

136 FERC ¶ 61,171
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. ER11-4064-000

ORDER ACCEPTING AMENDMENTS TO INTERCONNECTION AGREEMENT

(Issued September 13, 2011)

1. On July 15, 2011, pursuant to section 205 of the Federal Power Act (FPA),¹ Entergy Services, Inc. (Entergy), acting as agent for Entergy Louisiana, Inc. (Entergy Louisiana), submitted amendments to the Interconnection and Operating Agreement (IOA) between Washington Parish Energy Center, L.L.C. (Washington Parish) and Entergy Louisiana (Amendments). The Amendments effectuate certain provisions of the Entergy Operating Companies'² Open Access Transmission Tariff (OATT) and the Independent Coordinator of Transmission's (ICT) Phase 2 Report.³ In this order, we accept for filing the proposed Amendments to the IOA, effective September 13, 2011, as requested. We also direct Entergy to submit a compliance filing to address minor necessary detail and formatting clarifications to the IOA.

I. Background

2. Entergy states that Attachment T,⁴ section 5.1 of the Entergy Operating Companies' OATT requires that the ICT conduct an analysis of certain existing

¹ 16 U.S.C. § 824d (2006).

² The Entergy Operating Companies are: Entergy Louisiana, LLC; Entergy Arkansas, Inc.; Entergy Gulf States Louisiana, L.L.C.; Entergy Mississippi, Inc.; Entergy Texas, Inc.; and Entergy New Orleans, Inc.

³ Southwest Power Pool, Inc., Entergy ICT Retrospective Generation Interconnection Analysis Phase 2 Final Report (December 2010) (Phase 2 Report).

⁴ Attachment T, Cost Recovery of New Facilities and Planning Redispatch, includes among other things provisions on classification of transmission investments,

(continued...)

interconnection facilities on the Entergy transmission system to determine whether those facilities should be classified as Base Plan Upgrades or Supplemental Upgrades.⁵ The ICT conducted a first phase of analysis culminating in the Phase 1A Report, which addressed interconnection-related facilities constructed by Entergy from January 1, 1997 through November 17, 2006. However, certain facilities were excluded at that time, including facilities under IOAs that were pending before the Commission. The ICT's Phase 2 Report analyzed the interconnection-related facilities that were previously excluded as IOAs pending before the Commission. Entergy states that, in order to implement the ICT's determinations from the Phase 2 Report, it must file any "necessary amendments to the applicable IOA...seeking cessation of outstanding credits or reimbursements of the customer for any uncredited balance as applicable."⁶

II. Proposed Amendments to the Interconnection and Operating Agreement

3. The first of Entergy's proposed Amendments is a new Appendix H to the IOA to reflect the results of the Phase 2 Report. It classifies six facilities under the IOA as Supplemental Upgrades entitled to the rights specified under Attachment T, section 4 of the OATT.⁷ Consistent with Attachment T, Entergy proposes that the costs of the facilities classified as Supplemental Upgrades will be eligible for financial rights payable to Washington Parish, depending upon any flows by subsequent transmission customers using excess available capacity created by Supplemental Upgrades.⁸ As the original cost

recovery of upgrade costs, and planning redispatch. Section 4 of Attachment T sets forth the rights associated with Supplemental Upgrades, including waiver of congestion charges and financial compensation for funders of Supplemental Upgrades. Section 5 describes the treatment of previously-incurred interconnection costs and the process and categories that the ICT will use in classifying existing interconnection facilities.

⁵ Entergy states that facilities classified as Base Plan Upgrades receive transmission credits and those classified as Supplemental Upgrades receive the rights specified under Attachment T, section 4 of the OATT. (We note that, although Entergy references Attachment T, section 2 on page one of its transmittal letter, these rights actually are specified in section 4.)

⁶ Entergy Transmittal at 2 (citing Attachment T, section 5.5; *see also Entergy Serv., Inc.*, 119 FERC ¶ 61,187, at P 41 (2007), *order on reh'g*, 122 FERC ¶ 61,216 (2008)).

⁷ *Id.* at 4-5 (citing IOA, Appendix H, section 1(a) at 72); *see also* Phase 2 Report at 20-22.

⁸ *Id.* at 5 (citing Appendix H, section 2, Cost and Responsibility Rights). Another Entergy amendment, at Appendix B, System Upgrades, page 63, proposes to add

(continued...)

of the facilities currently classified as Supplemental Upgrades were previously funded by Washington Parish, Entergy states that there is no change in cost responsibility for the Supplemental Upgrades as a result of the Phase 2 Report.

4. Entergy also proposes to amend the IOA at section 23.7 to clarify that the terms and conditions of Appendix H replace and supercede any conflicting cost allocation provisions in the body of the IOA that otherwise would apply to the facilities studied by the ICT.

5. Entergy states that, under Attachment T, amendments to the IOAs are to be effective on the date specified by the Commission, but not prior to the implementation of the software necessary to provide compensation for short-term point-to-point transmission service.⁹ Entergy requests a September 13, 2011 effective date.

III. Notice of Filing and Responsive Pleadings

6. Notice of Entergy's filing was published in the *Federal Register*, 76 Fed. Reg. 44,319 (2011), with interventions and protests due on or before August 5, 2011. A timely motion to intervene and protest was filed by Washington Parish. On August 22, 2011, Entergy filed an answer to the protest. On September 2, 2011, Washington Parish filed a reply to the answer. Entergy filed an answer to Washington Parish's reply on September 9, 2011.

A. Washington Parish's Protest

7. Washington Parish identifies itself as a subsidiary of Calpine Corp. It states that it expects that there will be flows by other transmission customers on the capacity created by its Supplemental Upgrades and is concerned that the proposed Appendix H lacks sufficient transparency to ensure that Washington Parish receives all compensation to which it may be entitled.¹⁰ It argues that Order No. 890¹¹ established transparency as a

language reducing costs eligible for such financial rights by any charges incurred prior to the effective date of the Agreement for transmission service necessary for deliveries from the facility across Entergy's transmission system.

⁹ Entergy Transmittal at 2.

¹⁰ Washington Parish Protest at 4.

¹¹ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, at P 45, *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).

core requirement to prevent undue discrimination and that a lack of transparency in Appendix H would contribute to opportunities to incorrectly apply the compensation mechanism set forth in Attachment T, as well as make compensation errors more difficult to detect.

8. Washington Parish states that it does not have access to the flow data necessary to confirm the compensation it may receive. Therefore, it asks the Commission to require Entergy to revise Appendix H to: (1) provide Washington Parish with access to load flow modeling information and results, and (2) require Entergy to notify Washington Parish on a regular basis (e.g., monthly or quarterly) of whether or not it is entitled to compensation. Washington Parish states that Entergy has a history of transmission service-related errors that supports Washington Parish's request for access to load flow modeling information and results to enable Washington Parish to monitor use of the Supplemental Upgrades, to calculate any compensation due, and to increase its ability to detect potential errors.

9. Washington Parish also contends that the notice that Entergy will provide regarding its right to compensation for use of the Supplemental Upgrades is insufficient. Washington Parish states that the only mechanism by which it will be made aware that it is entitled to compensation is the receipt of payments, or lack thereof, which it deems to be insufficiently transparent. Therefore, it suggests that the Commission require Entergy to make affirmative representations in writing as to whether or not compensation is due for a particular period and, if due, to provide sufficient information for Washington Parish to confirm that any such payments have been properly calculated.

B. Entergy's Answer

10. Entergy counters that Washington Parish's proposed revisions are both unnecessary and beyond the scope of implementation requirements for Attachment T. Entergy explains that the costs of the facilities at issue in this proceeding were already funded by Washington Parish; therefore the Amendments do not make Washington Parish responsible for any additional costs. Instead, the Amendments provide rights to potential financial payments to Washington Parish to which Washington Parish was not previously entitled.

11. Entergy states that the Amendments, like those in the previously amended IOAs, reflect the ICT's classification of facilities pursuant to Attachment T. Entergy further states that Washington Parish has not objected to the ICT's analysis, facility classification, or any other procedure necessary to comply with the Commission's orders. Entergy states that Washington Parish is the first party to argue that load flow modeling information and periodic statements about compensation should be added to an IOA.

12. Entergy contends that proposed Appendix H is consistent with, and appropriately limited by, the text of section 5 of Attachment T and the Commission's orders accepting

the Attachment T process. According to Entergy, there is nothing in section 5.5 or any other provision of Attachment T that contemplates the types of requirements proposed by Washington Parish. Moreover, Entergy notes that, in the Commission order accepting its proposal to have the ICT review all previously incurred interconnection costs back to January 1, 1997,¹² the Commission did not order the requirements proposed by Washington Parish, despite a Commission discussion of the ICT's review of incurred interconnection costs and the possibility that Entergy might need to make changes to IOAs to implement the ICT's findings with respect to pricing for interconnection facilities.

13. Entergy also disputes Washington Parish's suggestion that there will be flows by other transmission customers over the capacity created by its Supplemental Upgrades. Entergy states that Washington Parish's Supplemental Upgrades are all direct interconnection facilities, i.e., they are existing interconnection facilities that were expanded to permit interconnection of the generator but that did not result in any additional nodal capacity. As Washington Parish did not object to the ICT's reclassification or analysis, Entergy argues that there is no expectation that there will be flows by other transmission customers over the capacity created by the Supplemental Upgrades. Further, Entergy notes that, because Washington Parish's generating facility was never placed in service, there are no flows from that facility over the Supplemental Upgrades. Entergy also contends that Washington Parish's proposed revisions would impose an unnecessary burden upon itself and the ICT.

14. In response to Washington Parish's contention that Order No. 890's findings of a need for greater transparency supports its request for periodic compensation reports, Entergy states that the Commission's transparency requirements in Order No. 890 focused on the evaluation of available transfer capability and transmission system planning.¹³ According to Entergy, neither of these topics is relevant here. Thus, it argues that Order No. 890 did not provide a basis for providing additional burdensome disclosure of all information requested by a customer in the name of transparency.

C. Washington Parish's Reply

15. In its reply, Washington Parish argues that Attachment T does not preclude Washington Parish's proposed revisions to Appendix H, and that the Commission's orders approving Attachment T are silent with respect to the types of revisions that

¹² Entergy Answer at 4 (citing *Entergy Serv., Inc.*, 115 FERC ¶ 61,095, at P 237-45, *reh'g denied*, 116 FERC ¶ 61,275, at P 183-205 (2006)).

¹³ *Id.* at 6 (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 193-96, 207-13, 313-31, and 461-79).

Washington Parish proposes. Washington Parish agrees that its proposed revisions should apply to all customers but it argues that implementing the revisions does not require an amendment to Attachment T.

16. Washington Parish argues that, by unilaterally predetermining that there will be no flows of other customers' power over Washington Parish's upgrades and that Washington Parish's proposed revisions are unnecessary, Entergy's position raises serious questions as to how Attachment T will be implemented with respect to all interconnection customers with Supplemental Upgrades identified under Attachment T. Washington Parish contends that, when added to the errors that Entergy has made in provision of transmission service, it is imperative that the Commission adopt Washington Parish's proposed revisions to Appendix H in order to provide an opportunity to identify potential errors in Entergy's application of Attachment T; the absence of such safeguards puts interconnection customers like Washington Parish at risk. Washington Parish argues that, absent such transparency, the same unduly discriminatory treatment at issue in Order No. 890 can go unchecked if Entergy does not implement the terms of Attachment T as approved by the Commission.

D. Entergy's Reply

17. Entergy refutes Washington Parish's representation that Entergy predetermined that application of Attachment T to the Supplemental Upgrades will result in no compensation for the life of those facilities. Entergy denies any claims of "predetermination" regarding compensation under the IOA, and clarifies that it was correcting Washington Parish's contention that there will be flows by other transmission customers over the capacity created by Washington Parish's Supplemental Upgrades. Entergy explains that Washington Parish's claim is not correct and that the ICT determined that there is no additional nodal capacity created by the upgrades at issue. Last, Entergy states that it intends to apply the load flow modeling required by Attachment T to Washington Parish's Supplemental Upgrades and to compensate Washington Parish to the extent it is due. It reiterates that the additional requirements proposed by Washington Parish are not needed to apply Attachment T and would only impose unnecessary burdens.

IV. Discussion

A. Procedural Matters

18. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), its timely, unopposed motion to intervene serves to make Washington Parish a party to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Entergy's

answer and reply and Washington Parish's reply because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

19. We will accept Entergy's new Appendix H, proposed amendments to section 23.7, and new language at page 63 of the IOA, to become effective September 13, 2011, as requested. We will also direct Entergy to submit a compliance filing to address certain minor deficiencies in the IOA within thirty days of the date of this order, as discussed below.

20. We find that Washington Parish's concerns regarding accurate determination of its right to financial compensation for third party use of its Supplemental Upgrades and regarding the sufficiency of anticipated related communications by Entergy are premature and do not support imposing upon Entergy an *a priori* duty to provide load flow modeling information and a precise format for compensation-related communications. Such proposed obligations have not been demonstrated to be necessary, particularly given current procedures in the Entergy Operating Companies' OATT that address the determination of compensation for use of the Supplemental Upgrades, as further discussed below.

21. Specifically, the Commission has determined that, pursuant to Attachment T, funders of upgrades reclassified as Supplemental Upgrades are to receive certain benefits, including compensation, when Entergy uses those upgrades to provide transmission service to other customers.¹⁴ This attachment contains detailed instructions regarding how third party use of Supplemental Upgrades is to be measured and financial compensation to funders of such facilities rendered.¹⁵

22. The ICT is an integral part of this process, because Attachment S¹⁶ to the Entergy Operating Companies' OATT charges the ICT with implementing Attachment T. Among other duties, the ICT evaluates whether the granting of long-term or short-term service to

¹⁴ See Entergy Operating Companies' OATT at Attachment T, section 4.

¹⁵ *Id.*

¹⁶ *Id.* at Attachment S, section 3.1(a)(4). Attachment S, Independent Coordinator of Transmission, covers, among other things: (1) the objectives of the ICT, (2) ICT functions, (3) coordination between the ICT and Entergy, (4) ICT as Reliability Coordinator, (5) ICT data collection and disclosure, (6) reports to be prepared by the ICT, (7) the stakeholder process, (8) ICT budgeting and funding, and (9) removal and replacement of the ICT.

third parties is dependent on Supplemental Upgrades previously funded by another customer,¹⁷ or whether Supplemental Upgrades previously funded by a customer are necessary to serve forecasted load growth reliably in the next calendar year.¹⁸ The ICT's discretion is itself limited by provisions defining whether a third party request for transmission and load growth will be deemed to be dependent upon a prior Supplemental Upgrade.¹⁹

23. We recognize that Washington Parish has expressed concern that, "unless Entergy provides Washington Parish access to the load flow modeling information and results with respect to its Supplemental Upgrades, [it] will not be able to determine whether it is receiving the full compensation to which it is entitled under Attachment T."²⁰ However, we note that Attachment S affords the ICT, which is independent, complete access to all data or other information that is gathered or generated by Entergy Transmission, the business unit, and employees that are responsible for the operation and reliability of the Entergy transmission system, in the course of its operations and reasonably necessary to achieve the purposes or objectives of Attachment S.²¹ Such information includes the data Washington Parish requests about the calculations for Attachment T.²²

24. We further note that the OATT calls upon the ICT, which, again, is independent, to consult with generation owners during the process of considering previously-incurred interconnection costs to ensure that the ICT has the benefit of the generator's view of its interconnection upgrades and cost assignments, and to ensure that the generator understands the analytical process undertaken by the ICT.²³ Entergy argues, and we

¹⁷ *Id.* at Attachment T, sections 4.3.2.1 and 4.4.2.

¹⁸ *Id.* at section 4.3.2.2.

¹⁹ *Id.* at sections 4.4.2, 4.3.2.1, and 4.3.2.2. We note that Attachment T, section 4.5 requires Entergy to provide for the continuation of a customer's rights to financial payments in the event the ICT ceases to function.

²⁰ Washington Parish Protest at 6.

²¹ Entergy Operating Companies' OATT at Attachment S, section 6.1.

²² *Id.* at Addendum A, No. 12. We reject Washington Parish's generalized complaints regarding data calculation and information sharing by Entergy, such as AFC administration and transmission service-related errors, as mandating the extensive disclosure provisions it advocates related to determination of the financial compensation required pursuant to Attachment T. Washington Parish Protest at 6-7.

²³ *See* Entergy Operating Companies' OATT at Attachment T, section 5.6.

agree, that this consultation process, which Washington Parish has not faulted, provides an opportunity for Washington Parish (and other generators) to make known their concerns about receiving compensation. Entergy also notes that Washington Parish's owner, Calpine Corporation, participated in the proceeding that led to the adoption of Attachment T²⁴ and had an opportunity at that time to propose the provisions it now advocates. It did not do so and Washington Parish offers no considerations specific to Washington Parish, or an allegation of changed circumstances, that would require the imposition of such provisions now through revisions to the IOA.²⁵

25. Finally, we reject Washington Parish's argument that the transparency discussion of paragraph 45 of Order No. 890 requires the amendments it suggests. Paragraph 45 discusses the notice of proposed rulemaking leading up to the issuance of Order No. 890, in particular the failure to comply with Open Access Same-Time Information System requirements, and does not apply to the disclosure provisions Washington Parish advocates.

C. Other Matters

26. We note that Entergy has not included in the preamble the complete dates on which the IOA was entered into and amended. Thus, we will require Entergy, in a compliance filing to be submitted within thirty days of the date of this order, to revise the preamble of the IOA to include the dates on which the IOA was entered into and amended. In addition, the title page of the IOA includes the following: "Dated as of January __, 2002, as further amended." Section 35.10(a) of the Commission's regulations²⁶ does not provide for this information to be included on the title page of a service agreement. Therefore, we will require Entergy to remove this language from the title page of the IOA in a compliance filing to be submitted within thirty days of the date of this order.

The Commission orders:

(A) Entergy's proposed Amendments are hereby accepted, to become effective September 13, 2011, as requested, as discussed in the body of this order.

²⁴ Entergy Answer at 4 & n.4 (citing *Entergy Serv., Inc.*, 115 FERC ¶ 61,095, at P 237-45, *reh'g denied*, 116 FERC ¶ 61,275, at P 183-205 (2006)).

²⁵ If Washington Parish feels that the ICT is not complying with its obligations, then it may file a section 206 complaint against the ICT alleging so.

²⁶ 18 C.F.R. § 35.10(a) (2011).

(B) Entergy is hereby directed to submit a compliance filing revising the preamble and title page of the IOA, as discussed in the body of this order, within thirty (30) days of the date of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.