

109 FERC 61,216  
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. ER04-35-001  
ER04-35-002

ORDER ON REHEARING, CLARIFICATION, AND COMPLIANCE FILING

(Issued November 23, 2004)

1. In this order the Commission accepts, subject to modification, Entergy Services, Inc.'s<sup>1</sup> (Entergy) compliance filing amending the Entergy Open Access Transmission Tariff (OATT) to implement retail open access in Texas. In addition, this order grants in part and denies in part the requests of Strategic Energy L.L.C. (Strategic Energy) and East Texas Cooperatives<sup>2</sup> (Cooperatives) for rehearing of the Commission's December 22, 2003 Order in this proceeding.<sup>3</sup> Finally, this order grants the motion for clarification of Entergy Solutions Select Ltd., Entergy Solutions Essentials Ltd., and Entergy Solutions Ltd. (collectively, Entergy Solutions). It also dismisses the Cooperatives' motion to dismiss. This order benefits customers by approving necessary changes to Entergy's OATT to conform to, or to complement the restructuring changes, adopted by the State of Texas.

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<sup>1</sup> Entergy Services, Inc. is acting as agent on behalf of the Entergy Operating Companies, which include: Entergy Arkansas, Inc.; Entergy Gulf States, Inc.; Entergy Louisiana, Inc.; Entergy Mississippi, Inc.; and Entergy New Orleans, Inc.

<sup>2</sup> The East Texas Cooperatives are: East Texas Electric Cooperative, Inc.; Sam Rayburn G&T Electric Cooperative, Inc.; and Tex-La Electric Cooperative of Texas, Inc.

<sup>3</sup> *Entergy Services, Inc.*, 105 FERC ¶ 61,318 (2003) (December 22 Order).

## **I. Background**

2. On October 9, 2003, Entergy filed a revised Attachment R to its OATT designed to implement retail open access in the Entergy Settlement Area in Texas (Settlement Area). The filing resulted from a proceeding before the Public Utility Commission of Texas (Texas Commission) where the parties developed retail and wholesale market protocols (Settlement Area Market Protocols) for retail competition in the Settlement Area. In the December 22 Order, the Commission accepted Entergy's proposed OATT revisions, and directed Entergy to make a compliance filing within 60 days of the date of that order. On February 20, 2004, Entergy submitted its compliance filing in response to the Commission's December 22 Order.

### **A. Rehearing and Clarification Requests**

3. On January 21, 2004, Strategic Energy and the Cooperatives each filed requests for rehearing of the Commission's December 22 Order. Strategic Energy seeks rehearing regarding Entergy's one-month minimum designation of network resources. The Cooperatives seek rehearing of the terms of service for imbalance energy for Competitive Retailers, as compared to those not opting to participate in retail competition.

4. On March 12, 2004, Entergy Solutions submitted a motion for clarification of the December 22 Order regarding whether the energy imbalance charge for aggregate load is priced at the incremental cost, or avoided cost, for aggregators within the plus or minus ten percent bandwidth. In addition, Entergy Solutions asks whether return-in-kind provisions that apply under Schedule 4 of the OATT<sup>4</sup> also apply for energy imbalance service under the Settlement Area Market Protocols.

5. On September 16, 2004, the Cooperatives filed a motion to dismiss. The Cooperatives argue that Entergy's application and compliance filing in the instant proceeding are moot and serve no purpose because the Texas Commission issued a ruling allegedly announcing that Entergy's subsidiary, Entergy Gulf States, Inc., will halt current efforts to move to retail open access in the Settlement Area.

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<sup>4</sup> The Commission approved the rates, terms, and conditions for certain ancillary services, including Regulation and Frequency Response Service, Energy Imbalance Service, Spinning Reserve Service and Supplemental Reserve Service in Schedules 3, 4, 5 and 6 of Entergy's OATT in Docket No. ER01-2214-000. *See Entergy Services, Inc.*, 96 FERC ¶ 61,113 (2001), *Order on Compliance Filing*, 99 FERC ¶ 61,265 (2002), *Order on Initial Decision*, 105 FERC ¶ 61,319 (2003).

6. On October 1, 2004, Entergy filed an answer to the Cooperatives' motion to dismiss. Entergy argues that the motion to dismiss should be denied because the retail open access goal for the Settlement Area has not been abandoned. Entergy asserts that the Cooperatives' request for dismissal is predicated on the possible indefinite delay of retail competition in the Settlement Area. Entergy argues that no useful purpose would be served by now discarding the product of a collaborative effort on the part of future Settlement Area market participants to define how the competitive retail market will work when it opens. Entergy contends that nothing in the Texas Commission's proceeding warrants dismissal of the instant proceeding, since the Texas Commission has not directed Entergy to suspend or otherwise limit its efforts to continue to advance the Settlement Area Market Protocols.

### **B. Compliance Filing**

7. On February 20, 2004, Entergy submitted a filing to comply with the December 22 Order. Specifically, Entergy filed revised tariff sheets to its OATT<sup>5</sup> in response to the Commission's directives. Entergy states that the revised tariff sheets are designed to: (1) clarify the descriptions of two classes of customers (competitive retailers and Entergy-affiliated companies) and the energy imbalance rates charged to these classes of customers; (2) clarify the calculation of the payment that Entergy Select is charged by Entergy Transmission Organization for energy imbalances; and (3) conform the tariff to the amended Generator Operating Limits approved by the Commission on June 4, 2003 in Docket No. ER02-2014-007.<sup>6</sup> Also, as directed by the December 22 Order, Entergy included in the compliance filing a description of the impact the suspension of the SeTrans Regional Transmission Organization (RTO) has on this proceeding and whether there are alternative plans to replace the Entergy Transmission Organization as the Transmission Authority.<sup>7</sup>

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<sup>5</sup> See Appendix.

<sup>6</sup> *Entergy Services, Inc.*, 103 FERC ¶ 61,270 (2003) (June 4 Order).

<sup>7</sup> See December 22 Order, 105 FERC ¶ 61,318 at P 50.

## II. Requests for Rehearing and Clarification (Docket No. ER04-35-001)

### A. One Month Minimum Initial Designation Period for Primary Network Resources

8. Strategic Energy raises concerns on rehearing regarding the Commission's approval of a one-month minimum initial designation period for primary network resources. Strategic Energy notes that, in its protest in this proceeding, it sought elimination of the one-month minimum requirement and a revision to the Settlement Area Market Protocols that would allow for the designation of primary network resources on a daily basis. Strategic Energy reiterates its argument that Entergy should not be allowed to impose a one-month minimum period designation on Competitive Retailers.

9. Strategic Energy challenges the Commission's reliance on *Cinergy Operating Companies*<sup>8</sup> in the December 22 Order to support the one-month minimum initial designation period, arguing that *Cinergy* does not require a minimum term of one month. According to Strategic Energy, the ability to designate current network resources is governed not by Section 29 of the *pro forma* tariff, which addresses forecasts of future resources and load, but rather by Section 30 of the *pro forma* tariff which does not impose a minimum term for initial designations.

10. Strategic Energy also argues that the Commission erred in transforming Entergy's one-month minimum initial designation period into a capacity requirement. According to Strategic Energy, the Settlement Area Market Protocols do not contain a capacity requirement, and there is no evidence in the record that Entergy's one-month requirement was intended to be a capacity requirement. Strategic Energy contends, further, that imposition of a generation adequacy obligation on retail suppliers is the responsibility of the appropriate regulatory body and not the responsibility of the Transmission Provider. In this case, Strategic Energy notes that the Texas Commission has not established such a generation adequacy requirement. Strategic Energy points out that the Settlement Area Market Protocols already include incentives for Competitive Retailers to arrange for sufficient network resources by virtue of their penalties for energy imbalances outside the ten percent plus or minus bandwidth. According to Strategic Energy, these penalties will encourage Competitive Retailers not to rely on Entergy's resources.

11. Strategic Energy repeats its arguments that the one-month minimum initial designation period will cause Competitive Retailers to incur costs that exceed those necessary to serve their load and that the one-month period is incompatible with the

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<sup>8</sup> *Cinergy Operating Companies*, 93 FERC ¶ 61,176 (2000) (*Cinergy*).

optimal utilization of resources and of short-term network transmission capacity. According to Strategic Energy, the one-month minimum initial designation period places Competitive Retailers at a disadvantage when compared with other participants in the wholesale market. Strategic Energy contends that it is essential for Competitive Retailers to be able to use effectively the short-term firm network transmission service available on the Entergy transmission system to access the lowest cost resources available to serve load. Strategic Energy also argues that the one-month minimum initial designation period does not allow the use of daily Generator Operating Limits (GOLs). According to Strategic Energy, daily GOLs would allow Competitive Retailers to match the variance from day to day in their customer base and load and thus minimize the retailer's costs incurred in serving that load.

12. Strategic Energy also challenges the Commission's reliance on the underlying stakeholder process in the December 22 Order and argues that the Commission cannot delegate its jurisdictional responsibility under section 205 of the Federal Power Act (FPA)<sup>9</sup> to determine that rates are just and reasonable for a stakeholder process, even one that was before the Texas Commission. According to Strategic Energy, the stakeholder process is not part of any Commission-approved tariff, and cannot serve as a substitute for Commission review.

13. Finally, Strategic Energy notes that the Commission's standard for determining whether proposed changes to the *pro forma* tariff are just and reasonable is that a proposed provision must be consistent with or superior to the *pro forma* tariff. Strategic Energy notes that the Commission's *pro forma* tariff does not contain any minimum term for the designation of network resources. Strategic Energy argues that neither Entergy nor the Commission has provided any basis to find that imposing the one-month minimum initial designation period is consistent with or superior to the *pro forma* tariff. Strategic Energy, therefore, requests that the Commission direct Entergy to amend Part III of the Settlement Area Market Protocols to allow the designation of all primary network resources on as little as a day's notice without the one-month minimum initial designation period.

### **Commission Determination**

14. The Commission denies Strategic Energy's request for rehearing of its decision in the December 22 Order to allow Entergy's one-month minimum period for initial network resource designation in the Settlement Area Market Protocols. The Commission stated in the December 22 Order that Entergy had adequately explained the basis for

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<sup>9</sup> 16 U.S.C. § 824(d) (2000).

requiring a one-month, rather than a one-day, minimum initial designation period.<sup>10</sup> As the Commission stated, “Since the Market Protocols do not contain a capacity requirement, a one-month resource designation is necessary to ensure that [Competitive Retailers] will have sufficient resources to serve their load.”<sup>11</sup> Moreover, Strategic Energy conceded in its November 24, 2003 Answer that it “recognizes that, if competitive retailers do not secure sufficient resources, they would be inappropriately relying on Entergy’s capacity.”<sup>12</sup> Strategic Energy has failed to persuade us on rehearing that our decision was in error.

15. Strategic Energy’s argument that the *pro forma* tariff does not require prior designation fails to consider that the *pro forma* tariff also provides no maximum or minimum time frame for such designations, and therefore does not prohibit transmission providers from proposing specific time frames for designations. Order No. 888 simply states that such designations should be made “with as much advance notice as practicable.”<sup>13</sup> Section 29 of the *pro forma* tariff also states that applications for designation of new network resources must be made pursuant to the requirements of section 29, contemplating that Sections 29 and 30 should be taken together rather than independently. The Commission has not imposed uniform parameters on network designations,<sup>14</sup> and will decline to do so in this circumstance. We find that the one-month prior designation of network resources required by Entergy in the Settlement Area Market Protocols is consistent with or superior to the *pro forma* tariff.

16. In addition, we note that Entergy has replaced daily GOLs with an Available Flowgate Capacity methodology. Therefore, Strategic Energy’s argument that the one-

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<sup>10</sup> Notably, the Settlement Area Market Protocols which include a one-month initial network resource designation requirement were approved by the Texas Commission, the same entity that would otherwise be required to approve a generation adequacy requirement.

<sup>11</sup> December 22 Order, 105 FERC ¶ 61,318 at P 33.

<sup>12</sup> Strategic Energy November 24 Answer at p. 3.

<sup>13</sup> Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,708 (1996).

<sup>14</sup> See *Midwest Independent Transmission System Operator, Inc*, 103 FERC ¶ 61,212 (2003). (There, the Commission declined to reject a twelve-month network resources designation requirement.)

month minimum initial designation period does not allow the use of GOLs is moot, as Entergy no longer uses GOLs.

17. Strategic Energy's argument that the Commission has delegated its responsibilities under section 205 is misplaced. We reject Strategic Energy's suggestion that the Commission failed to fulfill its responsibilities under the FPA by deferring to the Texas Commission's stakeholder process. As we stated above, our finding that Entergy had adequately explained the basis for requiring a one-month initial designation period was based on our own review of the record; we did not defer to the findings of the stakeholder process provided in the Settlement Area Market Protocols. We recognize that other interested parties to the proceedings have expressed interest in changing the network designation timeline, but only subject to agreement of the other signatories to the Non-Unanimous Settlement, and provided that Strategic Energy avail itself of the Settlement Area Market Protocol procedures for revisions.<sup>15</sup> While parties can utilize the stakeholder process to change the network designation timeline, any such amendments to the network designation requirements would have to be filed with the Commission for review under section 205 of the FPA.

#### **B. Treatment of Non-Opt-In-Entities**

18. The Cooperatives take issue on rehearing with the Commission's determination that "different rates for different classes of customers do not amount to undue or unjust discrimination."<sup>16</sup> The Cooperatives argue that the cases and prior Commission orders cited in the December 22 Order,<sup>17</sup> where customers' circumstances were factually divergent, do not support such an interpretation. The Cooperatives assert that the Commission's use of the cases implies that the Non-Unanimous Settlement, as a

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<sup>15</sup> See Strategic Energy's November 24 Answer at p. 2.

<sup>16</sup> December 22 Order, 105 FERC ¶ 61,318 at P 24.

<sup>17</sup> See, e.g., *Northern Natural Gas Company*, 97 FERC ¶ 61,314 (2001), 97 FERC ¶ 61,384 (2001), *order on reh'g and compliance filing*, 99 FERC ¶ 61,051 (2002), *aff'd without opinion*, *Northern Municipal Distributors Group, et al.*, No., 02-1180 (D.C. Cir. 2003); *Cities of Bethany, et al.*, 727 F.2d 1131 (D.C. Cir. 1984) (different customer profiles and load characteristics justify different classification and treatment); *Cities of Newark, et al.*, 763 F.2d 533 (D.C. Cir. 1985), *United Municipal Distributors Group v. FERC*, 732 F.2d 202 (D.C. Cir. 1984), *Entergy Services, Inc.*, 91 FERC ¶ 61,592, *reh'g denied*, 93 FERC ¶ 61,156 (2000). See also *Town of Norwood v. FERC*, 587 F.2d 1306 (D.C. Cir. 1978).

settlement or contract entered into between parties in the Texas proceeding, is dispositive of the Cooperative's discrimination claims. The Cooperatives state that there is collusion between the parties participating in the Texas retail program, resulting in a competitive advantage for those parties and prospective discrimination against non-opt-in entities.

19. The Cooperatives also maintain that their decision to forego participation in the Texas retail open access program cannot be the justification for different imbalance rates. Citing *Public Service Co. of Indiana v. FERC*,<sup>18</sup> the Cooperatives state that "the particular difference in rates between customers must be justified by the particular difference in the situations of the customers." According to the Cooperatives, the non-opt-in entities' exercise of their Texas statutory right to opt out of retail choice has no relationship to the particular differences in the energy imbalance rates for Competitive Retailers and non-opt-in entities. The Cooperatives submit that a customer has no right to nondiscriminatory rates if, to secure that right, the customer must give up other rights. The Cooperatives state that Entergy, as the local utility with a competitive advantage in the Settlement Area, is obligated to avoid discrimination in its rates against those who choose not to opt into the retail program.

20. The Cooperatives disagree with the Commission's assessment of the differences between non-opt-in entities and Competitive Retailers in the Settlement Area, arguing that the Commission has erroneously created an "irrebuttable presumption of fact" that imbalance energy for retail loads in competitive jurisdictions is more difficult to forecast than imbalance energy for historical retail loads. The Cooperatives point to their own higher percentages of error in scheduling as evidence that load scheduling is not necessarily more difficult to forecast in competitive jurisdictions. The Cooperatives further state that because Competitive Retailers will largely acquire commercial or industrial urban load, their load will have more advanced metering and will therefore be easier to forecast than non-opt-in entities' loads.

21. The Cooperatives assert that the instant proceeding concerns two sets of wholesale resellers, and not imbalance energy rates of wholesale resellers compared to imbalance energy rates for end use customers. The Cooperatives insist, therefore, that *Arizona Independent Scheduling Administrator Association*<sup>19</sup> is on point, and that non-opt-in entities and Competitive Retailers are wholesale customers in the Settlement Area. The

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<sup>18</sup> 575 F.2d 204 (7th Cir. 1978).

<sup>19</sup> 93 FERC ¶ 61,231 (2000) (*Arizona*), *reh'g denied and order clarified*, 94 FERC ¶ 61,302 (2001) (where the Commission rejected the use of a smaller deadband for Standard Offer Scheduling Coordinators whose customers did not change providers).

Cooperatives claim that the Commission, by ignoring the Cooperatives' arguments, has created an irrebuttable presumption that violates constitutional due process, the Administrative Procedure Act, and the Commission's own regulations. For these reasons, the Cooperatives submit that it cannot be said that there is no genuine issue of material fact on this point and that the Commission should order a hearing on the issue.

### **Commission Determination**

22. The Commission denies rehearing. We remain convinced that the application of different energy imbalance rates as between Competitive Retailers, who are engaged in the retail market, and non-opt-in entities, who are not engaged in the retail market, is just and reasonable and nondiscriminatory based, among other things, on the differences between the ability of the respective entities to forecast their loads. The Cooperatives' supposition that their decision to forego participation in the Texas retail open access program is the justification for different imbalance energy rates is incorrect. Rather, as a wholesale transmission customer receiving service under the Entergy OATT to serve historical load, the Cooperatives do not share the same characteristics and risks as a Competitive Retailer, such as a lack of historical experience serving stable load, the risk of customer switching and its effect on forecasts, a lack of access to real-time metering, and a commensurate inability to determine real-time load. Consequently, there are inherent problems leading to difficulty in minimizing energy imbalances for retail loads participating in the Texas retail program. While the Cooperatives refer to examples showing their own difficulty in forecasting load compared to what they assert are more accurate forecasts by other entities participating in retail access in ERCOT, we do not find this anecdotal evidence to be dispositive of all participants' future forecasting accuracy within the retail program in the Settlement Area.

23. The Cooperatives' argument that Competitive Retailers and non-opt-in-entities are wholesale customers, and that the outcome in *Arizona* applies, fails to focus on the different factual circumstances of the situations. As we stated in the December 22 Order, the scheduling coordinators in *Arizona* were both engaged in the retail market. The only distinction between competitive scheduling coordinators and standard offer scheduling coordinators was that one scheduled for load that had switched suppliers, while the other scheduled for load that had not switched suppliers. The facts of *Arizona* are dissimilar to the facts in the instant proceeding. Competitive Retailers function within a retail open access program, whereas the non-opt-in entities do not. *Arizona* is therefore inapposite. As we explained in our December 22 Order, "[E]nergy imbalance provisions applicable to wholesale service may not be just and reasonable for a retail program." This is a difference between wholesale and retail programs that the Commission has repeatedly recognized. We will therefore decline to grant rehearing on this issue.

### **C. Self Supply and Hedging**

24. The Cooperatives denounce as unfair Entergy's plan to allow self-supply for up to fifty percent of imbalance energy by Competitive Retailers, both within and outside the bandwidth, and the creation of an imbalance energy market permitting hedging by Competitive Retailers. The Cooperatives explain that non-opt-in entities may only self supply within the bandwidth and cannot participate in an energy imbalance market other than for products that are self-supplied. The Cooperatives again cite to *Commonwealth*, where the Commission declined to institute an energy imbalance trading program for retail customers that would exclude wholesale customers.<sup>20</sup> The Cooperatives further state that the lack of a regional transmission organization or independent system operator diminishes the prospects for any energy imbalance market in the Settlement Area.

### **Commission Determination**

25. The Commission denies rehearing. We determined in the December 22 Order that the *Commonwealth* case, upon which the Cooperatives rely for the proposition that the hedging option available to retail customers should also be made available to wholesale customers, dealt specifically with an energy imbalance trading program in which Commonwealth refused to allow its wholesale customers to participate. No such trading program is at issue in this docket. Rather, the Cooperatives are allowed to use both self-supply and hedging within the provisions of Schedule 4 of Entergy's OATT, the schedule applying to all of Entergy's wholesale customers. As we stated in the December 22 Order, should the Cooperatives desire to benefit from the full panoply of provisions available to Competitive Retailers, they may decide to participate in the retail program.

### **D. Aggregation and Insurance**

26. The Cooperatives contend that the Commission's December 22 Order allows retail electricity providers affiliated with Entergy to take advantage of aggregation, to the detriment of non-affiliated providers in the Settlement Area. The Cooperatives further contend that such approval provides insurance and load diversity to Entergy's affiliates unavailable to other Settlement Area entities. The Cooperatives state that the Commission should order Entergy "to provide non-affiliated utilities the ability to aggregate loads and benefit from diversity in loads just like Entergy's [affiliated retail electric providers]."

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<sup>20</sup> See *Commonwealth Edison Co.*, 90 FERC ¶ 61,121 (2000) (*Commonwealth*).

### **Commission Determination**

27. The Commission will grant rehearing on this issue. We note that, while Entergy's OATT would appear to allow aggregation by certain classes of customers, such as Competitive Retailers, it is silent as to whether or not non-affiliated entities can or cannot combine their loads for scheduling purposes. We also note that Entergy has not provided any explanation as to why one class of customer is entitled to such service while another class of customer is not. Therefore, we direct Entergy to provide comparable aggregation service to non-affiliated entities or, in the alternative, to justify treating non-affiliated entities in a manner different than other customers. Accordingly, we will require Entergy to do so in the compliance filing required herein.

### **E. Scheduling Energy Imbalance Service**

28. The Cooperatives argue that Entergy discriminates against Competitive Retailers and non-opt-in entities by allowing Entergy Select to make schedule changes twenty minutes prior to delivery, whereas Competitive Retailers and non-opt entities may only change their schedules an hour before delivery. The Cooperatives argue that the December 22 Order ignores this point, and argue that the provision is discriminatory.

### **Commission Determination**

29. The Commission denies rehearing. Sections 13.8 and 14.6 of Entergy's OATT, concerning Scheduling of Firm and Non-Firm Point-to-Point Transmission Service, respectively, as well as testimony provided by John P. Hurstell in the original October 9, 2003 filing in this docket<sup>21</sup> indicate that current wholesale customers are allowed to submit new schedules or schedule changes twenty minutes prior to the start of the schedule. Thus, non-opt-in entities retain the same scheduling rights they enjoyed previously under the Entergy OATT. In addition, according to Mr. Hurstell, "competitive retailers agreed to submit their schedules one hour prior to the operating hour as part of the proposal that permits the competitive retailers to pay a single imbalance charge using the method that they prefer." Mr. Hurstell states that this arrangement "will reduce the overall Settlement Area imbalance, which in turn decreases the amount of imbalance energy that Entergy must provide."<sup>22</sup> In the absence of any concerns being raised by the Competitive Retailers to whom these provisions would apply, we see no reason to discuss further the terms of this agreement.

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<sup>21</sup> October 9 filing, Tab D, page 11 of 17.

<sup>22</sup> *Id.*

**F. Cost Shifting**

30. The Cooperatives maintain that the Commission was wrong to dismiss as speculation the likelihood of direct cost shifts due to the difference in energy imbalance rates between Competitive Retailers and non-opt-in entities. The Cooperatives project that Entergy's revenues from bundled retail customers will decline, the costs to implement retail choice will increase, and Entergy will collect its cost of assuming risk from customers.

**Commission Determination**

31. The Commission denies rehearing. The Cooperatives' argument is based on speculation. The Cooperatives have provided no factual basis upon which to conclude that their scenarios of revenue decrease, costs increase, and cost shifts will occur as a result of the implementation of retail access.

**G. Commission's Decision to Allow Entergy Solutions to Intervene**

32. The Cooperatives challenge the Commission's decision to allow Entergy Solutions to intervene in this proceeding. The Cooperatives argue that the claim that Entergy Solutions is a separate legal entity is true, but does not provide any justification for treating Entergy Solutions as if it were an independent decision maker. According to the Cooperatives, Entergy Solutions cannot make decisions independently from Entergy Corporation, and Entergy Solutions' concerns and business focus will come secondary to Entergy Corporation's commands. The Cooperatives argue that allowing a party to intervene multiple times in its own application is disruptive, inefficient and prejudicial to other parties. The Cooperatives, therefore, request that if the Commission grants rehearing and orders a hearing, the Commission deny Entergy Solutions' motion to intervene.

**Commission Determination**

33. The Commission denies rehearing. The Cooperatives have failed to demonstrate that Entergy Solutions does not have a legitimate interest in this proceeding and that the Commission's grant of Entergy Solutions' intervention was in error.

**H. Energy Imbalance Price to be Paid by Entergy Solutions**

34. Entergy Solutions requests clarification and confirmation as to the energy imbalance price it will be charged or credited under the Settlement Area Market Protocols. Specifically, Entergy Solutions requests clarification that: (1) regardless of the

final determination in the ancillary services proceeding in Docket No. ER01-2214-000, *et al.*,<sup>23</sup> concerning the price for energy imbalance service under Schedule 4 of Entergy's OATT, the Aggregate Load Imbalance Charge is priced at the Entergy System Incremental Cost (ESIC) or Avoided Cost without penalties (100 percent of ESIC/Avoided Cost) within a ten percent plus or minus bandwidth; and (2) to the extent there is a penalty free deadband with a return-in-kind provision in Schedule 4 of the OATT, it is the intent of the Commission to apply such deadband with a return-in-kind provision to the Settlement Area load imbalance, with imbalances outside the deadband at ESIC/Avoided Cost without penalties (100 percent of ESIC/Avoided Cost) up to the expanded bandwidth ten percent plus or minus.

### **Commission Determination**

35. The Commission intends that a ten percent plus or minus bandwidth applies for imbalance energy under the Settlement Area Market Protocols for non-affiliated Competitive Retailers and for affiliated retail electric providers. This includes return-in-kind settlement at ESIC or Avoided Cost within the ten percent plus or minus deadband. For imbalance energy outside the bandwidth, the provisions of Schedule 4 apply, as approved by the Commission in *Entergy Services, Inc.*, 105 FERC ¶ 61,319 (2003). Therefore, Entergy currently would be allowed to assess penalties equal to 125 percent of ESIC, and 80 percent and 70 percent of Avoided Cost, depending on the situation, for imbalances outside the ten percent plus or minus bandwidth for participants in the retail access program.

#### **I. Motion to Dismiss**

36. We will deny the Cooperatives' motion to dismiss. As Entergy points out, the retail open access goal for the Settlement Area has not been abandoned. Further, we agree with Entergy that no useful purpose would be served by our dismissing the filing and, thus, discarding the product of a collaborative effort on the part of future Settlement Area market participants to define how the competitive retail market will work when it opens.

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<sup>23</sup> *Entergy Services, Inc.*, 105 FERC ¶ 61,319 (2003).

### **III. Compliance Filing (Docket No. ER04-35-002)**

#### **A. Procedural Matters**

37. Notice of Entergy's compliance filing was published in the *Federal Register*, (69 Fed. Reg. 10022 (2004)), with interventions, protests and comments due on or before March 12, 2004. The Cooperatives filed a timely intervention and protest. We note that the Cooperatives did not need to file a motion to intervene as they already have party status by virtue of their intervention in the underlying docket. On March 29, 2004, Entergy filed an answer to the Cooperatives' protest. On April 9, 2004, the Cooperatives filed a motion to strike Entergy's answer, conditional motion to accept the Cooperatives' answer, and an answer to Entergy's answer (the Cooperatives April 9 Answer).

38. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2003), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We find good cause to accept the answers because they have provided information that assisted us in our decision-making process.

#### **B. Discussion**

##### **1. Customer Energy Imbalance Rates**

###### **a. Entergy's Compliance Filing**

39. Entergy states that it has added a new part to section 6.7.6.2 of the Settlement Area Market Protocols and made minor revisions to section 6.7.6.2 to provide an overview of energy imbalance pricing, to clarify the descriptions of the Competitive Retailers and Entergy-affiliated companies, and to explain the payment that Entergy Select Ltd. (Entergy Select) makes for energy imbalances.

###### **b. Protest**

40. The Cooperatives state that Entergy's addition of an overview at Attachment R section 6.7.6.2(1) helps considerably by clarifying the description of Competitive Retailers and Affiliated Retail Electric Providers and carefully defining in the tariff when Entergy is referring to one, the other, or both. Nevertheless, the Cooperatives maintain that Entergy has not fully clarified its tariff.

41. First, the Cooperatives contend that the imbalance rate for Competitive Retailers depends on a series of assumptions about undefined terms. The Cooperatives contend that the Commission specifically required Entergy to clarify the energy rate for

Competitive Retailers. Second, the Cooperatives state that Attachment R section 6.7.6.2(9)-(11), concerning Affiliated Retail Electric Providers' Imbalance and Aggregate Imbalance Charges, is nearly the same as in the initial filing and consequently still vague. The Cooperatives note an "Unaccounted for Energy" (UFE) adjustment to "Loss Adjusted Metered Load" (LAML) for both Competitive Retailers and Affiliated Retail Electric Providers. The Cooperatives state that the Affiliated Retail Electric Providers apparently already pay on an aggregated basis only, and that adding a second aggregation adjustment adds uncertainty and confusion. Third, the Cooperatives argue that the UFE adjustment to LAML appears to be a means for aggregating all Settlement Area load and moving that aggregation into the calculation of the individual Non-Affiliated Competitive Retailers' liability for energy imbalance service.

42. The Cooperatives state that Entergy's definition of imbalance energy appears to be inconsistent with how the Commission defines energy imbalance service, citing *Duquesne*.<sup>24</sup> The Cooperatives state that in *Duquesne* the Commission clarified "energy imbalance" as the difference between scheduled deliveries and actual load, and not the difference between scheduled and actual deliveries, nor the difference between actual deliveries and actual load. However, the Cooperatives state that Section 6.7.6.2(6)-(8) and Section 6.7.6.2(9)-(11) explicitly calculate the Load Imbalance charge as the difference between deficient or excess energy and delivered energy.

**c. Entergy's Answer**

43. Entergy answers that it has added a new part to section 6.7.6.2 of the Settlement Area Protocols to clarify the descriptions of the Competitive Retailers, and to explain the payment that Entergy Select makes for energy imbalances, therefore complying with the December 22 Order. Entergy states that the Cooperatives have failed to specify any "undefined" terms. Entergy states further that the preparation of the Settlement Area Market Protocols was the result of an open stakeholder process in which the Cooperatives participated, but that the Cooperatives proposed no modifications to the alleged undefined terms, nor suggested any alternative language.

44. Entergy contends that the Settlement Area Market Protocols are consistent with how the Commission defines energy imbalance service. Entergy cites Order No. 888,<sup>25</sup> where the Commission explained that energy imbalance service "supplies any hourly

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<sup>24</sup> 86 FERC ¶ 61,189, *order on compliance*, 87 FERC ¶ 61,352, *order on reh'g*, 88 FERC ¶ 61,273 (1999) (*Duquesne*).

<sup>25</sup> Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,708 (1996).

mismatch between a transmission customer's energy supply and the load being served in the control area, this service makes up for any net mismatch over an hour between the scheduled delivery of energy and the actual load." Entergy states that section 6.7.6.2(6) explains that the load imbalance is calculated based upon the metered or actual load adjusted for Unaccounted For Energy compared to the scheduled delivery of energy. Entergy maintains that the Cooperatives misunderstand the phrase "delivered energy," which refers to energy delivered pursuant to the hedging mechanism, and is separate and apart from the scheduled amount of energy to serve an individual Competitive Retailer's load.

### **Commission Determination**

45. The Commission finds that Entergy has satisfactorily clarified the descriptions of Competitive Retailers and Entergy-affiliated companies and the energy imbalance rates that each of these classes of customers pays. While the Cooperatives argue that many of the terms used are "vague," the Cooperatives fail to identify which terms they believe are vague. Nor have the Cooperatives specifically demonstrated or substantiated their concerns regarding loss calculations under the tariff that will otherwise be uniformly applied to both Competitive Retailers and Affiliated Retail Electric Providers. Entergy has also satisfactorily explained that its definition of imbalance energy is consistent with the Commission's determinations on that subject in Order No. 888 and its progeny, as well as in *Duquesne*. Further, the Cooperatives' argument concerning aggregation and incorporation of Non-Affiliated Competitive Retailer liability goes to load diversity, which is addressed in the rehearing section of this order.

## **2. Calculation of Payment to Entergy Transmission Organization**

### **a. Entergy's Compliance Filing**

46. The Commission directed Entergy in the December 22 Order to clarify the calculation of the payment that Entergy Select pays to the Entergy Transmission Organization (ETO).

### **b. Protest**

47. The Cooperatives state that Entergy intends that Entergy Select will pay all the energy imbalance charges of the Affiliated Retail Electric Providers and the shortfall of Non-Affiliated Competitive Retailers' energy imbalance payments so that full payment to the ETO equals what would have been the Entergy OATT Schedule 4 charge for that load. The Cooperatives note that the Non-Affiliated Competitive Retailers and Affiliated Retail Electric Providers pay using a 10 percent bandwidth, while the OATT uses

2 percent, and the lower charges of the wider bandwidth cannot add to the higher charges of the OATT, even if computed on an aggregated basis.

48. The Cooperatives again argue that the complexity of the formulas frustrates advance knowledge of the price. For example, in Attachment R Section 6.7.6.2(11)(b) (i), the Cooperatives maintain that none but Entergy would know that the aggregate Deficient Energy during an Operating Hour that is 10 percent or less of aggregate Settlement Area UFE-adjusted LAML for the Operating Hour is greater than the delivered amount of incremental energy for all Competitive Retailers' (including the Affiliated Retail Electric Provider's) Incremental Energy Bid Resources.

**c. Entergy's Answer**

49. Entergy responds that the Commission has previously addressed advance knowledge of energy imbalance prices. In *Duquesne*,<sup>26</sup> the Mid-Atlantic Power Supply Association proposed that Duquesne should release energy imbalance pricing on a real-time basis. However, the Commission did not require the release of imbalance energy pricing in real-time. Entergy reasons that while the exact price a Competitive Retailer must pay cannot be determined until after-the-fact, such an approach is consistent with Commission precedent.

50. Entergy also responds that the Cooperatives are repeating their earlier arguments regarding the discriminatory nature of the energy imbalance provisions in the Settlement Area Market Protocols, and that such arguments are unrelated to the specific question of whether Entergy's compliance filing satisfies the requirements of the December 22 Order, and therefore are an impermissible collateral attack on the December 22 Order.

**Commission Determination**

51. The Commission finds that Entergy's answer generally provides a satisfactory explanation of its definitions for imbalance energy. However, we will require Entergy to provide and explain, in a compliance filing, its provisions for reconciling Attachment R imbalance energy charges with imbalance energy charges incurred pursuant to the provisions of Schedule 4 of the OATT.

52. As the Commission has already held in the December 22 Order, we will not require Entergy to release imbalance energy pricing information in order to provide

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<sup>26</sup> 87 FERC ¶ 61,352, *order on reh'g*, 88 FERC ¶ 61,273 (1999).

advance knowledge of such prices. The Commission has addressed the question of real-time release of Entergy System Incremental Costs (ESIC) in *General Coalition v. Entergy Services, Inc.*<sup>27</sup> In that order, the Commission declined to require Entergy to post its ESIC on an hourly basis, and instead directed Entergy to verify ESIC information upon request. We see no reason to require any additional disclosure in this case.

53. The Cooperatives raise the issue of discrimination in their protest, as well as in their request for rehearing. The Commission has addressed this issue in the rehearing section of this order.

**C. Conformance of the Tariff to the Commission's June 4, 2004 Order**

54. Entergy states that it has revised Sheet Nos. 518, 519, 521 and 524 to conform the Settlement Area Market Protocols to the Generator Operating Limit (GOL) Protocols approved in the June 4 Order. Entergy's revisions satisfactorily comply with the Commission's December 22 Order and are hereby accepted.

The Commission orders:

(A) Strategic Energy's and the Cooperatives' requests for rehearing are hereby granted, in part, and denied in part, as discussed in the body of this order.

(B) Entergy is hereby directed to make a compliance filing to provide additional information within 30 days of the date of issuance of this order, as discussed in the body of this order.

(C) Entergy Solutions' motion for clarification is granted, as discussed in the body of this order.

(D) The Cooperatives' motion to dismiss is denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

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<sup>27</sup> 98 FERC ¶ 61,355 (2002).

**Appendix**

Entergy Services, Inc.  
FERC Electric Tariff, Second Revised Volume No. 3  
Docket No. ER04-35-002  
Tariff Sheets to become effective upon the commencement of retail open access in the  
Settlement Area

First Revised Sheet No. 496  
First Revised Sheet No. 497  
First Revised Sheet No. 518  
First Revised Sheet No. 519  
First Revised Sheet No. 521  
First Revised Sheet No. 524  
First Revised Sheet No. 558  
Original Sheet No. 558A  
Original Sheet No. 558B  
Original Sheet No. 558C  
First Revised Sheet No. 559  
First Revised Sheet No. 560  
First Revised Sheet No. 561  
First Revised Sheet No. 562  
First Revised Sheet No. 563  
First Revised Sheet No. 564  
First Revised Sheet No. 565