

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
William L. Massey, and Nora Mead Brownell.

Entergy Services, Inc.

Docket No. ER03-753-000

ORDER ACCEPTING AND SUSPENDING AMENDMENTS  
TO SERVICE SCHEDULE,  
AND ESTABLISHING HEARING PROCEDURES

(Issued June 10, 2003)

1. In this order, the Commission accepts certain amendments to Service Schedule MSS-4 of the System Agreement of the Entergy Operating Companies (Entergy System Agreement), suspends them for a nominal period and sets them for hearing. This order benefits customers by ensuring a timely inquiry into whether the amendments to Service Schedule MSS-4 are just and reasonable.

**Background**

2. On April 18, 2003, Entergy Services, Inc., as agent for the Entergy Operating Companies<sup>1</sup> (collectively, Entergy), filed several amendments to Service Schedule MSS-4, which governs unit power purchases under the Entergy System Agreement.<sup>2</sup> Entergy explains that the purpose of Service Schedule MSS-4 is to set forth a basis for a unit power purchase between Operating Companies.<sup>3</sup> Entergy further states that Service Schedule

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<sup>1</sup>The Entergy Operating Companies are: Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc. and Entergy New Orleans, Inc.

<sup>2</sup>The System Agreement includes various Service Schedules that govern, among other things, the allocation of costs associated with the integrated operations of the Entergy System. Entergy explains that the Service Agreement requires the central economic dispatch of the Operating Companies' generating units and provides for the exchange of electric energy among the Operating Companies.

<sup>3</sup>Entergy states that a unit power purchase is defined as the purchase of a portion of a

(continued...)

MSS-4 prescribes a formula rate for calculating the payment by one Operating Company to another Operating Company for a sale of unit capacity.

3. Entergy explains that Service Schedule MSS-4 has been in existence in its present form as part of the current version of the System Agreement and is basically unchanged from the calculation of charges imposed under the 1973 System Agreement for Participation Units. It also states that it has not used Service Schedule MSS-4 for any transaction since 1989. Entergy explains that it is now seeking to amend Schedule MSS-4 because it is beginning, for the first time since 1985, to add additional long-term resources to serve retail customers.

4. Entergy asserts that it is amending Service Schedule MSS-4 because a review of the current terms of Service Schedule MSS-4 revealed that it does not properly calculate the costs of a generating unit that has been in service for a period of years. Entergy further states that it is amending Service Schedule MSS-4 because there is no provision to reflect the accumulated reserve for deferred income taxes. Further, Entergy proposes to provide the basis for the sale of purchased power from one Operating Company to another. Finally, Entergy explains that there are a number of relatively minor changes to reflect changes in the accounting for certain costs and to correct typographical errors.

5. Entergy notes that certain provisions of its System Agreement are under review in Docket No. EL01-88-001<sup>4</sup> and that, as the issues raised in this filing may also appear in that docket, it would not oppose consolidation of the two dockets.

### **Notice, Interventions and Protests**

6. Notice of Entergy's filing was published in the Federal Register, 68 Fed. Reg. 23,295 (2003), with interventions, comments and protests due on or before May 9, 2003. On April 22, 2003, the Arkansas Public Service Commission (Arkansas Commission) filed a notice of intervention. On April 29, 2003, the Mississippi Public Service Commission (Mississippi Commission) filed a notice of intervention. On May 9, 2003, the Arkansas Electric Cooperative Corporation (Arkansas Electric) and the Louisiana Energy Users Group (Louisiana Energy) filed motions to intervene; Calpine Corporation (Calpine), TECO Power Services Corporation (TECO), and Tractebel Energy Marketing, Inc.

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<sup>3</sup>(...continued)

designated generating unit's capability, which entitles the purchaser to receive each hour, the same portion of the total energy generated by that unit.

<sup>4</sup>See Louisiana Public Service Commission, 98 FERC ¶ 61,135 (2002) (Louisiana).

(Tractebel)<sup>5</sup> filed motions to intervene and protests; the Louisiana Public Service Commission (Louisiana Commission) filed a notice of intervention and protest;<sup>6</sup> the Electric Power Supply Association (Electric Power) filed a motion to intervene and comment, and the Council of the City of New Orleans (New Orleans) filed a notice of intervention and comment. On May 23, 2003, the Arkansas Commission filed an answer to protests. On May 30, 2003, Entergy filed an answer to protests and a request that the Commission deny the requests for intervention of Tractebel, TECO, Calpine and Electric Power.

7. Intervenor assert that Entergy has transmission and market power in its control area.<sup>7</sup> They maintain that the amendments that Entergy proposes for Service Schedule MSS-4 are part of a larger process by which Entergy purchases and dispatches energy from its affiliates.<sup>8</sup> Intervenor urge the Commission not to view the amendments to Service Schedule MSS-4 in isolation, but to view them in the context of how Entergy procures power, how it dispatches generation throughout its integrated system, and how its power allocation strategy and system dispatch interact with the wholesale market in the Entergy region.<sup>9</sup>

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<sup>5</sup>On May 23, 2003, Tractebel modified its protest to further argue for consolidation of proceedings.

<sup>6</sup>On May 12, 2003, the Louisiana Commission clarified its protest to state that, in its view, if the Commission consolidates this Docket with Docket No. EL01-88-000, the Commission should hear the issues in the two dockets separately.

<sup>7</sup>TECO Protest at 10-14.

<sup>8</sup>Tractebel Protest at 6; TECO Protest at 3-7. TECO and Tractebel reference Docket Nos. ER03-583-000, ER03-681-000, ER03-682-000, and ER03-774-000, each of which involves multi-year power sales between affiliates. On May 2, 2003, the Commission issued a letter order in these four dockets, finding Entergy's applications deficient and requiring Entergy to provide additional information. On May 12, as supplemented on May 14, 2003, Entergy filed its response to the Commission's May 2 letter order and, on May 30, 2003, the Commission ordered, in the above referenced proceedings, a public hearing to be held on the justness and reasonableness of the power sales agreements. See Entergy Services, Inc., et al., 103 FERC ¶ 61,256 (2003) (Entergy Services).

<sup>9</sup>Tractebel Protest at 4-8; TECO Protest at 14-22; Electric Power at 2-3 (asking the Commission to ensure that the proposed amendments not allow Entergy to implement purchased power agreements that the Commission might otherwise reject); Calpine Protest

(continued...)

8. Intervenor contend that Entergy is promoting its affiliated generation by freezing non-affiliated generation out of Entergy's power procurement process,<sup>10</sup> providing a safety net for market-based assets, and erecting barriers to the entry of unaffiliated merchant generators, thus removing the discipline of the market place.<sup>11</sup> They ask the Commission, as a condition of accepting the Service Schedule MSS-4 modifications for filing, to require Entergy to open its central economic dispatch system to all generators in the region and to ensure that Entergy places in its bid stack and centrally dispatches independent, unaffiliated generation.<sup>12</sup> According to Intervenor, this would increase the efficiency of generator dispatch, promote wholesale competition, and make available to the people in the Southeast newer and cleaner generation.<sup>13</sup>

9. Intervenor are also concerned that the proposed modifications to Service Schedule MSS-4 would allow Entergy to change the cost allocations among its Operating Companies and to deprive the Entergy Operating Companies of their rights to purchase excess capacity from each other.<sup>14</sup> Intervenor state that the Commission has previously approved these features of the System Agreement.<sup>15</sup>

10. Intervenor contend that the proposed changes to Service Schedule MSS-4 violate the conditions that Entergy entered into in order to obtain approval of its merger with Gulf

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<sup>9</sup>(...continued)  
at 7 (same).

<sup>10</sup>TECO Protest at 16, 19.

<sup>11</sup>Tractebel Protest at 7-10, citing Cinergy Services, Inc., 102 FERC ¶ 61,128 (2003); Ameren Energy Generating Company, 103 FERC ¶ 61,128 (2003).

<sup>12</sup>TECO Protest at 1-2, 8, 17-24. Calpine argues that, as a condition of accepting the proposed modifications of Service Schedule MSS-4 for filing, the Commission should require Entergy to provide in the System Agreement a definition of central economic dispatch that includes independent generators. See Calpine Protest at 4-6.

<sup>13</sup>TECO Protest at 14-22; Calpine Protest at 4-6.

<sup>14</sup>Louisiana Commission Protest at 1-7; Calpine Protest at 7.

<sup>15</sup>Louisiana Commission Protest at 4

States Utilities Company.<sup>16</sup> They also submit that the proposed revision concerning the proper depreciation treatment of upgrades to existing generation may have the effect of encouraging Entergy to upgrade its existing facilities when purchasing electric energy on the competitive wholesale market might be more efficient.<sup>17</sup>

11. Intervenors further maintain that certain proposed changes may lack sufficient clarity. For example, they state that it is not clear whether the modification proposing to price purchased power at the cost incurred by the selling company applies solely to long-term purchase power contracts or to all purchased power that transfers between the Operating Companies.<sup>18</sup> They also submit that the Commission should explore the practical effects on billings of Entergy's proposal to directly assign various aspects of nuclear unit costs.<sup>19</sup> Intervenors further ask the Commission not to approve Entergy's proposals to change debt and capitalization ratios and to treat taxes and O&M expenses on affiliate purchases and leases without first undertaking a thorough review of Entergy's intra-corporate accounting treatment of these assets.<sup>20</sup>

12. Certain Intervenors express concern that consolidating Docket No. ER03-753-000 with Docket No. EL01-88-001 might unduly delay the proceedings in Docket No. EL01-88-001 or provide insufficient time for discovery and examination in Docket No. ER03-753-000.<sup>21</sup> Further, Tractebel requests that we consolidate Docket No. ER03-753-000 with Docket Nos. ER03-583-000, ER03-681-000, ER03-682-000 and ER03-744-000, which concern certain power sales agreements filed by Entergy that the Commission recently set for hearing.<sup>22</sup>

## Discussion

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<sup>16</sup>Id. at 8-10.

<sup>17</sup>Calpine Protest at 8.

<sup>18</sup>See New Orleans Comments at 3.

<sup>19</sup>See Id. at 4-5.

<sup>20</sup>Tractebel Protest at 10.

<sup>21</sup>See TECO Protest at 22-23; Louisiana Commission Protest at 2-4; Calpine Protest at 1-2; Louisiana Commission Clarified Protest at 1-2. Hearings in Docket No. EL01-88-000 are scheduled to commence on June 23, 2003. Louisiana Commission Protest at 4.

<sup>22</sup>Tractebel Protest at 10-11. See Entergy Services.

### **Procedural Matters**

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the notices of intervention and timely, unopposed motions to intervene serve to make the Arkansas, Mississippi, and Louisiana Commissions and Arkansas Electric, Louisiana Energy, and New Orleans parties to this proceeding. Notwithstanding Entergy's opposition, given their interest in this proceeding we will grant the motions to intervene of Tractebel, Calpine, TECO and Electric Power. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2002), prohibits an answer to a protest, unless otherwise permitted by the decisional authority. We find good cause to accept the answers and therefore will allow the Arkansas Commission's and Entergy's answers.

### **Hearing Procedures**

14. Intervenors have raised issues of material fact concerning Entergy's proposed amendments to Service Schedule MSS-4 that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing ordered below. Our preliminary analysis indicates that the amendments to Service Schedule MSS-4 have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Therefore, we will accept the proposed amendments for filing, suspend them for a nominal period, make them effective June 17, 2003, as requested, subject to refund, and set them for hearing.

### **Consolidation**

15. We recognize that there are other Entergy proceedings currently set for hearing.<sup>23</sup> Given the procedural status of those proceedings and the variety of issues involved, we will not consolidate this proceeding with those other proceedings. On the other hand, however, we recognize that some efficiencies could be gained from consolidation. Accordingly, we will leave to the Chief Administrative Law Judge's discretion whether to consolidate some or all of these proceedings, in whole or in part, and, if he chooses to consolidate any or all of the proceedings, in whole or in part, how the consolidation should occur.

The Commission orders:

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<sup>23</sup>See Louisiana; Entergy Services.

(A) The proposed amendments to Service Schedule MSS-4 are hereby accepted for filing, suspended for a nominal period, made effective June 17, 2003, as requested, subject to refund, and set for hearing, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly Sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter 1), a public hearing shall be held in Docket No. ER03-753-000 into the reasonableness of the proposed rate schedules, as discussed in the body of this order.

(C) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a hearing conference in this proceeding, to be held at a time designated by the Chief Administrative Law Judge, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, D.C. 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding administrative law judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

( S E A L )

Linda Mitry,  
Acting Secretary.