

129 FERC ¶ 61,204
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. OA08-59-006

ORDER DENYING REQUEST FOR CLARIFICATION

(Issued December 7, 2009)

1. On June 18, 2009, the Commission issued an order in which it accepted, subject to a further compliance filing, a revised Attachment K to the Open Access Transmission Tariff (OATT) of Entergy Services, Inc. (Entergy).¹ This revised filing was made in response to requirements that the Commission specified in an earlier order in which the Commission accepted Entergy's transmission planning process as a proposed attachment to its OATT,² as required by Order No. 890.³

2. On July 20, 2009, East Texas Electric Cooperative, Inc., Sam Rayburn G&T Electric Cooperative, Inc., and Tex- La Electric Cooperative of Texas (collectively, the East Texas Cooperatives) submitted what they style as a request for clarification of the June 18 Order. In it they argue that the Commission should: (1) expand the requirements for the compliance filing that the June 18 Order requires by requiring detailed explanations of how Entergy selects projects for inclusion in its Construction Plan; and (2) make clear that the Commission found that Entergy's reliance on its interpretation of the Note B footnote in the North American Electric Reliability Corporation (NERC)

¹ *Entergy Services, Inc.*, 127 FERC ¶ 61,272 (2009) (June 18 Order).

² *Entergy Services, Inc.*, 124 FERC ¶ 61,268 (2008).

³ *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).

Transmission Planning (TPL) reliability requirements in developing the Construction Plan does not comport with the recommendations made by the Southwest Power Pool (SPP), which is Entergy's Independent Coordinator of Transmission (ICT), for expansion of the Entergy transmission system to meet identified reliability needs.⁴

3. The East Texas Cooperatives state that the Commission should take such action "in light of evidence heard" at a joint conference held in Charleston, South Carolina on June 24, 2009 (the Joint Conference) in which the Commission and Entergy's retail regulators were participants.⁵ They maintain that "[t]here is a general consensus among Entergy's regulators expressed at the Joint Conference that Entergy has failed to build necessary transmission facilities."⁶ The East Texas Cooperatives state that it became apparent during the Joint Conference that a crucial piece of missing information was the "exact criteria" Entergy used to decide whether to include a project in its Construction Plan, including projects that the ICT determined to be necessary for reliability.⁷

4. The East Texas Cooperatives state that it also became apparent at the Joint Conference that a major reason for what they describe as the disparity between projects that the ICT lists as necessary for reliability purposes and the projects in the Entergy Construction Plan is "Entergy's particular interpretation of NERC Reliability Guidelines, in particular Note B of the NERC TPL Reliability Standards."⁸ They argue that the Commission should make clear that the provisions of Attachment K will be subject to modification as a result of actions taken to resolve the controversy over the interpretation of Note B. The East Texas Cooperatives concede, however, that "the interpretation of Note B is a matter beyond the scope of this proceeding."⁹

⁴ Note B refers to footnote B to Table 1 of NERC Standard TPL-001-0.1. According to SPP's Report on the Differences between the 2009 ICT Base Plan and the 2009-2011 Entergy Construction Plan at 4, the ICT and Entergy use different interpretations of Note B in determining how much load can be shed in a single contingency event. The differences in interpretation of Note B are one cause of the differences in the Base Plan and the Construction Plan.

⁵ East Texas Cooperatives Clarification Request at 1.

⁶ *Id.* 2.

⁷ *Id.* 5.

⁸ *Id.* 5.

⁹ *Id.* 12.

5. The East Texas Cooperatives acknowledge that the Commission “has a general policy of rejecting, as untimely, evidentiary submissions made at the rehearing and compliance stages of a proceeding.”¹⁰ They maintain, however, that those policies should not apply here. This is because the information obtained at the Joint Conference sets in “bold relief” the “disparity between the ICT’s Base Plan and Entergy’s Construction Plan” which “is a long standing issue in these proceedings.”¹¹ The East Texas Cooperatives also maintain that providing the clarifications that they request comports with the purposes of the June 18 Order. Finally, they assert that acting on the information gained at the Joint Conference will “further the mutual regulatory aims expressed [there] by state and federal regulators.”¹²

6. Entergy filed an answer to the East Texas Cooperatives in which it maintains that their filing is in fact a rehearing request that was filed more than 30 days after the deadline for such requests. Entergy also argues the Commission has not required other transmission providers to include in their Attachment Ks the additional detail that the East Texas Cooperatives seek. Entergy maintains that the East Texas Cooperatives have mischaracterized the concerns expressed at the Joint Conference and that the facts do not bear out the conclusions they have drawn. Finally, Entergy states that Note B to NERC Reliability Standard TPL-001-0.1 is commonly recognized to be ambiguous, and the Commission has directed NERC to consider the matter.

7. The East Texas Cooperatives filed an answer to Entergy’s answer. In it they dispute the claim that their filing was untimely. They also maintain that there is a lack of transparency as to how Entergy formulates its Construction Plan, which justifies the additional detail that they request. Finally, the East Texas Cooperatives argue that Entergy does not respond to the points they made in their request and instead attempts to defend itself against the points raised at the Joint Conference and to explain that it is revising its 2010-2012 draft construction to be more closely aligned with the ICT’s current Base Plan.

Discussion

8. Under Rule 713(d) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.713 (d) (2009), an answer may not be made to a request for rehearing, which, as discussed below, is what the East Texas Cooperatives have made.

¹⁰ *Id.* 8.

¹¹ *Id.*

¹² *Id.* 8.

Accordingly, we will reject Entergy's answer and therefore need not consider the East Texas Cooperative's answer to it as a result.

9. We will deny the East Texas Cooperatives' request. We note first that the request is incorrectly styled a "request for clarification." In fact, the East Texas Cooperatives do not point to anything in the June 18 Order that they consider to be unclear or ambiguous. Instead, they argue that the Commission should "reconsider" the June 18 Order in light of evidence heard at the Joint Conference.¹³ They ask that the Commission "expand the requirement imposed on Entergy" with respect to the compliance filing required by the June 18 Order.¹⁴ The East Texas Cooperatives thus make clear that they consider the June 18 Order to be deficient, and they seek modifications to it. In short, they seek rehearing.

10. Additionally, the East Texas Cooperatives make clear that the purpose of their request is to introduce new evidence, and they implicitly acknowledge the nature of their pleading when they argue that Commission policy on the introduction of new evidence at the rehearing stage should not apply in this case.

11. The Commission has stated many times that "we are reluctant to chase a moving target by considering new evidence presented for the first time at the rehearing stage of Commission proceedings."¹⁵ The East Texas Cooperatives seek to introduce as evidence conclusions that they have drawn from discussions held at the Joint Conference. They do this in order to emphasize that what they describe as "a long standing issue in these proceedings," namely, differences between Entergy's Construction Plan and the ICT's Base Plan, continues in their view to be an issue. In addition, the East Texas Cooperatives present this evidence as grounds for a Commission pronouncement on how the resolution of another matter, the interpretation of Note B, will affect matters to be decided here, even though they concede that the interpretation of Note B is beyond the scope of this proceeding.¹⁶ These are not reasons to grant an exception to our

¹³ *Id.* 1.

¹⁴ *Id.* 2.

¹⁵ *Philadelphia Electric Company*, 58 FERC ¶ 61,060, at 61,133 & n.4 (1992) (citing cases); *see also, e.g., Ocean State Power II*, 69 FERC ¶ 61,146, at 61,548 n.64 (1994); *Ameren Services Co.*, 127 FERC ¶ 61,121, at P 18 & n.24 (2009).

¹⁶ We note that in section 4.2 (Recommended Expansion Planning) of its September 30, 2009 Third Quarterly Report, the ICT announced that Entergy revised its Construction Plan to address the differences between the Construction Plan and the Base Plan. These revisions reflect Entergy's changed interpretation of Note B in response to anticipated changes to TPL-001-0.1.

longstanding policy of prohibiting new evidence at the rehearing stage, and we therefore decline to do so.

The Commission orders:

The request of the East Texas Cooperatives is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.