

136 FERC ¶ 61,218
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. ER11-3175-000

ORDER CONDITIONALLY GRANTING REQUEST FOR WAIVER OF AFFILIATE
RESTRICTIONS

(Issued September 29, 2011)

1. On March 22, 2011, Entergy Services, Inc. (ESI), on behalf of the Entergy Operating Companies¹ and certain of their market-regulated power sales affiliates (collectively, Applicants), filed a request for waiver of the market-based rate affiliate restrictions. In this order, we conditionally grant Applicants' request for limited waiver of certain affiliate restrictions, effective April 20, 2011.

I. Background

2. Entergy Corporation is an electric utility holding company that includes the six Entergy Operating Companies (each of which is a franchised public utility with captive customers), various market-regulated power sales affiliates,² and several service company affiliates. The service company affiliates include ESI and Entergy Nuclear Operations, Inc.

¹ The six Entergy Operating Companies are: Entergy Arkansas, Inc. (Entergy Arkansas); Entergy Gulf States Louisiana, L.L.C. (Entergy Gulf States Louisiana); Entergy Louisiana, LLC (Entergy Louisiana); Entergy Mississippi, Inc. (Entergy Mississippi); Entergy New Orleans, Inc. (Entergy New Orleans); and Entergy Texas, Inc. (Entergy Texas).

² Entergy's market-regulated power sales affiliates that own nuclear plants are: Entergy Indian Point 2, LLC; Entergy Indian Point 3, LLC; Entergy Nuclear FitzPatrick, LLC; Entergy Nuclear Generation Co.; Entergy Nuclear Vermont Yankee, LLC; and Entergy Nuclear Palisades, LLC. Entergy's other market-regulated power sales affiliates are: Entergy Power, LLC (Entergy Power); Entergy Nuclear Power Marketing LLC; EWO Marketing, Inc. (EWO Marketing); Llano Estacado Wind, LLC; Northern Iowa Windpower LLC; and RS Cogen, LLC.

3. Applicants seek clarification that current shared fuel procurement, outage scheduling and economic dispatch operations at two fossil generating units co-owned by affiliates are consistent with the separation of functions and information sharing provisions of the affiliate restrictions (18 C.F.R. § 35.39(c)(2)(i) and 35.39(d)(1) (2011)); alternatively, they request a waiver of those provisions to permit a continuation of these shared operations. Similarly, Applicants request clarification that their current shared fuel procurement and outage scheduling operations at their nuclear plants are consistent with sections 35.39(c)(2)(i) and 35.39(d)(1) of the affiliate restrictions; alternatively, they request a waiver of those provisions to permit a continuation of these shared operations.

4. Applicants submit that the activities described in their application do not harm—and indeed benefit—the Entergy Operating Companies’ captive customers and thus are permitted under the affiliate restrictions. In the alternative, Applicants submit that limited waivers from these provisions of the affiliate restrictions are appropriate because of this combined absence of customer harm and existence of customer benefits.

A. Co-Owned Fossil Units

5. Applicants request clarification that their current practices at two co-owned fossil generating units regarding fuel procurement, outage scheduling, and economic dispatch are consistent with sections 35.39(c)(2)(i) and 35.39(d)(1) of the affiliate restrictions; alternatively, they request a waiver of those provisions to the extent necessary to continue their existing practices.

Fuel Procurement

6. The two co-owned fossil generating units at issue are Independence Steam Electric Station, Unit 2 (ISES 2), located in Newark, Arkansas, and Roy S. Nelson Station, Unit 6 (Nelson 6), located in Westlake, Louisiana. ISES 2 is co-owned by Entergy Mississippi, which is an Entergy Operating Company, and Entergy Power, which is a market-regulated power sales affiliate, with the remaining interests held by non-affiliated co-owners. Entergy Arkansas, which is an Entergy Operating Company, operates ISES 2 but is not a co-owner. Nelson 6 is co-owned by Entergy Gulf States Louisiana and Entergy Texas, both of which are Entergy Operating Companies, with the remaining interests held by non-affiliated co-owners. EWO Marketing, which is a market-regulated power sales affiliate, has a tolling agreement to receive the share of the output owned by one of the non-affiliated co-owners of Nelson 6 but EWO Marketing is not a co-owner. Under the tolling agreement, EWO Marketing receives information to which the co-owner is entitled. Applicants state that they are asking for Commission clarification or

waiver as if Nelson 6 were co-owned by Entergy Operating Companies and market-regulated power sales affiliates.³

7. Applicants state that coal transportation and procurement for ISES 2 and Nelson 6 are arranged by employees from ESI's System Planning and Operations and that these employees do not engage in generation or market functions. They explain that co-owners are charged only for their proportionate share of fuel, based on their ownership interest, with all co-owners paying the same price for their proportion of fuel purchased. Applicants state that because all co-owners are charged the same unit cost of fuel, there is no possibility of allocating any "cheaper" fuel to Entergy Power and EWO Marketing, the market-regulated power sales affiliates. Applicants further state that the delivered cost of coal for ISES 2 has been previously reviewed in the periodic fuel cost audits conducted by the Arkansas Public Service Commission and that the delivered cost of coal to Nelson 6 has been previously reviewed by the Public Utilities Commission of Texas and the Louisiana Public Service Commission. Applicants maintain that, under their current practices, shared fuel procurement at the co-owned facilities results in economies of scale at both the purchasing stage and the handling stage. They contend that at both ISES 2 and Nelson 6, consolidated fuel procurement benefits all co-owners, providing a favorable bargaining position, which results in reduced fuel costs. They state that if their request is denied, the facilities would have to undergo expensive physical changes to accommodate multiple coal pile storage for each of the co-owners, additional staff would be needed, and transportation costs would increase.

Outage Scheduling

8. Applicants state that responsibility for organizing outage scheduling of fossil plants belongs to the Entergy Fossil business unit, whose employees are not involved in power marketing functions, in collaboration with ESI's System Planning and Operations personnel. Commercial operations functions for the market-regulated affiliates are performed by Entergy Wholesale Commodity Group and Applicants state that these employees are precluded from participating in meetings at which the timing of outage schedules is determined for the Entergy Operating Companies' fossil plants. Outage decisions are made on the basis of which plants need maintenance and repair work. Entergy Arkansas and Entergy Gulf States Louisiana only inform the relevant co-owner(s) of each generating unit respectively once an outage schedule is in place. Applicants maintain that the market-affiliated co-owners under the respective plant operating agreements do not create or determine the timing of the outage schedules, and therefore have no opportunity to manipulate outage schedules for their own benefit or to the detriment of captive customers. Applicants contend that separating the outage

³ Applicants note that another market-regulated power sales affiliate, EAM Nelson Holding, LLC, has been created to acquire a partial ownership interest in Nelson 6.

scheduling function for co-owned units like ISES 2 and Nelson 6 is impractical because it is not possible for each co-owner to separately schedule outages for the percentage of the generating unit it owns.

Economic Dispatch

9. Applicants state that there is no sharing of personnel who create economic dispatch schedules. They state that neither of the market-regulated power sales affiliates (Entergy Power nor EWO Marketing) submit dispatch instructions. Applicants explain that separately created economic dispatch schedules are separately communicated to the plant personnel responsible for physical dispatch. Entergy Power and EWO Marketing each receives its fixed contractual pro rata share of actual hourly generation; therefore there is no opportunity for dispatch schedules to be manipulated to shift capacity to market-regulated owners to the detriment of captive customers of the Entergy Operating Companies. Further, they state that employees have received training on the Commission's affiliate restrictions and the no-conduit rule.

Information Sharing

10. Applicants state that co-ownership of generating units by franchised public utilities and their market-regulated power sales affiliates means that market information about the operational level of that particular co-owned plant will become known to personnel working for the market-regulated power sales affiliates as part of the "conjoined nature of the facilities." Applicants note that if a shared unit is experiencing a forced or scheduled outage, the co-owners will be aware that the Entergy Operating Company is not dispatching energy from the same unit. They state that other after-the-fact operational information, such as heat rates, capacity factors, emissions and information regarding coal supply and transportation for ISES 2 and Nelson 6, will be shared among co-owners of the same unit. Applicants explain that information related to the actual delivered price of coal, vendors and quantities of purchased coal, and inventory is provided after the fact to each respective set of co-owners at semi-annual co-owners meetings, which usually take place approximately every six months. Applicants submit that this intentionally delayed disclosure of price-related information is a measure taken to avoid the risk of a co-owner using the coal price to undercut any Entergy Operating Company's potential generation sales to wholesale customers, to the detriment of captive customers.

11. Applicants describe the restrictions in place with respect to how a market-regulated power sales affiliated co-owner may obtain information about its own generating unit. They state that all ISES 2 and Nelson 6 co-owners (including Entergy Power and EWO Marketing, which has a tolling agreement with a co-owner) view their generating unit's daily operating characteristics only by accessing a password protected website. This website provides information only about the generating unit or generating units in which the co-owner has an ownership interest. Applicants state that co-owner

meetings are carefully organized so as to ensure that only the representatives of companies with an interest in their particular co-owned generating unit are present and exposed to the materials regarding the unit at issue. An Entergy Corporation compliance representative is present at the co-owner meetings to ensure that no non-public Entergy Operating Company market information is disclosed to any Entergy Wholesale Commodity Group employee present on behalf of Entergy Power or EWO Marketing (other than information applicable to the relevant unit in which Entergy Power or EWO Marketing has an ownership interest). Applicants also state that the no-conduit rule applies to any market information about other Entergy Operating Company units and personnel are under an obligation to not release any market information about other Entergy Operating Company plants to market-regulated power sales affiliates. This includes employees involved in fuel procurement, outage scheduling and executing economic dispatch instructions for the co-owned units. Additionally, they state that separate electronic data rooms are used for ISES 2 and Nelson 6 to provide equal access to the information released to all the co-owners.

B. Entergy's Nuclear Operations

12. Applicants request that the Commission clarify that the shared nuclear fuel procurement and consolidated outage scheduling practices are consistent with sections 35.39(c)(2)(i) and 35.39(d)(1) of the affiliate restrictions; alternatively, they request a waiver to allow their practices to continue. Applicants state that the representations on which Commission staff relied when the Office of the General Counsel and the Office of Enforcement issued a No-Action Letter regarding the franchised and market-regulated nuclear fleets on February 8, 2007 remain true and correct.

13. Applicants state that the franchised nuclear units, located in the southern portion of the United States and referred to as the South fleet, and the market-regulated nuclear units, located in the north and referred to as the North fleet, are functionally and geographically separate. The market-based rate tariffs of the market-regulated nuclear entities specify that they do not have market-based rate authority for sales within the balancing authority area of the Entergy Operating Companies (including the Louisiana Energy and Power Authority and City of Lafayette balancing authority areas).

Fuel Procurement

14. Applicants maintain that shared fuel procurement processes provide both captive ratepayers and customers of the market-regulated affiliates benefits in terms of efficiency, cost-effectiveness, and expertise. They maintain that joint fuel procurement and management benefits captive customers by reducing costs and supply risks, providing personnel cost savings, enhancing expertise, and enhancing leverage in contract negotiations. Applicants explain that none of the individuals involved in fuel procurement within Entergy Nuclear are involved in power marketing, and marketing personnel play no role in nuclear fuel procurement except for input into the official

schedule for the market-regulated North fleet nuclear plants. They state that the pricing structure of nuclear fuel prohibits the Nuclear Fuels division, the division within Entergy Nuclear responsible for negotiating and administering the fuel contract portfolio, from allocating relatively cheaper fuel to the market-regulated nuclear plants at the expense of the franchised utility plants or its captive ratepayers.

15. Creation of nuclear fuels involves four steps: (1) mining raw uranium; (2) converting the raw uranium into uranium hexafluoride; (3) enriching the uranium hexafluoride; and (4) fabrication of fuel assemblies, which involves converting the enriched uranium into uranium dioxide powder, which is processed into ceramic pellets that are loaded into the fuel rods and joined to fuel assemblies. The Nuclear Fuels division procures raw uranium and conversion and enrichment services on a bulk basis on behalf of all nuclear plants at the same time. The resulting uranium and conversion and enrichment contracts, and related purchases are then divided equally between, and under the same pricing terms and conditions for, the North and South fleets, creating a separate “pool” for each fleet. Subsequently, at the fabrication step in the process, costs become plant-specific. Each plant in the North and South fleets is charged the average cost of inventory when enriched uranium is withdrawn from their respective fuel pools for further processing for a reload. Applicants state that this prevents inequitable sharing of costs in a manner that could harm captive customers. Where it is not feasible to contract for equivalent quantities of raw uranium or services for each fleet because of operational needs—as reactor requirements vary in terms of quantity and timing—it is the practice of the Nuclear Fuels division to obtain the best possible price available on the market for the pool that needs that material. In either case, the pools of uranium, conversion, and enrichment requirements, contracts, and inventories are kept separately for the North and South fleets. Applicants maintain that this prevents any potential transfer of fuel from the franchised plants to the merchant plants, or vice versa. Once contracts are in place for each pool, the administration of each contract is done to provide the best efficiency and risk management for the applicable pool, taking into account only its supply portfolio.

16. Applicants state that even if some market information about the South fleet were somehow inadvertently disclosed, the distinct customer bases would preclude the market-regulated plants from being able to use such information to their advantage or to the detriment of captive customers. Further, the market-based rate tariffs preclude sales from the North fleet within the balancing authority of the Entergy Operating Companies. Nonetheless, Applicants state that they have in place structural restrictions to prevent the sharing of information about the Entergy Operating Companies’ plants, including the South fleet, to the market-regulated power sales affiliates. The Nuclear Operations division is separate from the market-regulated affiliate market function, which is managed by Entergy Wholesale Commodity Group. Applicants assert that this minimizes the likelihood that information regarding the operations of the regulated facilities—even information regarding their fuel costs—will be disclosed to the market-regulated affiliate’s marketing employees. In addition, Applicants state that all Nuclear

Fuels employees are trained on the affiliate restrictions, particularly the no-conduit rule, further ensuring against the possibility that market information regarding fuel prices will be improperly disclosed. Moreover, the personnel involved in nuclear fuel procurement receive specific training on the restrictions against preferential treatment and cross-subsidization of the market-regulated power sales affiliates. Further, such personnel know that their behavior is subject to audit by regulators at the state level—nuclear fuel costs and contracts are subject to periodic regulatory review in all the franchised jurisdictions.

Outage Scheduling

17. Applicants state that outage scheduling for the nuclear units is largely done on a plant-by-plant basis, and management of outage scheduling only begins to converge at the higher levels of the corporate ladder. For each fleet—the franchised nuclear plants (South fleet) and the market-regulated nuclear plants (North fleet)—there is an Official Schedule Working Group that creates the official schedule for that particular fleet. These personnel do not perform wholesale power sales activities. Applicants state that the only shared employees in this context are the employees in the Official Schedule Working Groups who are field and maintenance employees that may be shared under section 35.39(c)(2)(i), subject to the no-conduit rule. They are not engaged in or responsible for generation or marketing functions. Applicants state that Official Schedule Working Group employees are trained on the affiliate restrictions, particularly the no-conduit rule.

18. Applicants maintain that the organizational and geographic separation of the franchised and market-regulated fleets greatly reduces the likelihood that any information regarding outage scheduling or dispatch of the regulated plants will be disclosed to the market-regulated affiliates. They state that multiple benefits result from consolidated outage scheduling, without imposing costs on captive customers. They further state that there is little risk that joint outage scheduling could result in harm to captive customers because the nuclear units physically do not have the ability to ramp up or down quickly. Moreover, the North and South fleets sell into different markets and the market-based rate tariffs of the market-regulated nuclear power sales affiliates preclude sales within the balancing authority of the Entergy Operating Companies. Applicants note that in the nuclear context, outage scheduling is driven by the nuclear fuel burn cycle and is typically planned on 18-month or 24-month intervals. Finally, Applicants state that the marginal cost of not sharing outage scheduling personnel would include increased personnel costs for duplicative functions, decreased procurement leverage, and decreased levels of experience and expertise

19. Applicants state that output from the franchised nuclear units (the South fleet), which is for base load generation, is dispatched by employees within ESI's System Planning and Operations. Output from the plants owned by the nuclear market-regulated power sales affiliates (the North fleet) is marketed by Entergy Nuclear Power Marketing, LLC, a market-regulated power sales affiliate integrated under Entergy Wholesale

Commodity Group. Applicants state that market-based rate tariffs forbid output from the North plants from being sold in the Entergy footprint.

20. Applicants state that physical (as opposed to commercial/marketing) operations of the South and North fleets remain at all times under the Entergy Nuclear management structure. Physical operational management is organizationally separated. They state that these senior officers are engaged in corporate oversight and neither perform wholesale power sales activities nor are involved in the daily functions of directing, organizing and executing the business decisions of either organization.

II. Notice of Filing and Responsive Pleadings

21. Notice of the Applicants' March 22, 2011 Filing was published in the *Federal Register*, 76 Fed. Reg. 17,643 (2011), with interventions and comments due on or before April 12, 2011. None was filed.

III. Discussion

22. As discussed below, we will conditionally grant Applicants' request for limited waiver of the separation of functions and information sharing provisions in 18 C.F.R. §§ 35.39(c)(2)(i) and 35.39(d)(1) to permit Applicants to continue their existing practices. However, we note that this limited waiver does not affect Applicants' obligation to comply with the no-conduit provisions of section 35.39(g).⁴

23. In Order No. 697, the Commission codified certain affiliate restrictions in its regulations to protect captive customers from the potential for a franchised public utility to interact with a market-regulated power sales affiliate in ways that transfer benefits to the affiliate and its stockholders to the detriment of the captive customers.⁵ Captive customers are defined as "any wholesale or retail electric energy customers served by a franchised public utility under cost-based regulation."⁶ The affiliate restrictions govern,

⁴ 18 C.F.R. § 35.39(g).

⁵ *Market-Based Rates For Wholesale Sales of Electric Energy, Capacity, and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, at P 513, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *order on reh'g*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010).

⁶ Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 202; 18 C.F.R. § 35.36(a)(6) (2011).

among other things, the separation of functions, the sharing of market information, and power brokering. The Commission requires that, as a condition of receiving and retaining market-based rate authority, sellers comply with these affiliate restrictions unless explicitly permitted by Commission rule or order granting waiver of the affiliate restrictions.⁷ Failure to satisfy the conditions set forth in these affiliate restrictions constitutes a violation of a seller's market-based rate tariff.⁸

24. Under the separation of functions requirement in the affiliate restrictions (section 35.29(c)(2)(i)), employees of market-regulated power sales affiliates must operate separately, to the maximum extent practical, from employees of affiliated franchised public utilities with captive customers.⁹ Under the information sharing provisions in the affiliate restrictions (section 35.39(d)(1)), a franchised public utility with captive customers may not share market information with a market-regulated power sales affiliate if the sharing could be used to the detriment of captive customers, unless simultaneously disclosed to the public. Section 35.39(d)(2) generally provides that permissibly shared support employees, field and maintenance employees and senior officers and board of directors may have access to information covered by the prohibition of section 35.39(d)(1), subject to the no-conduit provision in section 35.39(g), which provides that a franchised public utility with captive customers and a market-regulated power sales affiliate are prohibited from using anyone as a conduit to circumvent the affiliate restrictions.

25. With respect to the separation of functions requirement, on April 15, 2010, in response to a request for clarification, the Commission provided guidance regarding which employees may not be shared under the affiliate restrictions unless otherwise permitted by Commission rule or order.¹⁰ Specifically, the Commission clarified that,

⁷ *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, 131 FERC ¶ 61,021, at P 2 (April 15 Clarification Order), *order granting in part request for extension of time to comply*, 132 FERC ¶ 61,014 (2010) (July 2 Order), *order denying reh'g*, 134 FERC ¶ 61,046 (2011) (Rehearing Order).

⁸ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 549-550.

⁹ 18 C.F.R. § 35.39(c)(2)(i).

¹⁰ April 15 Clarification Order, 131 FERC ¶ 61,021 at P 43. In Order No. 697-A, the Commission stated that "shared employees may not be involved in decisions regarding the marketing or sale of electricity from the facilities, may not make economic dispatch decisions, and may not determine the timing of scheduled outages for facilities." Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 253.

consistent with Order No. 697-A, a franchised public utility with captive customers and its market-regulated power sales affiliate may not share employees that make economic dispatch decisions or that determine the timing of scheduled outages.¹¹ The Commission also clarified that franchised public utilities with captive customers are prohibited from sharing employees who engage in fuel procurement.¹² With respect to fuel procurement employees, the Commission explained that a shared employee who procures fuel for both the franchised public utility and the market-regulated power sales affiliate may have the incentive to allocate purchases of lower priced fuel supplies to the market-regulated power sales affiliate while allocating purchases of higher priced fuel supplies to the franchised public utility.¹³ The Commission denied rehearing of the April 15 Clarification Order, and required that market-based rate sellers comply with the guidance in the April 15 Clarification Order within 90 days, or by April 20, 2011.¹⁴ The Commission has also explained that, to the extent that affected entities believe they need additional guidance concerning compliance with the currently effective market-based rate affiliate restrictions, they may submit a request for a no-action letter regarding specific proposed transactions, practices, or situations¹⁵ or may seek waiver of the market-based rate affiliate restrictions on a case-by-case basis.¹⁶

26. We will conditionally grant Applicants' request for limited waiver of the separation of functions requirements of section 35.39(c)(2)(i) and the information sharing restrictions in section 35.39(d)(1) to permit Applicants to share fuel procurement employees, outage scheduling personnel, and certain unit-specific information concerning ISES 2 and Nelson 6 as discussed by Applicants in their request for waiver, based on their representation that their practices ensure that captive customers will not be harmed.¹⁷ We interpret this representation to be a commitment that captive customers will not be harmed.

¹¹ April 15 Clarification Order, 131 FERC ¶ 61,021 at P 40.

¹² *Id.* P 41.

¹³ *Id.* P 42.

¹⁴ Rehearing Order, 134 FERC ¶ 61,046 at P 28.

¹⁵ See July 2 Order, 132 FERC ¶ 61,014 at P 5 (citing *Interpretative Order Modifying No-Action Letter Process and Reviewing Other Mechanisms for Obtaining Guidance*, 123 FERC ¶ 61,157 (2008)).

¹⁶ See *id.* (citing *Cleco Power LLC*, 130 FERC ¶ 61,102 (2010)).

¹⁷ Based on Applicants' representation that there is no sharing of personnel who create economic dispatch schedules, we find that Applicants do not need a waiver of the separation of functions requirements of section 35.39(c)(2)(i) with respect to economic

(continued)

27. With respect to the co-owned fossil units, Applicants represent in their March 22 Filing, among other things, that the employees arranging coal transportation and procurement are from ESI's System Planning and Operations and do not engage in generation or market functions and that because co-owners are charged the same unit cost of fuel, "cheaper" fuel cannot be allocated to Entergy Power and EWO Marketing, the market-regulated power sales affiliates. Applicants further represent that employees responsible for outage scheduling are not involved in power marketing functions, that Entergy Arkansas and Entergy Gulf States Louisiana only inform the relevant co-owner(s) of each generating unit respectively once an outage schedule is in place, and that the market-regulated affiliated co-owners do not create or determine the timing of the outage schedules. In addition, Applicants represent that disclosure of certain information among co-owners is delayed and that co-owners view their generating unit's daily operating characteristics only by accessing a password protected website.

28. With respect to nuclear operations, Applicants represent, among other things that: none of the individuals involved in fuel procurement within Entergy Nuclear are involved in power marketing, and marketing personnel play no role in nuclear fuel procurement except for input into the official schedule for the market-regulated North fleet nuclear plants; Applicants' procurement process and pricing structure prohibits the Nuclear Fuels division from allocating cheaper fuel to the market-regulated nuclear plants at the expense of the franchised utility plants and provides both the franchised captive ratepayers and customers of the wholesale fleet with benefits in terms of efficiency and cost-effectiveness. In addition, Applicants represent that outage scheduling is largely done on a plant-by-plant basis, and management of outage scheduling only begins to converge at the higher levels of the corporate ladder. As Applicants explain, for each fleet there is an Official Schedule Working Group that creates the official schedule for the particular fleet (i.e., the North or South fleet) and these personnel do not perform wholesale power sales activities. Applicants further represent that the only shared employees in this context are the employees in the Official Schedule Working Groups who are field and maintenance employees and who are not engaged in or responsible for generation or marketing functions. Applicants also represent that structural restrictions are in place to prevent the sharing of information about the Entergy Operating Companies' plants to the market-regulated power sales affiliates; all Nuclear Fuels employees are trained on the affiliate restrictions and the no-conduit rule in particular; the

dispatch. We note that to the extent a market-regulated power sales affiliate seeks to broker power for an affiliated franchised public utility with captive customers, the market-regulated power sales affiliate must comply with the requirements of section 35.39(f) of the Commission's regulations, including the requirement that the market-regulated power sales affiliate must offer the franchised public utility's power first. 18 C.F.R. § 35.39(f).

organizational and geographic separation of the franchised and market-regulated fleets reduces the likelihood of inappropriate disclosures to market-regulated affiliates of information regarding outage scheduling or dispatch of the franchised plants as well as resulting harm from such disclosures.

29. Accordingly, we will conditionally grant Applicants' request for limited waiver of sections 35.39(c)(2)(i) and 35.39(d)(1) to permit Applicants to continue their current practices, based on their representation that their arrangements ensure that captive customers will not be harmed. As noted above, this limited waiver does not affect Applicants' obligation to comply with the no-conduit provisions of section 35.39(g).¹⁸ Additionally, as a condition of this waiver, Applicants will be required to maintain sufficient records to enable the Commission to audit whether the representations and commitments made in their request for waiver remain true and accurate, including their commitment that captive customers will not be harmed.

30. The waivers conditionally granted herein are limited to the specific facts, representations, policies and procedures Applicants presented in their March 22 Filing and apply only to the employees discussed in their March 22 Filing. To the extent there is any material change in circumstances that would reflect a departure from the facts, representations, policies and procedures that we have relied upon in granting the requested waiver, Applicants will be required to inform the Commission within 30 days of any such change. With the exception of the limited waivers specifically granted herein, and any other previously granted waiver, all of the other affiliate restrictions continue to apply to Applicants.

31. Finally, we will direct Applicants to submit a compliance filing, within 30 days of the date of this order, revising the limitations and exemptions sections of their market-based rate tariffs to list the limited waiver granted herein and include a citation to this order.¹⁹

The Commission orders:

(A) Applicants' request for limited waiver of certain of the affiliate restrictions is hereby granted, effective April 20, 2011, subject to conditions, as discussed in the body of this order.

¹⁸ 18 C.F.R. § 35.39(g).

¹⁹ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at Appendix C, *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 384.

(B) Applicants are hereby directed to submit a compliance filing, within 30 days of the date of this order, revising the limitations and exemptions sections of their market-based rate tariffs, as discussed in the body of this order.

(C) Applicants are hereby directed to maintain records to enable the Commission to audit their compliance, as discussed in the body of this order.

(D) Applicants must inform the Commission within 30 days of any material change in circumstances that would reflect a departure from the facts, representations, policies, and procedures the Commission relied upon in granting the waiver granted herein.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.