

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Entergy Services, Inc.

Docket No. ER01-2214-003

ORDER ON REHEARING

(Issued October 28, 2004)

I. Introduction

1. In this order we address the rehearing and clarification requests filed by several parties. We deny in part and grant in part those requests, as discussed below.
2. This order benefits customers by ensuring that rates, terms and conditions for certain ancillary services are just and reasonable.

II. Background

3. This proceeding involves revisions to rates, terms, and conditions proposed for each of Entergy Corporation's operating companies¹ (Entergy) ancillary services offered under Schedule 3 (Regulation and Frequency Response Service), Schedule 4 (Energy Imbalance Service), Schedule 5 (Spinning Reserve Service), and Schedule 6 (Supplemental Reserve Service) of Entergy's Open Access Transmission Tariff (OATT).

¹ The Entergy operating companies include Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc.

4. The proposed revisions substantially changed certain provisions contained in the *pro forma* OATT adopted in Order No. 888² and in Entergy's pre-existing *pro forma*-conforming OATT. The Commission accepted the proposed revisions, suspended them for a nominal period, allowed them to become effective, subject to refund, on August 1, 2001, and set the matter for hearing and investigation.³

5. The Administrative Law Judge found some aspects of the filing to be unjust and unreasonable and ordered Entergy to make a compliance filing consistent with his findings.⁴

² See *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in part and rev'd in part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd*, *New York v. FERC*, 535 U.S. 1 (2002).

³ See *Entergy Services, Inc.*, 96 FERC ¶ 61,113 (2001).

⁴ See *Entergy Services, Inc.*, 102 FERC ¶ 63,016 (2003) (ID or Initial Decision).

6. The Commission summarily affirmed and adopted several of the judge's findings.⁵ The Commission discussed and modified the judge's findings on the remaining issues.⁶

⁵ See *Entergy Services, Inc.*, 105 FERC ¶ 61,329 (2003) (December 22 Order).
The Commission stated:

As to the following issues, we find, having reviewed the record, the Initial Decision, and the briefs, that they were properly resolved by the Initial Decision. We therefore deny the exceptions and summarily affirm and adopt the judge's decisions as our own: (A) rejecting the proposed additional capacity charges; (B) rejecting the alternative method of determining the appropriate Load Following Capacity (LFC) charge; (C) revising the minimum terms for capacity-related ancillary services purchased from Entergy; (D) dividing the LFC purchase obligation in two; (E) accepting Entergy's concession to use the customer's coincident peaks as the unit of measurement to determine the amount of LFC that must be purchased; (F) eliminating the penalty for imbalances that fall within the bandwidth and eliminating the additional penalties for curtailment risk periods and low load events; (G) requiring Entergy to provide advance notice to customers of the imminence of a curtailment risk period; (H) requiring Entergy to credit non-offending transmission customers with ancillary service penalty revenues plus interest; (I) requiring Entergy to develop its rates using the net non-levelized methodology; (J) accepting the stipulated return on equity allowance; (K) requiring Entergy to utilize a gross plant allocator to allocate production related costs to the Automatic Generator Control (AGC)-equipped units ; (L) requiring Entergy to adjust its rates, minimum terms and proposed penalties for Schedules 5 and 6 to be consistent with the changes required in Schedule 4; and (M) requiring Entergy to remove the proposed audit provisions.

Id. at P 4 (footnotes omitted).

⁶ The Commission stated:

The remaining issues resolved by the Initial Decision, *i.e.*, settlement of energy imbalances, the appropriate percentage of LFC that a customer must purchase, the amount of operating reserves a customer must purchase, the appropriate penalties for under-supply or over-supply of energy under certain circumstances, and Entergy's proposed summer rate are addressed below.

Id. at P 5.

7. Entergy and Allied Intervenors⁷ request rehearing of several issues decided in the December 22 Order. Those requests will be discussed in detail below.

III. Discussion

A. Schedule 3 – Load Following Capacity Purchase Obligation

1. Entergy's Proposal

8. Entergy proposed to revise Schedule 3 to require that each transmission customer purchase or self-supply an amount of Regulation and Frequency Response Service, *i.e.*, regulation service or LFC, equal to “4 percent of a Customer's maximum integrated peak load.”⁸ Alternatively, Entergy proposed to revise the customer's required LFC if either Entergy or the customer determines that the 4 percent figure overstates or understates the customer's LFC requirement.

2. Initial Decision

9. The judge rejected Entergy's proposed 4 percent LFC purchase obligation. The judge found that Entergy should not include the sum of both positive (2 percent) and negative (2 percent) variations in the calculation of LFC. The judge pointed out that customers do not purchase negative capacity. He found that when Entergy must turn down one or more of its units (including AGC units) to reflect a reduction in load, Entergy does not incur additional costs; rather, the reverse is true.⁹

⁷ Allied Intervenors are: Arkansas Electric Cooperative Corporation, Mississippi Delta Energy Agency and its members, Clarksdale Public Utilities Commission, the Public Service Commission of Yazoo City, South Mississippi Electric Power Association, Williams Energy Marketing & Trading Company, and the City of North Little Rock, Arkansas.

⁸ Entergy supported the proposed 4 percent with its operating personnel's estimates that on average the maximum instantaneous deviation between customers' loads and the output of their generation resources is 2 percent in each direction, *i.e.*, ranging from 2 percent over to 2 percent under the output of their generation resources. *See* ID at P 27, *citing* Ex. ETR-1 at 7 and Ex. ETR-11 at 5-7.

⁹ *See id.* at P 31-33.

10. The judge concluded that consistent with Commission precedent, Entergy must determine its transmission customer's LFC obligation by averaging adequate generating capacity to cover the portion of the hour when a customer's load is above the amount of generating capacity it has block scheduled.¹⁰ Thus, the judge ordered Entergy to reduce its proposed 4 percent LFC purchase obligation to 2 percent.

11. The judge rejected Entergy's alternative methodology because that method permitted negotiated LFC rates known only to Entergy and the other party. Finally, the judge noted that, Entergy conceded that the percent rate could be applied to the customers' coincident peaks rather than the originally proposed non-coincident peaks. The judge approved the concession as being consistent with *Kentucky Utilities Co.*, 75 FERC ¶ 63,024 (1996), *aff'd in part*, Opinion No. 432, 85 FERC ¶ 61,274 at 62,121 (1998) (*Kentucky Utilities*).

12. The judge rejected Commission Trial Staff's proposal of a 1.41 percent multiplier to derive a customer's LFC purchase obligation. The judge determined that Trial Staff's proposal was not reasonable because it assumes that the amount of LFC a customer requires occurs on the same day of the month as the system peak load.¹¹ The judge pointed out that there was no basis for this assumption and that the Commission had already held that LFC demand cannot be determined by measuring load variations at the system's peak.¹²

¹⁰ See *id.* at P 34-38, citing *Allegheny Power Service Corp.*, 77 FERC ¶ 63,024 (1996), *aff'd*, Opinion No. 433, 85 FERC ¶ 61,275 at 62,109 (1998); *Kentucky Utilities Co.*, Opinion No. 432, 85 FERC ¶ 61,274 at 62,120 (1998); *Consumers Energy Co.*, 87 FERC ¶ 61,170 (1999) (*Consumers*).

¹¹ Trial Staff proposed an alternative method to develop the percent of regulation service that customers demand. Trial Staff totaled the hourly load changes during the peak hours of the day in each month of the year 2000, then averaged them, divided the average by two, again divided the resulting variation value by the average of 12 monthly peaks and then multiplied the quotient by 100. Trial Staff's methodology derived the factor of 1.41 percent. Trial Staff concluded that 1.41 percent of a customer's LFC represented that customer's LFC purchase obligation. See *id.* at P 29, citing Testimony of Staff Witness Walter Birch, Exs. S-8 and S-12.

¹² See *id.* at P 30, citing *Allegheny Power Service Corp.*, Opinion No. 433, 85 FERC ¶ 61,275 at 62,120 (1998) (*Allegheny Power*).

3. December 22 Order

13. The Commission reversed the judge's decision that allowed Entergy to include a 2 percent LFC purchase obligation. The Commission stated that *Allegheny Power* required the LFC obligation to be based on all hours, not just peak hours. The Commission instead adopted Trial Staff's approach and noted that the use of the all-hours approach, applied to the 12-monthly peak days in 2000, produced a LFC purchase obligation of 1.41 percent. Thus, Entergy was directed to reduce its LFC purchase obligation to 1.41 percent. The Commission did not address Allied Intervenors' 1.48 percent LFC proposal because the 1.41 percent result was more favorable to Entergy's customers.¹³

4. Requests for Rehearing

14. Entergy requests rehearing of the Commission's decision to reduce the LFC purchase obligation.¹⁴ Entergy asserts that the Commission erred because it improperly relied on *Allegheny Power* and *Kentucky Utilities* and failed to give deference to the judge's findings.¹⁵

15. Entergy argues that *Allegheny Power* and *Kentucky Utilities* do not control here because, unlike the transmission providers in those cases, Entergy introduced actual intra-hour data of moment-to-moment changes in load on its system. In contrast, Entergy points out that Trial Staff's proposal is based on the one day of each month during which Entergy experiences its monthly peak load, which, Entergy asserts, leads to an underestimation of the transmission customer's capacity requirement.¹⁶ According to Entergy, the proposed 1.41 percent LFC purchase obligation would have been rejected had the Commission properly analyzed Trial Staff's proposal in light of *Allegheny Power* where the transmission provider was criticized because it did not provide actual data of moment-to-moment changes in load on its system or data on the actual block scheduling that occurs on the system.

¹³ See December 22 Order at P 23-24.

¹⁴ See Entergy Rehearing Request at 5, *citing* Initial Decision at P 37; December 22 Order at P 23.

¹⁵ *Id.* at 7.

¹⁶ See *id.* at 7-8, *citing* Exhibit ETR-19 at 11.

5. Commission Determination on Rehearing

16. We affirm our earlier decision to adopt Trial Staff's proposal of a 1.41 percent LFC purchase obligation for the reasons provided in that decision. With regard to Entergy's study, it covered only a two-month period and we agree with Trial Staff that this two-month period does not fairly represent the conditions on Entergy's system throughout the year. As Entergy points out, it did submit intra-hour data; however, the intra-hour data that Entergy submitted was not representative of conditions on its system over the year. While neither Trial Staff's approach nor Entergy's approach are perfect, we believe that Trial Staff's methodology, reflecting conditions on Entergy's system throughout the year (looking at all 24 hours for each of the 12 monthly peak days) is the superior of the two, as it better represents conditions on Entergy's system throughout the year, and imposes a reasonable obligation on customers while still adequately compensating Entergy.¹⁷ If Entergy feels that this percentage is inadequate, it can develop a new study that it believes would better show the transmission customer's required LFC purchase obligation on an annual basis and file to change its rates accordingly.

B. Schedule 3 –Additional Capacity Charges

1. Entergy's Proposal

17. Entergy proposed additional capacity charges that are to be assessed when the LFC calculation produces a positive result.¹⁸ That proposal required customers taking this ancillary service from Entergy in the summer to do so for a three month minimum and customers taking this service in non-summer months to do so for at least one month. As part of its proposal to impose the additional capacity charges, Entergy eliminated a minimum charge of \$100/MWh for energy imbalances (outside of the bandwidth).

¹⁷ The use of data for 24 hours a day for each day of the year would have resulted in an even lower (and, from Entergy's perspective, less desirable) 1.11 percent, and Entergy does not challenge this conclusion on rehearing. *See* December 22 Order at P 23 n.31.

¹⁸ Entergy proposed to impose charges for LFC in Schedule 3 of \$3.06/kW/mo (later revised to be \$2.85/kW/mo) for each month except for June, July and August when the charge would be \$10.90/kW/mo.

2. Initial Decision

18. The judge looked to Order No. 888 for the proposition that “someone must supply power to meet any differences between actual and scheduled generation.”¹⁹ The judge noted that the ‘someone’ in this case is primarily Entergy. The judge stated that Entergy must demonstrate that this duty imposes additional capacity costs and that the revenues it receives for Energy Imbalance Service do not recover those costs. The judge rejected the proposed additional capacity charges because Entergy did not show that it incurs additional capacity costs. In addition, the judge pointed out that, assuming *arguendo* that Entergy does incur additional capacity costs, Entergy must prove that the calculation of each customer’s maximum hourly imbalance each month compared to the total peak hourly imbalance for all customers is a satisfactory way to measure the customer’s responsibility for those additional capacity costs.²⁰

3. December 22 Order

19. The Commission summarily affirmed the judge’s decision to reject Entergy’s proposed additional capacity charges.²¹

4. Requests for Rehearing

20. Entergy objects to the summary affirmance of the judge’s rejection of the proposed additional capacity charges in Schedule 3. Entergy reiterates that the decision in *Detroit Edison*²² does not control here because, unlike Detroit Edison, Entergy proposed to eliminate the \$100/MWh minimum charge in Schedule 4 and replace it with a rate based on incremental costs. Entergy concludes that, without the proposed additional capacity charges, customers taking this service will not contribute to its fixed costs.²³

¹⁹ See ID at P 47, quoting FERC Stats. & Regs. ¶ 31,036 at 31,707.

²⁰ See *id.* at P 47-49.

²¹ See December 22 Order at P 4.

²² *Detroit Edison Company*, 84 FERC ¶ 63,006 (1998), *aff’d*, Opinion No. 439, 88 FERC ¶ 61,070 (1999) (*Detroit Edison*) (proposed additional capacity charge for Schedule 4 was denied because Detroit Edison’s energy imbalance charge already compensated Detroit Edison for its costs of providing capacity).

²³ See Entergy Rehearing Request at 10.

21. Entergy also asserts that its proposal is consistent with *Kentucky Utilities*.²⁴ Entergy points out that the amount of LFC it provides must be adjusted in response to moment-to-moment load changes; in addition, it must provide Additional Capacity to meet differences between a customer's actual load and its forecasted load.²⁵ Entergy argues that these two separate capacity needs cannot be netted out, thus it incurs a separate capacity cost for which it should be compensated.

22. Next, Entergy argues that its data showing that current transmission customers engage in poor scheduling practices was not merely "anecdotal," as the December 22 Order states, but is instead statistical data that has not been refuted.²⁶

23. Finally, Entergy argues that the Commission failed to recognize that the proposed additional capacity charges are appropriate because the State of Texas' pending retail open access program permits customers to rely upon ancillary services provided by companies under government regulation. This retail program, Entergy asserts, provides additional opportunities for customers to "game the system"²⁷

5. Commission Determination on Rehearing

24. We deny Entergy's request for rehearing. Entergy has not raised any issues or presented any evidence that we (or the judge) did not consider when we issued the December 22 Order (or when he issued the Initial Decision);²⁸ Entergy has not shown

²⁴ See *Kentucky Utilities*, 85 FERC ¶ 61,274 at 62,108 (Commission recognized that transmission customers may require additional capacity, and such on-going balancing of generation sources with load is separate from balancing for moment-to-moment fluctuations).

²⁵ That latter difference, we note, is what energy imbalance service charges compensate utilities for. See ID at P 15. While the former would be addressed by the load following service charges.

²⁶ See Entergy Rehearing Request at 11, *citing* December 22 Order at P 34; *but see supra* note 25 and accompanying text (noting that any costs Entergy might incur are already covered in the other charges).

²⁷ See Entergy Rehearing Request at 13.

²⁸ See Initial Decision at P 44-49.

that it incurs additional capacity costs that are not recovered elsewhere.²⁹ Thus, this case is comparable to *Detroit Edison*; there was no showing of a need for an additional capacity charge there and there is likewise no such showing here. We add that if Entergy believes that, in fact, it is still under-recovering its costs, it can instead make a new filing reinstating the \$100/MWH minimum charge that it removed from its OATT with this filing. Since Entergy has the discretion as to the rate filings it will make, Entergy, not the customers, must bear the risk of filing an inadequate rate.

C. Schedule 4 - Energy Imbalance Service

1. Entergy's Proposal

25. Entergy proposed to: (1) expand its energy imbalance bandwidth to 4 percent (from plus 2 percent to minus 2 percent); (2) delete the return-in-kind provision; and (3) require that customers who fell short outside the bandwidth pay the cost of the energy plus a penalty.³⁰ Entergy proposed a penalty rate based upon the Entergy System Incremental Cost (ESIC).³¹ If a customer under-supplied energy, Entergy proposed to charge 110 percent of ESIC if the deficiency falls within 2 percent or 2 MWh of the customer's actual load. If the deficiency were larger, Entergy proposed to charge 125 percent of ESIC. Entergy proposed to impose these penalties only during times of normal operation. Customers experiencing energy deficiencies during a Curtailment Risk Period would be subject to proposed penalties several magnitudes higher.³²

²⁹ See ID at P 47-48; see *supra* note 25.

³⁰ This is a change to Entergy's OATT which tracked the *pro forma* tariff. The *pro forma* bandwidth of plus or minus 1.5 percent for differences between a customer's load and its contribution of energy to the system provided that customers would incur no additional charges as long as they remain in that 3 percent bandwidth. Entergy's OATT also adopted this 3 percent tolerance and allowed customers who were 'short' on the energy that they provided to return the difference in kind at a later time. See ID at P 16.

³¹ ESIC is defined as "the most expensive source of energy generated or purchased by Entergy . . . any Entergy generation that would not be operating . . . but for transmission reliability purposes, and 24 percent of the cost of any monthly energy purchases during the months of June, July and August." See *id.* at P 17, citing Tr. 247.

³² See *id.* at P 17.

26. Entergy proposes to pay a customer who over-supplied energy 90 percent of its avoided cost,³³ if the customer-supplied excess is within the 2 percent deviation bandwidth; to pay 80 percent of its avoided cost if the excess falls outside the bandwidth but is no more than 10 percent of the amount scheduled by the customer; and to pay 70 percent of its avoided costs for greater increments of excess energy.³⁴ Finally, Entergy proposes to penalize customers who over-deliver more than 2 percent of their scheduled energy and more than 2 MWh during a “Low Load Event”.

2. Initial Decision

27. The judge noted that a transmission provider must adhere to the *pro forma* OATT unless it demonstrates that there is a good reason for the Commission to tolerate the deviation. Applying this standard, the judge rejected Entergy’s proposed elimination of the return-in-kind provision included in the *pro forma* OATT. He pointed out that Entergy did not provide a systematic study showing that transmission customers were deliberately ‘leaning’ on its generation to avoid purchasing energy when prices are high and with the intent of repaying the energy when prices are low. Thus, the judge concluded that Entergy could not rely on *Niagara Mohawk Power Corp.*, 86 FERC ¶ 61,009 (1999) (*Niagara Mohawk*), to substitute for a return-in-kind provision a financial settlement provision. The judge noted that Entergy supplied anecdotal evidence that at least one of its two transmission customers may be ‘leaning’ on its system during peak periods when the cost of procuring energy from third parties is highest.³⁵ Consequently the judge opined that Entergy might be able to make a case for a *Niagara Mohawk* type solution, if it resubmits and supports its request with an adequate systematic study.³⁶

28. The judge rejected Entergy’s proposal to charge a multiple of the ESIC for energy short-falls within and without the proposed broadened bandwidth. The judge concluded that the ESIC must, by definition, include something other than Entergy’s incremental

³³ Avoided Cost was defined as the “incremental cost to Entergy of electric energy which, but for a positive imbalance, Entergy would generate itself or purchase from another source.” *See id.* at P 63 n. 19, *citing* Ex. ETR-10 at 5.

³⁴ *See id.* at P 18.

³⁵ *See id.* at P 68.

³⁶ *Id.*

costs, therefore anything above the ESIC is a penalty.³⁷ The judge directed Entergy to eliminate the penalty for imbalances within the bandwidth. He stated that Entergy could revert to the 3 percent *pro forma* bandwidth. The judge also stated that if Entergy insists on a financial settlement, it must revise Schedule 4 so that it pays its full avoided costs.³⁸

29. The judge noted that the Commission closely examines penalties proposed by the transmission provider³⁹ and that Order No. 888 approved penalty provisions applicable during normal periods as long as the penalties are capped at twice the standard rate for the service at issue. The judge also noted that companies are free to propose different penalty provisions, including a different cap, in any future filings they choose to make.⁴⁰ The judge concluded that Entergy is entitled to progressive penalties to discourage transmission customers from “leaning” on its system but that Entergy is required to provide adequate support for the precise level of penalties as being sufficient to discourage inappropriate practices without being exorbitant or exploitative.⁴¹

30. The judge noted that the proposed penalties exceeded the maximum 200 percent penalty approved by the Commission in other cases. The judge directed Entergy to implement a 200 percent penalty. He explained that Entergy could file a proposed higher penalty if it found that the 200 percent penalty is not sufficient to deter improper customer behavior.

³⁷ The judge concluded that the ESIC probably included reimbursement for difficult to quantify costs so that anything above the ESIC could not be justified by the decisions in *Niagara Mohawk* or *Consumers*. *See id.* at P 70, 72. The judge concluded that *Carolina Power & Light Co.*, 95 FERC ¶ 61,429 (2001) (*CP&L*), required rejection of Entergy’s proposal because customers did not benefit from the proposed elimination of the return-in-kind provision. He noted that the broadened bandwidth provided an insufficient benefit because the two customers in Entergy’s study were so small, neither of them could benefit from the increased bandwidth. *See ID* at P 71.

³⁸ *See id.* at P 72.

³⁹ *See id.* at P 67.

⁴⁰ *See id.* at P 74, citing *Allegheny Power System, Inc.*, 80 FERC ¶ 61,143 at 61,545-46 (1997).

⁴¹ *See id.* at P 80, citing *Sierra Pacific Power Co.*, 92 FERC ¶ 61,179 at 61,627 (2000) (*Sierra Pacific*).

31. The judge stated that Trial Staff objected to the higher penalties imposed during a Curtailment Risk Period because such penalties are novel and Entergy failed to keep statistics on how often Curtailment Risk Periods occurred, the duration of the periods, and the extent to which customers improperly leaned on Entergy's system during those periods. The judge held that: (1) the notion of graduated penalties during Curtailment Risk Periods is reasonable; (2) the definition of Curtailment Risk Period requires the exercise of judgment on the part of the system operator; and (3) adequate notice must be provided to customers who might be subject to the Curtailment Risk Period penalty. The judge determined that Entergy, in fairness to customers, must provide 24 hours advance notice of a potential Curtailment Risk Period.⁴²

32. The judge rejected the proposed penalties on over-supply during Low Load Events. The judge noted that Entergy cited no instance where its transmission customers supplied excess energy during a low-load event and that excess supply caused Entergy to incur additional costs. The judge reasoned that since energy is a valuable commodity and Entergy did not propose to purchase this excess supply during Low Load Events, a transmission customer is unlikely to deliberately supply excess energy. The judge also noted that Entergy's proposal to charge a penalty equal to the market price of energy on the day after the over-supply bore no relation to any cost that Entergy may incur.

33. The judge concluded that Entergy failed to support the proposed penalty for over-supply.⁴³ However, the judge concluded that Entergy could amend its OATT to provide zero payment for excess energy during low-load periods and that this zero payment penalty should serve as a sufficient disincentive to over-supply during those periods.⁴⁴

3. December 22 Order

34. The Commission summarily affirmed the judge's decision to reject the proposed penalties for imbalances within the bandwidth, as well as, excessive penalties for curtailment risk periods and low load events. In addition, the Commission summarily affirmed the judge's finding that Entergy could impose a 200 percent penalty to

⁴² *See id.* at P 88.

⁴³ *See id.* at P 84.

⁴⁴ *See id.* at P 83.

discourage customer-created energy imbalances. Finally, the Commission summarily affirmed the judge's decision requiring that Entergy give its transmission customers 24 hours advance notice of a curtailment risk period.⁴⁵

4. Requests for Rehearing

35. Allied Intervenors assert that the Commission should not have allowed Entergy to increase the penalties for imbalance energy and to reduce payments to customers for Excess Energy (*i.e.*, energy generated or procured by a transmission customer in excess of load) outside the bandwidth.⁴⁶ According to Allied Intervenors, Entergy's performance data is misleading; they argue that the data does not support the conclusion that customers engage in inappropriate scheduling behavior; and the evidence shows that Entergy's transmission policies hinder customers' efforts to avoid imbalances.⁴⁷

36. Allied Intervenors concede that Entergy should be permitted to recover its costs of providing energy when a transmission customer does not have sufficient energy to serve the load. However, they assert that the record does not support the increase in penalties outside the bandwidth. They point out that smaller loads are especially harmed because Entergy's pricing policies increase the likelihood that smaller loads will be outside the bandwidth and thus required to pay the penalties. Moreover, Allied Intervenors assert that the imbalances of individual customers frequently off-set other effects on Entergy's system so that the net effect of the imbalances on Entergy is zero.⁴⁸ Finally, Allied Intervenors assert that the record does not justify approval of reduced payments to customers for excess energy.

⁴⁵ See December 22 Order at P 4.

⁴⁶ See Allied Intervenors Rehearing Request at 15-23.

⁴⁷ *Id.* at 15-16.

⁴⁸ *Id.* at 21-22.

37. Entergy seeks clarification, or in the alternative, rehearing of paragraph 37 of the December 22 Order.⁴⁹ Entergy interprets this paragraph as giving it two options for making its compliance filing for Schedule 4. The first option is for Schedule 4 to contain a +/-2 percent bandwidth with a return-in-kind option within this bandwidth and pricing at 100 percent of ESIC/Avoided Cost within the bandwidth. For imbalances outside the bandwidth, Entergy can impose charges of 125 percent of ESIC or payments of 80 percent or 70 percent of Avoided Cost, depending on the magnitude of the imbalances. Entergy characterizes the second option as reverting to the *pro forma* OATT Schedule 4 in its entirety, including a return-in-kind provision within the bandwidth.⁵⁰

38. Entergy seeks rehearing of the Commission's decision to eliminate separate penalties during curtailment risk periods. Entergy asserts that the judge, in fact, approved the recovery of curtailment risk penalties but it is unclear what curtailment risk penalties were approved. In any event, Entergy argues that the Commission's summary affirmation of the judge's finding while stating that the additional penalties for curtailment risk have been eliminated is in error. Entergy argues that curtailment risk penalties are necessary to discourage transmission customers from "leaning" on Entergy by taking energy imbalance service without notice and unbeknownst to the transmission provider who cannot interrupt the service. This behavior, Entergy argues, causes the transmission provider to use its finite capacity resources to supply this unplanned-for imbalance to the detriment of its own native load – that pays for and depends on those finite capacity resources.⁵¹

39. Entergy objects to the Commission's finding that a 125 percent ESIC charge is sufficient to discourage inappropriate transmission customer behavior during a curtailment period. Entergy argues that "the calculation for the Curtailment Risk charges must include the (proposed) 'x 10' factor in order to have real meaning." According to Entergy, "[a]bsent the 'x 10' multiplier, a transmission customer would pay the same

⁴⁹ The December 22 Order states:

As a result of our determinations, Entergy may, if it chooses, revert to its pre-existing *pro forma-conforming* OATT that contains penalty-free bandwidth with customers being allowed to return imbalances in-kind. For those imbalances outside of Entergy's bandwidth, it may charge 125 % of ESIC or pay 80 % or 70 % of its avoided cost, consistent with the respective circumstances presented in each pricing situation.

⁵⁰ See Entergy Rehearing Request at 22.

⁵¹ See *id.* at 25-27.

amount whether it acted responsibly and purchased the day-ahead power or simply leaned on Entergy.” Entergy argues that there is no incentive for the transmission customer to act responsibly if its energy costs are higher than Entergy’s costs plus penalty and this situation is especially egregious if these actions occur when Entergy’s native load is also exposed to the risk of curtailment.⁵²

40. Entergy asserts the Commission erred when it affirmed the judge’s rejection of the proposed penalty for excess customer generation during a low-load period. Entergy states that during such a period it must take generation off-line. It asserts that it would take this action only after considering factors such as load profiles and generating schedules, in order to maintain minimum stable operating levels consistent with prudent utility practice. Entergy argues that it is prepared to take generation off-line when its native load is not sufficient to match the output of generation, but it should not be forced to take generation off-line to accommodate excess energy during a low-load event caused by a transmission customer who did not back down its generation. Entergy points out that the proposed low-load penalties are designed to apply only when the excess energy is outside the +/-2 percent bandwidth. Thus, Entergy asserts that the penalty provides an economic signal that encourages proper scheduling procedures.⁵³

41. Entergy seeks rehearing of the imposition of a requirement of a 24-hour advance notice of a Curtailment Risk Period. Entergy argues that if it is not permitted to increase the curtailment risk penalty beyond 125 percent of ESIC, then advance notice is meaningless because transmission customers do not face additional consequences for improper scheduling during this critical time. On the other hand, Entergy also objects to 24 hours’ advance notice even if the Commission permits increased curtailment risk penalties. Entergy argues that it does not have extended advance notice of the need to curtail service because a Curtailment Risk Period usually results from the sudden, unexpected loss of generation. Furthermore, Entergy argues that its transmission customers do not need 24 hours’ notice to meet their load obligations because Entergy Transmission permits new schedules or schedule changes to be submitted up to 20 minutes prior to the start of the schedule. Entergy maintains that since curtailment risk penalties only apply when the transmission customer has deficient energy outside the +/-2 percent bandwidth, its proposal of 2 hours’ advance notice is sufficient.⁵⁴

⁵² See *id.* at 28-29, *citing* Hurstell Testimony, Ex. ETR-19 at 49.

⁵³ See *id.* at 31.

⁵⁴ *Id.* at 29-30.

5. Commission Determination on Rehearing

42. Upon further consideration in light of the requests for rehearing, we reverse the judge's decision allowing Entergy to impose a 200 percent penalty to discourage transmission customers from creating energy imbalances during a Curtailment Risk period. The judge misinterpreted Commission precedent on this issue. It is true that service providers have been permitted to impose a range of energy imbalance penalties up to 200 percent of the actual cost to supply deficient energy.⁵⁵ However, Entergy must provide adequate support for any special circumstances penalty that is higher than the penalty for deficient energy already justified for energy deficiencies during normal circumstances, and has failed to do so.

43. We agree that curtailment risk penalties would be more effective if they were higher than penalties applicable to energy imbalances outside the bandwidth experienced during normal operation. However, Entergy has not supported its proposal for an "x 10" factor. Entergy argues that this adder is necessary so that the curtailment risk penalty will succeed and dissuade transmission customers from "leaning" on the system, to the detriment of its native load, during these unusual circumstances. The problem with Entergy's proposal is that it proves too much. Entergy has not shown or argued why the proposed "x 10" factor is more justified than, for example, an "x 5" factor or an "x 3" factor. This evidence is especially important because, as the judge notes, "the Commission has never approved a penalty exceeding 200 percent of the actual cost to supply the deficient energy."⁵⁶

44. We emphasize that the imposition of a penalty must be tailored to deter the unwanted action, without providing an unnecessary windfall.⁵⁷ Thus, "transmission providers are required to provide adequate support for the precise level of penalties as being sufficient to discourage inappropriate practices without being exorbitant or exploitative."⁵⁸ Entergy did not support the proposed "x 10" factor; it did not show that

⁵⁵ See, e.g., *Central Hudson Gas & Electric Corp.*, 88 FERC ¶ 61,138 (1999), modified, 90 FERC ¶ 61,045 (2000) (150 percent penalty); *New England Power Pool*, 85 FERC ¶ 61,141 (1998) (200 percent penalty); *Carolina Power & Light Co.*, 95 FERC ¶ 61,429 (2001) (150 percent penalty).

⁵⁶ See ID at P 81.

⁵⁷ See generally *Entergy Services, Inc.*, 88 FERC ¶ 61,098 at 61,233-34 (1999).

⁵⁸ See *Sierra Pacific*, 92 FERC ¶ 61,179 at 61,627.

the penalty was carefully crafted to meet the *Sierra Pacific* standard. On the other hand, it is reasonable for Entergy to have some relief from transmission customers that under-schedule power during a Curtailment Risk Period while purchasing ancillary services from Entergy. Accordingly, we will permit Entergy to utilize the same penalties approved for out-of-the bandwidth energy shortfalls during non-emergency service periods. We emphasize that Entergy, with adequate support, may submit a new proposal to increase the penalty level.⁵⁹

45. In light of our decision to impose the same penalties for under-supply during Curtailment Risk Periods as for under-supply outside the bandwidth at other times, we find that advance notice of a Curtailment Risk Period is not necessary, since, as Entergy points out, the transmission customers will face no additional consequences. Therefore we grant Entergy's rehearing request on this issue and reverse the requirement that it provide 24 hours' advance notice of a Curtailment Risk Period.⁶⁰

46. The judge noted that Entergy's data showed that one customer failed to schedule within the bandwidth for 41 percent of the hours while another failed to schedule within the bandwidth for 89 percent of the hours between August 1, 2001 and April 2002. This evidence persuaded the judge to find that the current penalty for under-supply of 120 percent is not sufficient to encourage a customer to adhere to its schedule. Thus an increase in the penalty to 125 percent is reasonable. Similarly, the judge permitted Entergy to pay a smaller amount when a customer over-supplied. We agree with the judge's findings. The increase in penalties should encourage customers to more closely adhere to their schedules while still ensuring that Entergy does not receive a windfall through the collection of penalty revenues. We also note that Entergy's proposed bandwidth of 2 percent is wider than the *pro forma* tariff's bandwidth of 1.5 percent. Therefore, we deny Allied Intervenors' request for rehearing as they have not presented any arguments on these issues that persuade us that we erred in the December 22 Order.⁶¹

⁵⁹ See also ID at P 81.

⁶⁰ Should Entergy seek penalties in excess of the current 125 percent applied to under supply outside the bandwidth during Curtailment Risk Periods, given that Entergy must use 16 hour block energy purchased in the day ahead market to provide this service, we see no reason why customers could not be given sufficient advance notice so that they would have the same opportunity to use similar purchases to ensure that they do not incur Curtailment Risk Period penalties.

⁶¹ See December 22 Order at P 34-36.

47. We grant Entergy's request that we clarify paragraph 37 of the December 22 Order, which discussed Entergy's compliance filing. Entergy has the option to make a compliance filing of Schedule 4 that adopts the +/-2 percent bandwidth, with in-kind payments for imbalances within the bandwidth. When the imbalances are beyond the +/-2 percent bandwidth, Entergy can charge 125 percent of ESIC or pay 80 percent or 70 percent of avoided cost depending on the magnitude of a customer's oversupply. Entergy has a second option of reinstating that portion of its pre-existing *pro forma-conforming* OATT that contains a +/-1.5 percent penalty-free bandwidth with the provision for in-kind payments and the approved 125 percent, 80 percent, and 70 percent penalties as noted above. We note that if Entergy chooses to implement the 1.5 percent *pro forma-conforming* bandwidth, it may do so on a prospective basis in the compliance filing that it files.

D. Rate Methodology – Schedules 3, 5, and 6

1. Entergy's Proposal

48. Entergy proposed to charge customers that purchased ancillary services under Entergy's OATT a capacity-based rate of \$3.06 per kW-month for the months of September through May and \$10.90 per kW-month for service during June, July, and August. Entergy proposed to impose a minimum purchase obligation that would be three months for service taken in the summer months and one month during non-summer months.⁶² Entergy stated that the proposed formula rate captured the cost of operating its AGC-equipped units, using a "gross plant levelized methodology."⁶³

⁶² Entergy's system has AGC generating units that are computer-controlled and designed to increase or decrease their output automatically in response to the changes in system loads and the proposed summer and non-summer rates include the cost of operating AGC units. *See ID* at P 11-14. Entergy included the costs of its summer capacity purchases because these purchases freed the AGC units to provide ancillary services. *See Ex. ETR-19* at 66.

⁶³ *See ID* at P 94, quoting Ex. ETR-7 at 15.

2. Initial Decision

49. The judge rejected Entergy's proposed rate design for non-summer months, which some parties characterized as switching from a non-levelized pricing strategy to one that is levelized, because the design would double recover from some customer's depreciation on its AGC-equipped units.⁶⁴

50. The judge rejected Entergy's proposal to include all summer capacity purchases in the summer rate. The judge found that this proposal unfairly treated transmission customers that purchased ancillary services from Entergy while relieving other customers of the burden of paying for the high-cost capacity as long as there are transmission customers to shoulder the burden. According to the judge, Entergy's obligation to provide the least-cost service is to all of its customers.⁶⁵

51. Over Trial Staff and Allied Intervenors' objections,⁶⁶ the judge found that Entergy's summer purchases freed up its AGC-equipped units to provide the service at issue. The judge determined that Entergy could charge the transmission customers the costs of its summer capacity purchases because these purchases, in part, allowed Entergy to provide regulation service (and also spinning and supplemental reserve services). Therefore, the judge ordered Entergy to calculate a new summer rate that included the costs of both owned and purchased capacity, plus 24 percent of the costs of energy purchased and generated from owned units that should be totaled and allocated to transmission service on the basis of the proportion of load ratio share of the transmission customers.⁶⁷

⁶⁴ The judge noted that in supplemental direct testimony Entergy reduced the proposed non-summer service rate from \$3.06/kW-month to \$2.85 per kW-month but did not abandon its use of the levelized gross plant methodology to develop the rate. *See id.* at P 94, *citing* Ex. ETR-16 at 8. *See also id.* at P 100.

⁶⁵ *See id.* at P 109.

⁶⁶ Allied Intervenors also objected to Entergy's proposal because it used the customer's non-coincident peak, rather than the coincident peak, as a basis for measurement. They argued that generating capacity is fungible as to customer load. In rebuttal testimony, Entergy announced that Entergy would use the customer's maximum integrated loads at the time of the system's peak to develop their LFC responsibility. *See* Ex. ETR-19 at 4.

⁶⁷ *Id.* at P 111.

3. December 22 Order

52. The Commission summarily affirmed the judge's decision to reject the proposed rate design for non-summer months.⁶⁸ The Commission rejected, however, the judge's finding that some portion of the summer capacity purchases should be included in the rates for these ancillary services. The Commission agreed with Trial Staff that since summer capacity purchases do not directly provide ancillary services, it is not appropriate to foist these costs on the OATT customers.⁶⁹

4. Requests for Rehearing

53. Entergy requests rehearing of the Commission's summary affirmance of the judge's decision rejecting the proposed rate design for non-summer months. Entergy argues that, contrary to the judge's finding, it is not proposing to switch from a non-levelized pricing strategy to one that is levelized. Entergy points out that under its previous Schedules 3, 5, and 6, ancillary service prices were priced at fractions of a mill per kWh for each kilowatt-hour transmitted by Entergy, rather than at rates based on capacity usage and that the previous ancillary services pricing terms were not tied to Entergy's specific units needed to provide these services because of an approved settlement in Docket No. ER95-112-000.⁷⁰ Entergy argues that, since the previous rate schedules did not use the net plant methodology and no transmission customers were billed under the previous Schedules 3, 5, and 6 because of the settlement, it cannot be seen as switching pricing methods in mid-stream.⁷¹

⁶⁸ December 22 Order at P 4.

⁶⁹ In the December 22 Order, the Commission stated:

Entergy's summer capacity purchases are not made to furnish ancillary services. Entergy enters into these purchases to meet its own requirements. Since these costs do not support the furnishing of the specific ancillary services, it is not appropriate to foist them onto Entergy's OATT customers. Such an action would be at odds with our cost causation and ratemaking principles.

Id. at P 22.

⁷⁰ See *Entergy Services, Inc., et al.*, 85 FERC ¶ 61,163 at 61,649-51 (1998). The Commission did not discuss this issue when it approved the settlement.

⁷¹ See Entergy Rehearing Request at 15-16.

54. Entergy seeks rehearing of the Commission's rejection of the judge's decision that allowed it to roll the purchased summer capacity costs into the summer rates for Schedules 3, 5, and 6.⁷² Entergy argues that the evidence shows that its summer month purchases are made to meet its total load obligation, which includes the provision of ancillary services. Entergy points out that the summer rates for these schedules are capacity-based and it does not have sufficient generation available and ready to provide ancillary services during the high demand summer months. Entergy maintains that, when a transmission customer decides to take ancillary services, Entergy cannot simply pull a dormant generation out of inventory and use it to provide the service.⁷³ Entergy states that it compared the costs of meeting its load obligations (including ancillary services) by building generation or purchasing capacity under long-term contracts, purchasing blocks of firm energy, or purchasing short-term call options on capacity. According to Entergy, this comparison revealed that the cost of summer purchases is less than the incremental cost of new AGC-capable generation, but more than the embedded cost of AGC-capable generation.⁷⁴ Thus, Entergy argues it should be permitted to include the costs of its summer capacity purchases in the summer rates for Schedules 3, 5, and 6.

5. Commission Determination on Rehearing

55. We deny Entergy's rehearing request concerning the proposed non-summer rates for Schedules 3, 5, and 6. Entergy's arguments miss the point. Any shortcomings in the previous rate design are due to Entergy's actions (it filed the prior proposed rate design and it agreed to the settlement). Furthermore, Entergy proposes to re-recover depreciation of the AGC units that it has already depreciated by almost 65 percent. It is not relevant that Entergy's previous non-summer rate design was not based on capacity usage. What is relevant is basic fairness, which lies at the heart of what is just and reasonable -- Entergy cannot be allowed to unjustly enrich itself by recovering depreciation expenses that it has already charged to the service of other ratepayers.⁷⁵

56. We also deny Entergy's rehearing request regarding its proposal to include the summer months' capacity purchase costs in its rates. Entergy admits that the summer purchases are not directly used to provide ancillary services, since they are neither

⁷² *See id.* at 17.

⁷³ *See id.* at 18.

⁷⁴ *Id.* at 18-19.

⁷⁵ *See ID* at P 100.

dynamically scheduled nor related to AGC-equipped capacity that is capable of providing regulation and operating reserve service. Transmission customers should not be forced to bear costs that do not correspond to the service they receive.

57. We continue to hold that the judge's recommendation to apportion the cost of the summer purchases between Entergy's transmission customers and its native load based on their load shares violates cost causation principles because the transmission customers did not cause the cost of the summer purchases to be incurred.⁷⁶

58. Entergy has not raised any issues or presented any evidence that we did not consider in the December 22 Order.⁷⁷ As we stated above, if Entergy believes that it is under-recovering its costs, it can propose to reinstate in a new filing the \$100 per MWh charge that it removed from its Energy Imbalance Service Schedule in the original filing in this docket. Since Entergy has the discretion as to the rate filings it will make, Entergy, not the customers, must bear the risk of proposing an inadequate rate.

E. Penalty Revenue Credits

1. Entergy's Proposal

59. Entergy's proposed filing contained no provision for crediting revenues received from penalties paid to it.

2. Initial Decision

60. The judge rejected Entergy's proposal to keep the revenues from penalties that it collects citing *CP&L*, because "since Entergy is today the dominant provider of transmission services ... [there] would seem to be little incentive to encourage the development of alternatives to penalties for under-supply if it is allowed to retain revenues that penalties produce."⁷⁸ The judge concluded that Entergy must credit non-offending transmission customers (including its affiliates) with the ancillary service penalty revenues it has collected during the period its rates for ancillary service are in effect subject to refund. Entergy was also directed to amend its tariff to include a crediting mechanism for future penalty revenues.

⁷⁶ See, e.g., Ex. A1-4 at 7.

⁷⁷ See ID at P 44-49.

⁷⁸ See *id.* at P 89.

3. December 22 Order

61. The Commission summarily affirmed the judge's decision requiring Entergy to credit non-offending transmission customers with ancillary service penalty revenues plus interest.⁷⁹

4. Requests for Rehearing

62. Entergy objects to the requirement that it credit penalty revenues. It argues that such a credit will reduce the incentive for transmission customers to keep their schedules and generation in balance. Furthermore, Entergy argues that its native load customers alone bear the risk of the transmission customer's conduct that gives rise to a penalty charge. Thus, if Entergy is required to refund all penalty revenues, then it bears the sole economic risk of maintaining system integrity. Entergy argues that transmission customers whose reliability or costs are not impaired should not receive a financial windfall while Entergy's native load customers face the risks of reduced reliability.⁸⁰

63. Alternatively, if the Commission affirms the decision to require that Entergy credit the penalty revenues, Entergy requests that the Commission make the crediting provision prospective (as it did in *CP&L*). Entergy also requests that the Commission clarify that penalty revenues may be credited to native load customers.⁸¹

64. Allied Intervenors request that the Commission consider and adopt their position that Entergy affiliates that serve Entergy's retail customers cannot be credited penalty revenues when they are not subject to the penalties. They point out that their request is consistent with *CP&L*.⁸²

⁷⁹ December 22 Order at P 4.

⁸⁰ See Entergy Rehearing Request at 23-24.

⁸¹ *Id.* at 24-25.

⁸² See *CP&L*, 103 FERC ¶ 61,209 at P 25. On rehearing, the Commission stated:

We reject CP&L's proposal to allocate energy imbalance penalties to retail customers. . . . (P)enalty revenues should be allocated only to OATT customers, who are subject to those penalties. Because CP&L's retail customers are not under CP&L's OATT, they are not subject to these penalties. Therefore, we believe that retail customers are not entitled to penalty revenue credits.

5. Commission Determination on Rehearing

65. We will deny Entergy's and Allied Intervenors' rehearing requests. Entergy presents no argument or evidence to justify exempting it from crediting penalty revenues to non-offending transmission customers, including its affiliates. Commission precedent requires that revenues generated from the assessment of penalties be credited in this manner.⁸³ It is the payment by the customer of a penalty that deters inappropriate conduct, not whether the utility keeps the resulting revenues. Here the transmission customer will pay the penalty. We thus do not agree with Entergy's assumption that the policy of crediting penalties mitigates transmission customers' incentives to properly and more accurately schedule transmission. The requirement that penalty revenues be credited to non-offending customers also encourages the development of a market for imbalance protection services and dissuades the utility from hindering the development of methods of preventing imbalances that do not rely on penalties.⁸⁴

66. We also are not persuaded that Entergy's native load solely bears the risk of a transmission customer's conduct that leads to the imposition of the imbalance penalties. Whether penalties are credited or not has nothing to do with service reliability to Entergy's native load. Furthermore, we note that Entergy is obligated to treat transmission service for its own customers and its affiliates on the same basis as transmission service for non-affiliated, transmission-only customers, thus Entergy and its affiliates are subject to the same penalties or credits as non-affiliated transmission customers.⁸⁵

67. We are not persuaded that Entergy should not have to credit the penalty revenues that it has collected to date. Entergy has been collecting these penalties, subject to refund and it must effectuate credits for those penalty revenues that it has already collected, lest Entergy be unjustly enriched. These credits also are no different in substance than the refunds that Entergy must make for other matters that are equally subject to the refund requirement in this docket. Finally, we are not convinced that it is any more proper for Entergy to retain penalties collected in the past than it is to retain penalties collected in the future.

⁸³ See *CP&L*, 97 FERC at 61,279.

⁸⁴ See ID at P 89, citing *CP&L*, 97 FERC at 62,279.

⁸⁵ *Id.* at P 93 citing Order No. 888 at 31,720 and Order No. 888-A at 30,216-17.

F. Customer Self-Supplied Ancillary Services**1. Entergy's Proposal**

68. Entergy proposed to revise the preamble to Schedule 3 to state that, if a customer elects to acquire Regulation and Frequency Response Service from a source other than Entergy, “it will still be subject to charges under this Schedule if the alternative arrangements do not prevent Entergy’s generators from providing the service.”

2. Initial Decision

69. The judge noted that Order No. 888, among other things, gave transmission customers the option to self-supply ancillary services provided under Schedules 3, 4, and 5 or to purchase them from third parties. The judge also noted that the Commission has held that the arrangement for the self-supply of ancillary services is a customer-specific arrangement that should be negotiated as part of the service agreement between the parties.⁸⁶

70. The judge stated that Entergy’s proposed language did not appear to predetermine the terms of self-supply of this ancillary service, contrary to Allied Intervenors’ assertions. He thus approved the language with the caveat that the particulars of any self-supply arrangements would be addressed in individual service agreements filed with the Commission.⁸⁷

3. Request for Rehearing

71. Allied Intervenors request rehearing of the Commission’s decision that, they state, implicitly⁸⁸ affirmed the judge’s decision to accept, with modification, Entergy’s proposed Schedule 3 language that, among other things, restricted the transmission

⁸⁶ See *id.* at P 50 citing *New Horizon Electric Coop., Inc. v. Duke Power Co.*, 93 FERC ¶ 61,029 at 61,054-55 (2000); *Illinois Power Co.*, 87 FERC ¶ 61,172 at 61,683 (1999); *Allegheny Power Systems, Inc.*, 80 FERC ¶ 61,143 (1997).

⁸⁷ See *id.* at P 53-54.

⁸⁸ The December 22 Order does not discuss this issue, but in footnote 16, states if “an issue is not discussed herein, we affirm and adopt the Initial Decision as our own discussion on the issue.”

customer's ability to self-supply needed ancillary services.⁸⁹ According to Allied Intervenors, the proposed tariff revision is contrary to Commission precedent that transmission providers must allow customers to self-supply ancillary services and that the arrangements for such self-supply are to be customer specific and set out in individually negotiated agreements, not the OATT.⁹⁰ Allied Intervenors point out that Entergy's pre-existing Schedule 3 is silent on what constitutes comparable alternative arrangements, what constitutes a failure of self-supply, and what obligations would apply upon a failure to self-supply.⁹¹ They assert that these issues were properly left to the parties to negotiate. Allied Intervenors request that the Commission order Entergy to revise the proposed Schedule 3 language by either reinstating the previous pertinent Schedule 3 language or to revise the proposed Schedule 3 by deleting the stricken text and adding the underlined text set forth below:

The Transmission Customer must purchase ~~whatever~~ Regulation and Frequency Response Service ~~it takes~~ from Entergy according to the terms and conditions described below. ~~If~~ The Transmission Customer may ~~makes~~ alternative comparable arrangements to satisfy its Regulation and Frequency Response obligation, ~~it will still be subject to charges under this Schedule if the~~ and such alternative

⁸⁹ Proposed Schedule 3 states in pertinent part (additions proposed shown in bold):

The Transmission Customer must **purchase whatever Regulation and Frequency Response Service it takes from Entergy according to the terms and conditions described below. If the Transmission Customer makes** alternative comparable arrangements to satisfy its Regulation and Frequency Response Service obligation **it will still be subject to charges under this Schedule if the alternative arrangements do not prevent Entergy's generators from providing the service.**

⁹⁰ See Allied Intervenors Rehearing Request at pp 9 -10, *citing* Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,176; *Allegheny Power Systems, Inc.*, 80 FERC ¶ 61,143 at 61,542 (1997); *Illinois Power Co.*, 87 FERC ¶ 61,172 at 61,683 (1999).

⁹¹ Entergy's pre-existing Schedule 3 states in pertinent part:

. . . The Transmission Customer must either purchase this service from the Transmission Provider or make alternative comparable arrangements to satisfy its Regulation and Frequency Response Service obligation.

comparable arrangements ~~do not prevent Entergy's generators from providing the service,~~ including the performance standards and when charges under this Schedule may apply, shall be set forth in the Service Agreement and/or Network Operating Agreement.⁹²

2. Commission Determination

72. Consistent with the judge's recognition that the terms of self-supply should be determined on a case-specific basis,⁹³ we grant Allied Intervenors' request for rehearing of this issue and direct Entergy to revise the relevant Schedule 3 language by adopting either of Allied Intervenors' options. This will allow the terms of self-supply to be addressed in a case-specific context; Entergy's proposed language did not do this.

The Commission orders:

(A) The parties' requests for rehearing or clarification are hereby granted or denied, as discussed in the body of this order.

(B) Entergy is hereby directed to make a compliance filing consistent with this order within 30 days of the date of this order.

(C) Entergy is hereby directed to make refunds, within 60 days of the date of this order and to file a refund report for Commission approval within 30 days thereafter, consistent with the terms of this order.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.

⁹² See Allied Intervenors Rehearing Request at 14.

⁹³ See ID at P 53.