

106 FERC ¶ 61,039
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

Entergy Services, Inc.

Docket Nos. ER04-207-000
ER04-207-001

ORDER ACCEPTING FOR FILING PROPOSED TARIFF REVISIONS, SUBJECT TO
MODIFICATION AND THE OUTCOME OF ANOTHER PROCEEDING

(Issued January 23, 2004)

1. In this order, the Commission accepts for filing Entergy Services, Inc.'s (Entergy)¹ proposed revisions to the creditworthiness provisions, Section 11, of the Open Access Transmission Tariff (OATT) of Entergy Operating Companies, to be effective January 25, 2004, subject to the outcome of Docket No. ER03-1140-001, et al., and subject to the modifications ordered below. This order benefits customers by allowing Entergy to decrease the potential financial risk to both Entergy and its creditworthy customers due to non-creditworthy customers, while protecting customers from unduly burdensome creditworthiness standards.

Background

2. On July 31, 2003, in Docket No. ER03-1140-000, Entergy filed proposed revisions to its OATT in order to better protect itself against the risk of nonpayment from its OATT transmission customers. These revisions outlined Entergy's credit review procedures and identified the types of financial assurance that Entergy will accept from uncreditworthy customers. They also specified the deadlines by which such financial assurances must be provided to Entergy and included suspension-of-service procedures.

3. The Commission issued an order on September 29, 2003² that generally accepted, with modifications, Entergy's proposed creditworthiness provisions. However, the order

¹ The Entergy Operating Companies are Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Mississippi, Inc., Entergy Louisiana, Inc., and Entergy New Orleans, Inc.

² Entergy Services, Inc., 104 FERC ¶ 61,329 (2003), reh'g pending (September 29 Order).

rejected Entergy's proposal to require customers to increase previously provided security in order to cover Entergy's increased exposure to the risk of nonpayment resulting from a customer's increased purchases of transmission service. That rejection was without prejudice to Entergy refiling a more specific proposal.

Entergy's Proposed Revisions

4. On November 19, 2003, as revised on November 25, 2003, Entergy filed proposed revisions to Section 11 of its OATT.³ Entergy explains that as provided in the Commission's September 29 Order, it has refiled Section 11.3.3, as well as related portions of Sections 11.1 and 11.3.5 of its OATT, in order to clarify when Entergy may require an existing transmission customer to increase previously provided financial assurances which have become insufficient with respect to their ability to protect Entergy against the risk of nonpayment because of such customer's increased purchases of transmission services. Entergy also explains that if a customer, pursuant to Section 11.1, requests a credit review and Entergy determines that the customer has provided security that exceeds the security required by Sections 11.3.1 and 11.3.2, Entergy will reduce the amount of security required by the customer.⁴ Entergy asserts that its proposed revisions are consistent with, and/or superior to, the terms and conditions of Order No. 888's pro forma tariff.⁵

³ Entergy submitted for filing, in Docket No. ER04-107-000, First Revised Sheet No. 36A, Original Sheet No. 36A.01, First Revised Sheet No. 36H, Original Sheet No. 36H.01, Original Sheet No. 36H.02, First Revised Sheet No. 36I, and Original Sheet No. 36I.01. In Docket No. ER04-207-001, Entergy submitted for filing Substitute First Revised Sheet No. 36H.02.

⁴ Entergy Cover Letter at 4.

⁵ Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Service by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888 FERC Statutes and Regulations, Regulations Preambles January 1991-June 1996 ¶ 31,036 (1996), order on reh'g, Order No. 888-A, FERC Statutes and Regulations, Regulations Preambles July 1996-December 2000 ¶ 31,048 (1997), order on reh'g, Order No. 888-B, 81 FERC ¶ 61,248 (1997), order on reh'g, Order No. 888-C, 83 FERC ¶ 61,046 (1998), aff'd in relevant part sub nom. Transmission Access Policy Study Group, et al. v. FERC, 225 F.3d 667 (D.C. Cir. 2000), aff'd sub nom. New York, et al. v. FERC, 535 U.S. 1 (2002).

Revised Section 11.3.3

5. Entergy states that Revised Section 11.3.3 is meant to protect Entergy from situations in which it is left exposed to an additional risk of nonpayment because a customer's purchases of transmission services have increased since the time that it originally provided security pursuant to either Sections 11.3.1 or 11.3.2 of Entergy's OATT.
6. Entergy explains that Section 11.3.3 is consistent with governing Commission precedent because it ensures that all financial assurances calculated and collected pursuant to Sections 11.3.1 and 11.3.2 will be sufficient to cover all of Entergy's exposure to the risk of nonpayment during the entire term of a customer's transmission service agreement. Entergy adds that pursuant to the September 29 Order, proposed Section 11.3.3 does not grant Entergy the ability to request unlimited amounts of financial assurances from customers because Entergy cannot collect more than three months worth of transmission service charges from a customer as collateral. Therefore, Entergy explains, customers are not penalized when Entergy implements this adjustment mechanism. Entergy states that it is ensuring that it has collected collateral commensurate with a customer's actual purchases, and a customer cannot be required to adjust its financial assurances more than twice every twelve months, and accordingly, customers are not in danger of Entergy perpetually ratcheting-up amounts of required security.

Revised Sections 11.1 and 11.3.5

7. Entergy has also included language in Revised Section 11.3 which clarifies that a customer's credit downgrade below Entergy's Commission-approved creditworthiness thresholds may trigger Entergy's reevaluation of a customer's creditworthiness. In addition, Entergy has revised Section 11.3.5 to reference Section 11.3.3 and to indicate that a customer may be notified and required to adjust financial assurances to reflect its actual purchases of transmission service.

Notices, Interventions, and Protests

8. Notice of Entergy's filing was published in the Federal Register at 68 Fed. Reg. 67,666 (2003) with comments, protests, or interventions due on or before December 10, 2003. On November 25, 2003, Entergy filed a substitute revised tariff sheet to correct a drafting error. The November 25, 2003 filing was noticed in the Federal Register at 68 Fed. Reg. 68,890 (2003) with comments, protests, or interventions due on or before December 16, 2003. InterGen Services (InterGen), an independent power producer, filed a timely motion to intervene and protest on behalf of Cottonwood Energy Company, LP. Arkansas Electric Cooperative Corporation filed a timely motion to intervene. On December 23, 2003, Entergy filed an answer to InterGen's protest.

9. InterGen expresses two concerns with Entergy's proposal. First, InterGen states that under Section 11.3.2, Entergy was requiring security based on a twelve-month average, but it now appears that under Section 11.3.3.2 Entergy may be using a six-month average. It asserts that Entergy should clarify which period it is using to calculate the amount of required security. InterGen maintains that if Entergy is using a six-month average, it is a fundamental change in the way Section 11.3.2 customer's security is being calculated. It states that this would result in some customers having their security calculated on a twelve-month basis, and others having their security calculated on a six-month basis, which would be discriminatory. InterGen states that such a result would be unfairly burdensome to generators and is neither consistent with, nor superior to, the pro forma tariff.

10. Second, InterGen argues that notwithstanding whether a six-month or a twelve-month "actual average charge" is used to calculate the required security, the use of a six-month "evaluation period" creates a substantial concern. InterGen argues that it is almost guaranteed that during some six-month period the "six-month actual average charge" will exceed the "twelve-month actual average charge" because a single month's aberration will not be spread out over the longer time period. Consequently, InterGen asserts, a customer subject to Section 11.3.2 will almost always be subject to Section 11.3.3.2 at some point throughout the year.

11. In this regard, InterGen explains that Entergy is a "summer-peaking" system, meaning that customers are likely to take more transmission service for the three or four months around the summer period. It asserts that coming out of the summer peaking season, it is likely that the actual average monthly purchases of Transmission Services over the six month period including the summer peak would exceed the original monthly average for charges upon which the amount of a financial assurance was initially based. It further explains that this would trigger a Section 11.3.3.2 credit review after the summer peak period, which would likely result in Entergy demanding more security in September, and therefore collect additional security at a time when transmission usage is likely to decline over the next 6-8 months. InterGen concludes that Entergy should re-evaluate its proposed creditworthiness provisions to tie security more closely to expected usage.

Discussion

Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedures, 18 C.F.R. §385.214 (2003), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedures, 18 C.F.R. § 384.213(a)(2) (2003) prohibits an answer

to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept Entergy's answer and will, therefore, reject it.

Commission Determination

13. The Commission will accept Entergy's proposed tariff sheets for filing, to be effective January 25, 2004, subject to the outcome of Docket Nos. ER03-1140-001 and 002, and subject to the modification ordered below.

14. The Commission finds that it is appropriate for Entergy to have the ability to reevaluate the customer's use of the transmission service and to be able to require the customer to provide additional financial assurances should the customer's use of the system increase. The Commission also finds that Entergy's proposal to limit such reevaluations to twice during a twelve-month period protects the customer against constant "ratcheting up" of its financial assurances. The Commission concludes that these revisions are consistent with or superior to the Commission's Order No. 888 pro forma tariff. However, the Commission agrees with InterGen that the use of a six-month period coming out of the summer peaking period to determine whether additional security is required could result in a substantial increase in certain customers' requisite security even though those customers' average transmission use over the entire twelve-month period did not change. The Commission also agrees that the proposed tariff language is unclear. Proposed Section 11.3.3.2 states merely that the "Transmission Customer must increase the amount of its financial assurance to be equal to three (3) times its actual average purchases of Transmission Service." It is unclear whether Entergy intended to reference the actual average purchase over the subsequent six-month period or over a twelve-month period.

15. Finally, the Commission notes that Entergy indicates it will reduce the amount of security required by the Transmission Customer if Entergy determines that it has provided security that exceeds that required by Sections 11.3.1 or 11.3.2 following a reevaluation requested by the Transmission Customer in accordance with Section 11.1 of its OATT. However, this obligation on the part of Entergy to reduce the Transmission Customer's security is not set forth in the tariff. Therefore, Entergy is directed to clarify its tariff to state that it will reduce the amount of financial security required by the Transmission Customer if a reevaluation of its transmission usage indicates that it has provided security in excess of that which is required in the tariff.

16. In summary, Entergy must modify its tariff language to specify that it will reevaluate the Transmission Customer's use of the system based on the preceding twelve-month period as measured from the date immediately prior to the initiation of such reevaluation so that a full year's usage of the system is represented. Entergy must also clarify that the amount of its financial assurance will be based on three times its actual average use over the reevaluation period (i.e., a twelve-month average). Finally, it must

clarify that Transmission Customer's financial assurances will be reduced if a reevaluation of its usage indicates it has provided security in excess of that which is required in the tariff.

Waiver

17. We find that Entergy has not demonstrated that good cause exists to justify waiver of the 60-day prior notice requirement. Accordingly, we will deny Entergy's request for waiver of this requirement.

The Commission orders:

Entergy's proposed revised tariff sheets are hereby accepted for filing, to be effective January 25, 2004, subject to the outcome of Docket Nos. ER03-1140-001, et al., and subject to Entergy filing revised tariff sheets within 30 days of the date of this order, as discussed in the body of this order. Original Sheet No. 36H.02 is rejected as moot.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.