⁴ See *Cleco Power LLC*, 118 FERC ¶ 61,074, at P 32 (2007).

suggestion should be denied. Further, Entergy states that the revisions to the NOA are entirely unrelated to the issues pending in Docket No. ER06-1555-000, which fundamentally concern Cleco's rollover rights, and LEPA's suggestion should be denied.

Discussion

A. Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

12. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answers of Entergy and Cleco because they provided information that assisted us in our decision-making process.

B. Analysis

13. Our review indicates that the executed NOA appears just and reasonable, and has not been shown to be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we will accept the executed NOA to be effective December 1, 2006,⁵ as requested, but make it subject to the outcome of the proceeding in Docket No. ER06-1555-000 because the primary issue in that proceeding is whether Entergy properly allowed the rollover of the existing agreement into the NITSA. If it is determined in that proceeding that the rollover was not proper, the NITSA could be terminated and there would be no need for a NOA.

14. We will deny LEPA's suggestion to consolidate. Generally, we consolidate cases where there are common issues of law and fact for purposes of settlement, hearing, and decision.⁶ Here, LEPA has not raised any issues of material fact with respect to the proposed executed NOA. Moreover, as we are conditionally accepting Entergy's proposed executed NOA in this proceeding, there are no issues to consolidate for purposes of settlement, hearing, and decision.

⁵ See *Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106 (1992) *reh'g denied*, 61 FERC ¶ 61,089 (1992) (*Central Hudson*) (the Commission will grant waiver of notice for good cause).

⁶ See *Cal. Indep. Sys. Operator Corp.*, 109 FERC ¶ 61,391, at P 45 (2004).

The Commission orders:

Entergy's proposed executed NOA is hereby conditionally accepted for filing to become effective December 1, 2006, as requested, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.