

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. ER05-1065-005
ER05-1065-006

ORDER ON REHEARING AND COMPLIANCE FILING

(Issued May 25, 2007)

1. Several intervenors¹ have requested rehearing of the Commission's October 18, 2006 Order in this proceeding.² That order accepted with modifications Entergy Services, Inc.'s³ proposal that an Independent Coordinator of Transmission (ICT) administer transmission and interconnection service in a non-discriminatory manner. That order also accepted modifications to an agreement executed by Entergy and the Southwest Power Pool (SPP) (the ICT Agreement), under which SPP has agreed to be the ICT. The October 18 Order also directed Entergy to make a further compliance filing within 60 days of the date SPP is installed as the ICT.

¹ Bayou Cove Peaking Power LLC, Big Cajun I Peaking Power LLC, Louisiana Generating LLC, NRG Sterlington Power LLC, and NRG Power Marketing, Inc., (collectively, NRG); Plum Point Energy Associates, LLC (Plum Point); Cottonwood Energy Company, LP (Cottonwood); and the Lafayette Utilities System, the Louisiana Energy and Power Authority, the Municipal Energy Agency of Mississippi, the Mississippi Delta Energy Agency and the Arkansas Electric Cooperative Corporation, (collectively, Muni-Coop Intervenors).

² *Entergy Services, Inc.*, 117 FERC ¶ 61,055 (2006) (October 18 Order).

³ Entergy Services, Inc. filed on behalf of the Entergy Operating Companies, which are Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, LLC, Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, Entergy).

2. Entergy made the compliance filing⁴ as directed by the October 18 Order, proposing changes to the ICT Agreement and Entergy's open access transmission tariff (OATT). Several intervenors⁵ protested Entergy's Compliance Filing. Entergy filed an answer to the protests and Cottonwood filed an answer to Entergy's answer.

I. Background

3. The background to this case is described in detail in the April 24, 2006 Order in this proceeding.⁶ Briefly, however, that order conditionally approved Entergy's proposals relating to the ICT, transmission pricing, and the Weekly Procurement Process (WPP).⁷ We found Entergy's ICT proposal, with modifications, is consistent with or superior to the Order No. 888 tariff and the ICT proposal is intended to improve transparency of transmission information, enhance transmission access and relieve transmission congestion. We will describe below the aspects of the ICT proposal that are at issue in this order.

4. Pursuant to the October 18 Order, Entergy's Compliance Filing modified the executed ICT Agreement and Entergy's OATT. Entergy requests an effective date of November 17, 2006, the date the ICT was installed, for the revised ICT Agreement and amended tariff sheets.

⁴ Entergy Services, Inc., January 16, 2007 filing (Compliance Filing).

⁵ Mississippi Delta Energy Agency and its members (the Clarksdale Public Utilities Commission of the City of Clarksdale, Mississippi, and the Public Service Commission of Yazoo City of the City of Yazoo City, Mississippi), the Lafayette Utilities System, the Louisiana Energy and Power Authority, the Municipal Energy Agency of Mississippi, and Arkansas Electric Cooperative Corporation (collectively TDU Intervenors); Cottonwood; and the Louisiana Public Service Commission (Louisiana Commission).

⁶ *Entergy Services, Inc.*, 115 FERC ¶ 61,095 (2006), *errata notice* May 4, 2006 (April 24 Order), *order on reh'g*, 116 FERC ¶ 61,275 (2006).

⁷ The WPP is designed to facilitate the granting of more transmission service and allow the displacement of existing network resources in favor of cheaper alternatives. This will be accomplished through simultaneous optimization of existing service and new requests, subject to transmission constraints.

5. Notice of Entergy's Compliance Filing was published in the *Federal Register*, 72 Fed. Reg. 3,829 (2007), with comments, protests, and interventions due on or before February 6, 2007.

II. Discussion

A. Procedural Matters

6. 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 Cottonwood because they have provided information that assisted us in our decision-making process.

B. Removal of Regulatory Out Clauses

7. In the October 18 Order, the Commission rejected sections 4.2.1 and 4.2.2⁸ of the ICT Agreement, stating that they are essentially new termination provisions (regulatory out clauses).⁹ Further, the Commission again noted that "[a]t the end of the four-year period, if Entergy requests that the ICT proposal be renewed, the Commission may at that time revisit an appropriate termination provision going forward."¹⁰ The October 18 Order also rejected corresponding sections 1.3(c) and 1.3(d) (regulatory out clauses) of

⁸ Section 4.2.1 provided that, "During the Initial Term, either Party may terminate this [ICT] Agreement without FERC approval after providing thirty days notice in the event that upon rehearing or appeal, either FERC or a federal appellate court does not approve this Agreement or the related provisions of Entergy's OATT in materially the same form as filed by Entergy in compliance with the FERC's Order Conditionally Approving Independent Coordinator of Transmission Filing, issued on April 24, 2006."

Section 4.2.2. provided that, "During the Initial Term, Entergy may seek FERC approval to terminate this [ICT] Agreement if FERC, either on its own motion or in response to a section 206 complaint filed by a non-party to this Agreement: rejects or materially changes the pricing proposal contained in Attachment T to the Entergy OATT; or (ii) issues an order that SPP is a public utility (or a Designated Agent) or Transmission Provider (a) that owns, controls, or operates Entergy facilities used for the transmission of electric energy in interstate commerce and (b) provides transmission service under Entergy's OATT."

⁹ October 18 Order at P 22.

¹⁰ April 24 Order at P 100.

Attachment S (Independent Coordinator of Transmission) to Entergy's OATT as beyond the scope of the Compliance Filing.¹¹ In the Compliance Filing at issue here, Entergy deleted these provisions.

1. Protest

8. The Louisiana Commission alleges that the required removal of the regulatory out provisions breaches the Commission's commitment not to interfere with the authority of the retail regulators of Entergy and is not reasoned decision-making. It argues that the removal also violates the "spirit of cooperation" between the Commission and the retail regulators that have conditionally approved the ICT based on its current configuration and scope. The Louisiana Commission argues that any material changes ordered by a court could result in the need to abandon the ICT before it begins. The section 4.2.2 regulatory out provision is consistent with the Commission's recognition of retail regulators' concerns regarding shifts in jurisdiction and the link between the ICT pricing structure and the ICT itself. Further, the Louisiana Commission argues that section 4.2.2 is consistent with a similar provision approved by the Commission.¹²

2. Commission Determination

9. We find that Entergy complied with the Commission's directive and removed the regulatory out clauses from its tariff. As the Louisiana Commission explained in its protest, the first regulatory out clause (section 4.2.1) would apply only if, in the *initial* approval process, the ICT package had been changed in a material way. The initial approval process is now complete and the ICT Agreement and the related provisions of Entergy's OATT have been approved in materially the same form in which they were filed. The Louisiana Commission's argument that any material changes ordered by reviewing courts could result in the need to abandon the ICT before it begins is essentially moot. The ICT began operations in November 2006, and this Commission would be bound to enforce any decision a reviewing court might make regarding the ICT.

10. The Commission is aware of the balance of jurisdiction between the Commission and Entergy's retail regulators and will avoid decisions regarding the ICT that would result in a shift in that balance. While we did accept an early termination in the *Duke Power* case referenced to by the Louisiana Commission, the facts in that case were different than the ICT's integrated package, which included a new pricing proposal and a

¹¹ October 18 Order at P 22.

¹² See *Duke Power*, 113 FERC ¶ 61,288 at P 44 (2005).

WPP. The Louisiana Commission did not seek rehearing of the April 24 Order on this issue. The Louisiana Commission's argument is thus a collateral attack on the April 24 Order.

C. Amendment to Section 13.2 of the OATT

11. Entergy explains¹³ that it has made changes to its tariff sheets to further ensure clarity regarding the role of the ICT, operation of the WPP, and the transmission pricing structure under Attachment T. One of these changes includes an addition to section 13.2 of Entergy's OATT concerning reservation priority of Point-to-Point (PTP) transmission service. Specifically, Entergy proposes the following modification (new language underlined):

If the Transmission System becomes oversubscribed, requests for longer term service may preempt requests for shorter term service, other than requests submitted in accordance with Attachment V, up to the following deadlines: one day before the commencement of daily service, one week before the commencement of weekly service, and one month before the commencement of monthly service.¹⁴

1. Protest

12. The TDU Intervenors claim that Entergy has modified section 13.2 of the OATT to give WPP¹⁵ participants a preferred status. The TDU Intervenors claim that this change would exempt transmission service requests made in connection with the WPP from being bumped by a longer-term service request when there is limited transmission capacity. They argue that this would grant participants in the WPP a higher reservation priority than non-participants.

¹³ Compliance Filing at 14.

¹⁴ Entergy Services, Inc., FERC Electric Tariff, Second Revised Vol. No. 3, Second Revised Sheet No. 41 (emphasis original).

¹⁵ The WPP is a weekly bid-based optimization process conducted in accordance with the terms and conditions of Attachment V. Attachment V of Entergy's OATT describes in detail all aspects of the WPP including, among other things, its optimization process and granting of transmission services.

2. Entergy's Answer

13. Entergy explains that PTP service granted through the WPP should not be preempted by later PTP service because the redispach rate under Attachment V is calculated based on the service granted through the WPP, and also is allocated to PTP transmission service based on the capacity of the service granted.¹⁶ Entergy states that the change to section 13.2 thus follows from the structure of the redispach calculations under Attachment V.

3. Commission Determination

14. Compliance filings must be limited to the specific directive ordered by the Commission.¹⁷ Entergy's addition to section 13.2 is rejected as beyond the scope of a compliance filing. We direct Entergy to delete this additional language in section 13.2.

D. Supplemental Upgrades

15. Supplemental Upgrades are all upgrades not included in the ICT's Base Plan. The ICT is responsible to independently develop the Base Plan and it is the basis for the allocation of costs between Base Plan Upgrades and Supplemental Upgrades. The ICT will identify the economic upgrades (Supplemental Upgrades) based on a screening criteria. The October 18 Order directed Entergy to submit tariff sheets detailing how it will provide financial compensation for Supplemental Upgrades being used for short-term point-to-point service.¹⁸ In compliance with the October 18 Order, Entergy has amended Attachment T of the OATT to provide compensation to a party that has funded a Supplemental Upgrade when the capacity of that upgrade is used to provide short-term PTP service to someone else.

¹⁶ Entergy OATT, Attachment V at §§ 8.2, 8.3.

¹⁷ See *AES Huntington Beach, LLC*, 111 FERC ¶ 61,079, at P 60 & n.25 (2005) (citing, *inter alia*, *Midwest Independent Transmission System Operator*, 99 FERC ¶ 61,302, at 62,264 (2002), *Sierra Pacific Power Co.*, 80 FERC ¶ 61,376, at 62,271 (1997), *Delmarva Power & Light Co.*, 63 FERC ¶ 61,321 at 63,160 (1993)); see also *American Elec. Power Serv. Corp.*, 99 FERC ¶ 61,178 at 61,699, *letter order on clarification*, 100 FERC ¶ 61,150 (2002) (compliance filings are limited to specific directives in the Commission's order; the sole issue is whether they comply with those directives).

¹⁸ October 18 Order at P 93.

1. **Determining Compensation Using Modeling at the Time of the New Transmission Request**

16. Entergy explains that the right of a party that funded a Supplemental Upgrade to receive revenues from a short-term PTP service will be determined using load flow models and response factors that apply at the time of the request for the short-term PTP service.¹⁹ Those models will differ from the ones that were used to initially determine who will pay for the transmission facility (that is, whether the facility is a Supplemental Upgrade).²⁰

a. **Protest**

17. Cottonwood objects to the proposal that the ICT not use the same model for confirming transmission service that was used to allocate cost responsibility. A customer may be required to fund a Supplemental Upgrade based on one model, but the ICT will determine whether compensation will be provided based on an entirely different model.

b. **Entergy's Answer**

18. Entergy explains that the transmission model used to determine the classification of an upgrade, and thus the cost allocation, is a long-term model based on the expected annual system peak. The models used to grant short-term PTP service are short-term models based on expected load and transmission flows for the term of the service, and include off-peak and shoulder periods as applicable. Entergy explains that there likely will be cases when PTP service is granted based on a short-term model that would not even be feasible under the long-term model used to classify an upgrade. The Commission has already approved the use of different models to determine, on the one hand, the cost allocation for a transmission upgrade and, on the other hand, the right to compensation for subsequent long-term uses of that upgrade. Cottonwood has provided no basis to treat short-term PTP services differently from long-term services in this regard.

c. **Cottonwood's Answer**

19. Cottonwood contends that Entergy's answer sidesteps the important point that, if Entergy does not use the same models for cost allocation and to grant short-term services, it will be impossible to determine whether a Supplemental Upgrade has been used to

¹⁹ Entergy OATT, Attachment T at §§ 4.4, 4.4.2 and 4.4.3.1.

²⁰ *Id.* § 3.2.

provide transmission service. Further, the purpose of the compensation mechanism is to ensure that subsequent customers that use the Supplemental Upgrade compensate the customer that did pay for the Supplemental Upgrade to be built. The models used to grant short-term transmission service will attempt to meet all services using Base Plan Upgrades first, whether those upgrades were added before or after the Supplemental Upgrade funded by the customer. By disregarding the key timing criterion, Cottonwood argues that Entergy will further diminish the potential for funders of Supplemental Upgrades to get any money in return for their investment in the Entergy transmission system.

d. Commission Determination

20. The ICT will determine the classification of an upgrade (as Base Plan or Supplemental) by using a long-term model based on the expected annual system peak. This classification will determine the cost allocation for the facilities depending upon whether the ICT classifies the facility as a Base Plan Upgrade or a Supplemental Upgrade. Compensation from new transmission requests that are dependent on previously funded Supplemental Upgrades will be based on the operating conditions at the time of the new transmission request for long-term or short-term service. Entergy's method for determining compensation for new short-term requests is consistent with our previous approval of the method to be used for determining compensation for new long-term requests. The two approaches are consistent because the evaluation for compensation is based on the point in time of the transmission requests. For new long-term service, the evaluation is done during the system impact study phase.²¹ For new short-term service, the evaluation is done using modeling based on expected load and transmission flows over a short-term operating horizon.²² Similar to what we have approved for compensation associated with new long-term requests, we find it appropriate to evaluate compensation on the modeling and operation of the system at the time the new short-term request is made.

2. Method to Evaluate Whether New Short-Term PTP Services are Using Supplemental Upgrades

21. Entergy proposes new language in Attachment T in sections 4.4.2 and 4.4.3 that provides the ICT an evaluation method to determine whether new short-term PTP service confirmed through the AFC process or the WPP will use a Supplemental Upgrade. A

²¹ Entergy OATT, Attachment T at § 4.3.2.1.

²² *Id.* §§ 4.4.2 and 4.4.3.

party that has funded a Supplemental Upgrade will be paid a share of the incremental revenues associated with a subsequent short-term PTP transmission service when the ICT determines, among other things, that in any hour for which the service was evaluated, the increase in flows associated with the request could not have been accommodated reliably (in whole or in part) absent the previously funded Supplemental Upgrade.²³

a. Protest

22. The TDU Intervenors protest this provision and state that short-term transmission service simply involves an incidental use of capacity that was installed for other purposes when the capacity happens to be available. The TDU Intervenors urge the Commission to require Entergy to compensate customers that fund Supplemental Upgrades whenever such upgrades are used to provide short-term PTP transmission service, whether or not such upgrades were necessary to make the short-term service available.

b. Entergy's Answer

23. Entergy states that it is not clear exactly how TDU Intervenors propose to measure “use” of a Supplemental Upgrade. Entergy explains that its proposed approach to determining the right to compensation for short-term PTP service is the same as the approach that applies to long-term service. There is no basis to treat short-term PTP service differently.²⁴

c. Commission Determination

24. Entergy's proposal in sections 4.4.2 and 4.4.3 of Attachment T uses an approach to evaluating whether a new short-term request for transmission service uses a Supplemental Upgrade that is similar to the approach used to evaluate whether a new long-term request uses a Supplemental Upgrade.²⁵ However, in one respect the approach differs from the long-term evaluation. In the evaluation for short-term transmission requests, sections 4.4.2 and 4.4.3 break the evaluation down on an hourly basis. We

²³ *Id.*

²⁴ *Id.* §§ 4.3.5.2, 4.3.5.3 and 4.3.5.4.

²⁵ *Id.* § 4.3.2.1 (this section explains the method of determining whether granting long-term service depends on any Supplemental Upgrades that were previously funded by another customer and states in part, “the increase in flows associated with the request could not be accommodated reliably (in whole or in part) absent the previously funded Supplemental Upgrade.”).

require Entergy to delete the hourly provision in both sections 4.4.2 and 4.4.3 and make it consistent with the language in the tariff that is used to evaluate new long-term requests.²⁶ For compensation purposes, there is no basis to treat short-term PTP service differently than long-term transmission service by breaking the service into hourly increments. Instead, similar to evaluating compensation as a result of new long-term service request, the evaluation should be based on the length of the transaction for the new short-term service request. With this deletion, a consistent standard will be in place to determine the right to compensation related to new short-term PTP and new long-term transmission service using Supplemental Upgrades. This approach is also consistent with our previous approval of a method of determining compensation resulting from new long-term transmission requests that use Supplemental Upgrades.²⁷

3. Method of Calculating the Level of Compensation for Short-Term PTP Services – Hourly Assessments

25. In its Compliance Filing, Entergy explains that when the ICT determines, through the Available Flowgate Capacity (AFC) process, that a confirmed short-term PTP service depends on a previously funded Supplemental Upgrade, Entergy will determine the level of compensation due to the customer that funded the Supplemental Upgrade. The proportionate share of the incremental revenues received by Entergy and due to customers funding the Supplemental Upgrade will be determined in the following way. Entergy will multiply the incremental revenues received by Entergy for the short-term PTP service by the ratio (calculated over *each hour* for which the service was evaluated, and weighted as appropriate to reflect the period evaluated) of (a) the MW of capacity associated with the prior Supplemental Upgrade that were used to grant the new short-term PTP service to (b) the total capacity of the short-term PTP service.²⁸

a. Protest

26. Cottonwood protests Entergy's proposal to base compensation on hourly assessments of energy schedules regardless of the length of the transaction. For instance, if the ICT grants a monthly PTP service that it would otherwise have denied without the

²⁶ Specifically, Entergy needs to delete the following language: in section 4.4.2, "in any hour for which the service was evaluated," and in section 4.4.3, "during any hour of the WPP Operating Week."

²⁷ April 24 Order at P 3.

²⁸ Compliance Filing at 9 (emphasis added).

Supplemental Upgrade, the customer will receive compensation for those hours during the monthly reservation period when the Supplemental Upgrade was actually used. If the Supplemental Upgrade is required to support the transaction only during a single on-peak hour during the month, only 1/720 of the monthly charge will be passed through to the funder of the Supplemental Upgrade. Consistent with transmission service reservation practices, the customer funding the Supplemental Upgrade should be compensated based on the full period of the transmission service reservation, not just the fraction of that period in which the Supplemental Upgrade is required.

b. Entergy's Answer

27. Entergy responds that Cottonwood's approach could result in an inequitable allocation of short-term PTP revenues. Entergy gives examples in which incremental revenues for short-term PTP service would be generated when the service did not rely on Supplemental Upgrades. These include a situation where (a) the transmission provider can counter-offer service up to the MW amount requested for the same increment of service requested (*e.g.*, counteroffer one week of service in response to a request for two weeks of service) and (b) the transmission customer or another transmission customer later requests and is granted service for the other weeks, days, or hours that service could have been accommodated without the Supplemental Upgrade.

c. Cottonwood's Answer

28. Cottonwood argues that there is no basis for Entergy to sever a transaction into hypothetical partial transactions, each lasting an hour. Revenues should be based on the actual transaction term that is accommodated as a result of the Supplemental Upgrade, whether that term is monthly, weekly, daily or hourly.

d. Commission Determination

29. We will reject Entergy's approach. Compensation for short-term PTP uses of Supplemental Upgrades should be based on the actual length of the service reservation that is accommodated as a result of the Supplemental Upgrade. The hourly assessment mechanism is appropriate if the replacement service granted is for one hour. However, if the accepted transmission service request is longer than an hour, Entergy should calculate compensation revenues over the actual time frame of the service reservation term. This is consistent with our April 24 Order in which we directed Entergy to establish

compensation when the funded capacity is sold by Entergy on a short-term basis.²⁹ We direct Entergy to make this change from hourly assessments to the actual length of the service reservation.³⁰

4. Method of Calculating the Level of Compensation for Short-Term PTP Services – Allocating *Pro Rata*

30. In the Compliance Filing,³¹ Entergy explains that when the ICT determines that a confirmed short-term PTP service depends on a previously funded Supplemental Upgrade, Entergy will pay to the party that funded the upgrade a proportionate share of the incremental revenues Entergy receives for providing that transmission service. In the case of short-term PTP service granted through the AFC process, that share will be determined by multiplying the incremental revenues Entergy receives for the service by the ratio (calculated over each hour for which the service was evaluated, and weighted as appropriate to reflect the period evaluated) of (a) the MW of capacity associated with the prior Supplemental Upgrade that were used to grant the new short-term PTP service to (b) the total capacity of the short-term PTP service.

31. Entergy further explains that if any transmission services requested through the WPP will flow over a Supplemental Upgrade, the proportionate use of that upgraded facility must be determined in order to derive the share of incremental revenues owed to the party that funded the upgrade. Entergy proposes that each service granted through the WPP be deemed to have a *pro rata* effect as between a Supplemental Upgrade and other unused transmission capacity on the relevant flowgate.

a. Protest

32. Cottonwood argues that the Commission should reject Entergy's proposal to allocate network services *pro rata* to Base Plan and Supplemental Upgrades. Short-term network transactions should be deemed to be provided over Base Plan Upgrades to the

²⁹ April 24 Order at P 194.

³⁰ We note that in the recent quarterly performance report filed by the ICT, the total transmission service requests were broken down by duration. Approximately seventy percent of the transmission service requests were for hourly service and twenty-four percent were for daily service. The remaining six percent were for weekly, monthly and yearly service combined. ICT Quarterly Report, March 9, 2007 at p 20 (covering the initial reporting period of November 17, 2006 through February 28, 2007).

³¹ Compliance Filing at 9.

maximum extent possible where multiple transactions are to be accommodated on a flowgate by both Base Plan and Supplemental Upgrades. Cottonwood proposes a symmetrical compensation scheme under which Base Plan Upgrades would be matched to new network service requests and transactions that are eligible to compensate funders of Supplemental Upgrades will be attributed to the Supplemental Upgrades.

b. Entergy's Answer

33. Entergy responds that because all transmission services requested through the WPP will have the same queue time, there is no basis for treating network service as if it first flows on Base Plan Upgrades and PTP service as if it first flows on Supplemental Upgrades. Entergy asserts that it is reasonable that flows from a transaction are prorated to determine the relative use of Base Plan and Supplemental Upgrades.

c. Cottonwood's Answer

34. Cottonwood contends that Entergy has proposed a mechanical rule to prorate revenues between itself and funders of Supplemental Upgrades. Cottonwood asserts that its approach is more equitable, given that the Commission has already decided to require funders of Supplemental Upgrades to allow network customers to use their facilities at no charge.

d. Commission Determination

35. If the ICT has determined that the transmission service granted through the WPP is going to be using both Base Plan and Supplemental Upgrades through a particular flowgate, it is just and reasonable to break down this service on a *pro rata* basis for compensation purposes. Because it is impossible to calculate precisely which electrons are using Base Plan or Supplemental Upgrades at a particular flowgate, a *pro rata* allocation will ensure that a portion of the transmission service granted will be deemed to flow through the Base Plan facilities and another portion will be deemed to flow through the Supplemental Upgrades. We will accept Entergy's *pro rata* approach as a reasonable method to determine the relative use of Base Plan and Supplemental Upgrades when a transmission service uses both types of facilities.

5. Timing of Reclassification and Compensation

36. Entergy explains in its transmittal letter that compensation for short-term PTP uses of Supplemental Upgrades could be available by January 2008.³²

³² Compliance Filing at 12.

a. Protests

37. Cottonwood asks the Commission to clarify that no reclassification of upgrades may become effective until all aspects of the compensation mechanism are implemented. Allowing Entergy to discontinue the existing compensation mechanism (crediting) before Entergy can provide the substitute mechanism would be allowing Entergy to under-compensate funders of Supplemental Upgrades.

38. The TDU Intervenors suggest that the provisions related to compensation for short-term PTP uses of Supplemental Upgrades should be made effective immediately, with the calculation of specific compensation amounts deferred until the necessary software is in place.

b. Entergy's Answer

39. Entergy argues that the approach sought by Cottonwood should be rejected. It says that the Commission contemplated that the reclassification of transmission facilities for pricing purposes could occur before the date on which compensation for short-term PTP services would be available to parties that fund Supplemental Upgrades.

40. In response to TDU Intervenors, Entergy states that the data necessary to calculate financial payments associated with short-term PTP services cannot be stored without the software modifications Entergy has identified before.

c. Commission Determination

41. We agree with Entergy that it is not practical to allow compensation with deferred billing to be implemented before the software is in place. Although previously the Commission has not required a compensation mechanism to be in place simultaneously with the reclassification of the Supplemental Upgrades, the Commission has not precluded that result either.³³ It is appropriate that the effective date of any reclassification of upgrades should occur simultaneously with the software implementation that calculates compensation.

42. To keep the Commission and other stakeholders apprised of the progress of the compensation software development, we will require Entergy to file a status report on

³³ April 24 Order, 115 FERC ¶ 61,095 at P 194, 245.

October 1, 2007. This report must explain the progress Areva³⁴ and Entergy have made in developing the compensation software. This report must include an updated estimated time frame for the completion of the compensation software and a description of the progress made through October 1, 2007.

6. Compensation for Short-term Network Uses of Supplemental Upgrades

43. In the October 18 Order the Commission noted that financial compensation for short-term use of Supplemental Upgrades is a challenging issue.³⁵ The existing load ratio pricing for network service does not provide any incremental revenues that could be given to the customer who previously funded the Supplemental Upgrades and whose upgrades are now being used by a network customer on a short-term basis. Therefore, it is difficult, if not impossible, to develop a rate mechanism to compensate for short-term network use of Supplemental Upgrades. The October 18 Order stated that in the future, if SPP develops a financial compensation mechanism for short-term *network* uses of Supplemental Upgrades to be part of its OATT, we recommend that Entergy and SPP then develop a common methodology regarding compensation for Supplemental Upgrades being used for short-term network service.³⁶

a. Rehearing Requests

44. Cottonwood and NRG seek rehearing of the Commission's decision to not require Entergy to provide compensation for short-term network uses of Supplemental Upgrades. They argue that allowing short-term network uses of Supplemental Upgrades without compensation is confiscatory and results in an improper subsidy and that the Commission did not engage in reasoned decision making. The protestors allege that the Commission's reliance on the SPP OATT is misplaced.

³⁴ Areva is the vendor that is developing the WPP software and the necessary changes to AFC and other software related to the WPP. Areva will also be developing the software necessary to provide compensation for short-term PTP uses of Supplemental Upgrades. The compensation software modifications will not begin until the WPP and related software is complete.

³⁵ October 18 Order at P 107.

³⁶ *Id.* at P 94.

b. Commission Determination

45. Although NRG admits that Entergy may not now receive additional revenue from short-term network service,³⁷ nonetheless, both NRG and Cottonwood advocate creating a rate mechanism that will compensate for the short-term network use of Supplemental Upgrades. However, they do not provide a proposal or explanation of how this can be accomplished when there is no additional revenue. We deny rehearing on this issue.

7. Protecting the Rights of Parties Paying for Supplemental Upgrades

46. The October 18 Order found that Entergy had not complied with the Commission's directive in the April 24 ICT Order to explain and fully support its plan for preserving the transmission rights of customers funding Supplemental Upgrades if the ICT ceases to function. We directed Entergy to explain in greater detail how the preservation of transmission rights would fit into the six-month transition period if the ICT expires or terminates.³⁸

47. Entergy now proposes to amend section 4.5 of Attachment T to specify the treatment of preserving transmission rights if the ICT terminates. New section 4.5 provides that:

In the event the ICT ceases to function, a customer that funds a Supplemental Upgrade shall maintain the same (a) protections against congestion, (b) curtailment priorities, and (c) rights to financial payments, as those provided in this section 4. To preserve such rights, Entergy shall: (section 4.5.1) take all steps reasonably necessary to implement, within six months of the date that the ICT Agreement terminates, a replacement entity to apply congestion hedges and financial rights; (section 4.5.2) pursuant to the terms of the ICT Agreement, request that the ICT continue to apply congestion hedges and financial rights until a replacement entity is implemented; and (section 4.5.3) in the event a replacement entity is not put into effect before the Transition Assistance Period under the ICT Agreement ends, negotiate in good faith for the ICT to continue to apply congestion hedges and financial rights under substantially the same terms

³⁷ NRG November 17, 2006 Protest at 7.

³⁸ October 18 Order at P 107.

and conditions as those provided under the ICT Agreement and until such time as a replacement entity is installed.

a. Protest

48. The TDU Intervenors argue that Entergy's proposal is inadequate. The ICT Agreement imposes no affirmative obligation on Entergy to require SPP to provide Transition Assistance Services following the termination of the ICT Agreement. The TDU Intervenors assert that the Attachment T language is vague with regard to the character or quality of the financial rights and congestion hedges the ICT (or replacement entity) would apply after termination of the ICT Agreement. They argue that section 4.5.2 fails to satisfy the Commission's directive because there is no specification of the character or quality of the hedges and rights to be applied during this period. The TDU Intervenors assert that in the situation where the Transition Assistance Period has ended but a replacement entity has not been installed, Entergy should be required to ask the Commission to direct SPP to furnish the services needed for those who have paid for the Supplemental Upgrades to realize value from their awarded hedges and rights.

b. Entergy's Answer

49. Entergy contends that it amended Attachment T to provide the exact steps that Entergy will take if the ICT terminates, including during the transition period under the ICT Agreement.³⁹ Entergy states that under Attachment T, as amended, Entergy must, if the ICT terminates, request SPP to provide Transition Assistance Services under section 4.9 of the ICT Agreement.⁴⁰ Further, Entergy explains that the new Attachment T language is not vague regarding the character or quality of the financial rights and congestion hedges because it provides that if the ICT ceases to function, a customer that funds a Supplemental Upgrade shall keep the *same* protections against congestion, curtailment priorities and rights to financial payments. Entergy states that the Commission did not, as the TDU Intervenors assert, require Entergy to address what will happen if an entity to replace the ICT cannot be established.

c. Commission Determination

50. Contrary to the TDU Intervenors' arguments, under the ICT Agreement, SPP is obligated to provide services during the transition period when Entergy asks it to do so.⁴¹

³⁹ Entergy OATT, Attachment T at § 4.5.

⁴⁰ *Id.* § 4.5.2.

⁴¹ ICT Agreement at § 4.9.2.

The new section 4.5 is not vague about the character or quality of the financial rights and congestion hedges to be maintained. Section 4.5 provides that “In the event the ICT ceases to function, a customer that funds a Supplemental Upgrade shall maintain the *same* (a) protections against congestion, (b) curtailment priorities, and (c) rights to financial payments, as those provided in section 4. Entergy set forth in sections 4.5.1, 4.5.2 and 4.5.3 the specific steps it will take if the ICT terminates, including during the transition period under the ICT Agreement, to preserve the transmission rights granted to funding parties. The Commission did not, as the TDU Intervenors assert, require Entergy to address what will happen if an entity to replace the ICT cannot be established. Instead, the Commission will revisit the pricing structure it approved as part of the ICT package if replacement to the ICT is not established.⁴² Entergy’s new section 4.5 adequately explains the steps Entergy will follow to preserve transmission rights during and after any transition period.

E. Mobile-Sierra Provision of the Executed ICT Agreement

51. The ICT Agreement, as accepted by the Commission, provides that the standard of review for any changes proposed by a party unilaterally, a non-party or the Commission acting *sua sponte*, and not agreed to by both parties to the agreement, shall be the public interest standard.⁴³ Muni-Coop Intervenors object to the public interest standard, arguing that the parties have a lesser standard. Given the fact that the parties to the ICT Agreement, in fact, must also meet the public interest standard, we will deny Muni-Coop Intervenors’ request for rehearing.

1. Request for Rehearing

52. Muni-Coop Intervenors assert that the agreement improperly requires a higher standard for modifications to the ICT Agreement proposed by non-parties and the Commission acting *sua sponte* than the standard applicable to modifications proposed by the parties to the ICT Agreement. They argue that, by accepting the *Mobile-Sierra*

⁴² See April 24 Order, 115 FERC ¶ 61,095 at P 167, stating that “...the Commission reserves the right to revisit the cost allocation for [Supplemental Upgrades] if the ICT Agreement is not renewed” and “if the ICT ceases to function and is not replaced by some structure of equal protective value, Entergy will need to satisfy the Commission that [rights granted to parties that fund Supplemental Upgrades] will continue to be protected.”

⁴³ See *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (*Mobile-Sierra*).

provision of the ICT Agreement without an explanation in the October 18 Order, the Commission has improperly abandoned long-standing precedent without a clear and coherent explanation for its shift. They further argue that statements made during the October 19, 2006 Commission meeting suggest the majority relied on a "flexible public interest standard," which is not a matter of clear and settled law.⁴⁴

2. Commission Determination

53. The *Mobile-Sierra* doctrine preserves the benefits of parties' bargains.⁴⁵ The doctrine protects against changes when the parties to the contract have not agreed to the changes, *e.g.*, where one party to a contract on file with the Commission attempts a unilateral change and asks the Commission to relieve it of its contractual obligations.⁴⁶ The doctrine has been applied to non-parties and to the Commission. While Muni-Coop Intervenors argue that the ICT Agreement creates different standards for parties and non-parties (and for the Commission acting *sua sponte*), that is not the case.

54. Section 19.3 of the ICT Agreement states in relevant part that:

None of the Parties shall petition [the Commission] pursuant to the provisions of Sections 205 or 206 of the Federal Power Act to unilaterally amend this Agreement. To the extent that changes to the scope of the services provided under this Agreement are required due to changes in Entergy's OATT, the Parties agree to negotiate in good faith in making such

⁴⁴ Muni-Coop's reliance on statements made by individual Commissioners is misplaced. The Commission, a five-member agency (*see* 16 U.S.C. § 792 (2000); 18 C.F.R. § 376.102 (2006)), acts through its written orders (*see, e.g., Indianapolis Power & Light Co.*, 48 FERC ¶ 61,040, at 61,203 & n.29 ("The Commission speaks through its orders"), *order on reh'g*, 49 FERC ¶ 61,328 (1989)), which are "issued" following a favorable vote of the majority. *Cf. Joseph Martin Keating*, 47 FERC ¶ 61,170, at 61,554 (1989) (Commissioner Trabandt dissenting) (referring to several recent cases "that by majority vote" took certain actions), *remanded on other grounds*, 927 F.2d 616 (D.C. Cir. 1991); *see MidAmerican Energy Holdings Co.*, 118 FERC ¶ 61,003, at P 19, n. 45 (2007) (Commission speaks through its formal, written orders); *cf.* 18 CFR § 388.104(a) (2006) (informal staff advice is not binding).

⁴⁵ *Maine Pub. Utils. Comm'n v. FERC*, 454 F.3d 278, 283-86 (D.C. Cir. 2006) (*Maine PUC*) (*citing Atlantic City Elec. Co. v. FERC*, 295 F.3d 1, 14 (D.C. Cir. 2002)).

⁴⁶ *See Maine PUC*, 454 F.3d at 284.

changes to this Agreement. Absent agreement of all of the Parties, the standard of review for any changes to this Agreement proposed by a non-party or FERC acting *sua sponte* shall be the “public interest” standard of review set forth in *[Mobile-Sierra]*.⁴⁷

Thus, parties, non-parties and the Commission are held to the same "higher" standard. Accordingly, our acceptance of the public interest standard is consistent with both Commission and court precedent as stated above and we deny Muni-Coop Intervenors request for rehearing.

The Commission orders:

(A) The requests for rehearing are hereby denied, as discussed in the body of this order.

(B) Entergy’s Compliance Filing, as modified, is hereby accepted, to be effective November 17, 2006, as discussed in the body of this order.

(C) Within 30 days of the date of this order, Entergy is directed to make a compliance filing, as discussed in the body of this order.

By the Commission. Commissioner Kelly concurring with a separate statement attached.
Commissioner Wellinghoff concurring with a separate statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

⁴⁷ ICT Agreement at § 19.3.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Entergy Services, Inc.

Docket Nos. ER05-1065-005
ER05-1065-006

(Issued May 25, 2007)

KELLY, Commissioner, *concurring*:

For the reasons set forth in my concurring statement on the October 18, 2006 Order on Compliance Filing in this proceeding,¹ I believe it is appropriate for the Commission to affirm its acceptance of the provision in the ICT Agreement, which would apply the *Mobile-Sierra* “public interest” standard of review to future changes to the ICT Agreement, whether proposed by a party, a non-party or the Commission acting *sua sponte*.

Suedeem G. Kelly

¹ *Entergy Services, Inc.*, 117 FERC ¶ 61,055 (2006).

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Entergy Services, Inc.

Docket Nos. ER05-1065-005
ER05-1065-006

(Issued May 25, 2007)

WELLINGHOFF, Commissioner, concurring:

When the Commission issued the underlying order in this proceeding, I wrote a separate concurring statement to explain my conclusion that it was appropriate for the Commission to grant the request made by the parties to the ICT Agreement to apply the “public interest” standard of review not only to future changes to that agreement sought by any of those parties, but also to such changes sought by a non-party or the Commission acting *sua sponte*. I continue to believe that the approach set forth in that statement has the benefit of being a clear policy on these issues and also strikes the appropriate balance between recognizing contracting parties’ needs for certainty with respect to their agreements and protecting the interests of electric consumers.

Jon Wellinghoff
Commissioner