

105 FERC ¶ 61,318
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 No. ER04-35-000

ORDER ACCEPTING REVISED TARIFF SHEETS AS MODIFIED

(Issued December 22, 2003)

1. This order accepts for filing revisions to Entergy Services, Inc.'s (Entergy) Open Access Transmission Tariff (OATT), as modified, without suspension or hearing. 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.

I. Background

2. On October 9, 2003, Entergy, on behalf of the Entergy Operating Companies,¹ filed revisions to the Entergy OATT to implement retail access in the Entergy Settlement Area (Settlement Area) in the State of Texas (Texas).² Entergy's filing results from a

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

²The Entergy Settlement Area is the Entergy Gulf States' control area that provides service for competitive retailers within the borders of Texas. The Settlement Area does not include municipally-owned utilities and electric cooperatives that do not offer customer choice. See Market Protocols for the Portion of Texas Within the Southeastern Electric Reliability Council, Docket No. 25089, Public Utility Commission of Texas (Texas Commission), Order dated September 9, 2003 at 1 n.1 (Market Protocols Order). See also Verified Statement of Richard C. Riley, Tab C to the cover letter accompanying Entergy's filing (Cover Letter) at 4 (V.S. Riley).

proceeding before the Texas Commission that addressed the retail and wholesale market protocols for retail competition in the Settlement Area.³

3. A number of entities participated in that proceeding.⁴ Certain of those entities, Entergy Gulf States, TXU, Reliant, Entergy Solutions, and the Texas Commission Staff, filed a settlement agreement with the Texas Commission in that proceeding (Non-Unanimous Settlement). Entergy's filing revises its OATT in accordance with the provisions of the Non-Unanimous Settlement.

A. Overview of Filing

4. Entergy proposes six changes to its OATT to implement retail access in Texas. First, Entergy has submitted a new Attachment R that contains Protocols for Customer Choice (Market Protocols) in the Settlement Area. The Market Protocols set out the rules or standards that will apply to retail access in the Settlement Area until what Entergy refers to as a Day Two-type⁵ market is in place.⁶

5. Second, Entergy is deleting Schedule 4A, Attachment K and Attachment L of its OATT. Third, Entergy is deleting the term "Texas Retail Electric Provider" in the OATT and replacing this term with a new term "Competitive Retailer" (CR). Fourth, Entergy is submitting an updated version of the current Attachment J (Competitive Retailer

³See Texas Commission Docket No. 25089, supra, n. 2.

⁴The following parties participated in the Texas Commission proceeding: Alliance for Retail Markets, Brazos Electric Power Cooperative, Inc. (Brazos), the Staff of the Texas Commission, Entergy Gulf States, Entergy Solutions, Inc., Entergy Solutions Select, Ltd., and Entergy Solutions Essentials, Ltd. (collectively Entergy Solutions), Office of Public Utility Counsel, Reliant Resources, Inc. (Reliant), Texas Industrial Energy Consumers (Texas Industrials), TXU Energy Retail Company, LP (TXU), and Sam Rayburn G&T Electric Cooperative, Inc., East Texas Electric Cooperative, and Tex-La Electric Cooperative of Texas (collectively East Texas Cooperatives or ETC). In addition, American Electric Power Company, Conoco Gas and Power Marketing, the Electric Reliability Council of Texas, Power Choice and Occidental Power Marketing intervened in the proceeding. See Market Protocols Order at 3.

⁵According to Entergy, "Day Two" means the first day of operation of Locational Marginal Pricing, a Firm Transmission Rights market and the provision of certain ancillary services through bid-based energy markets. See Cover Letter at 1 n.2.

⁶See Cover Letter at 1.

Transmission Service Charges).⁷ Fifth, Entergy is submitting a new Schedule 1-A, which sets forth an administrative fee that Entergy will charge CRs in Texas (Administrative Fee).⁸ Sixth, Entergy submits revisions to Section 34.4 of the OATT (Allocation of Revenues). Entergy states that the revisions to Section 34.4 are necessary to ensure that the revenues that Entergy receives for providing transmission service in the Settlement Area will go exclusively to Entergy Gulf States, Inc.

B. Attachment R

6. Attachment R includes new Market Protocols, consisting of rules, guidelines, and procedures that affect both retail and wholesale sales of electric energy within the Settlement Area. Attachment R revises Entergy's OATT to provide for a wider exchange band for energy imbalance service before triggering penalties, and for financial settlement. Attachment R reduces penalties for failure to self-arrange resources after committing to do so and includes provisions for ancillary services, including Schedule 4 (energy imbalance service), Schedule 5 (operating reserve-spinning reserve service), and Schedule 6 (operating reserve-supplemental reserve service).⁹

7. Attachment R requires a Transmission Authority¹⁰ to develop an ancillary services plan that will accommodate self-arrangement by competitive retailers. Under this proposal, the Transmission Authority will be the sole provider of: (a) scheduling; (b) system control and dispatch service; (c) reactive power; and (d) voltage control service. Attachment R provides that the Control Area Operator will deploy a competitive retailer's self-arranged resources, including deployment of incremental and decremental energy from bids and settlements.

⁷Entergy filed the original Attachment J in Docket No. ER00-1947-000. The Commission accepted Attachment J for filing without modification. See Entergy Services, Inc., 91 FERC ¶ 61,155, reh'g denied, 93 FERC ¶ 61,156 (2000).

⁸Entergy states that this fee will compensate the Transmission Authority for the costs (e.g., personnel and capital expenditures for software and hardware) associated with administering the new services and functions of the Market Protocols. Cover Letter at 2.

⁹Attachment R also references Schedule 3 (regulation and frequency response service), which is the subject of proceedings in a separate docket. See Entergy Services, Inc., 105 FERC ¶ 61,319 (2003) (Entergy Services).

¹⁰Attachment R anticipates that, until the formation of a Regional Transmission Organization (RTO) that would encompass the Settlement Area, the Transmission Authority would be the Entergy Transmission Organization. See Cover Letter at 8.

8. Attachment R further provides for an exchange bandwidth of plus or minus ten percent for energy imbalance service. Imbalances within this bandwidth result in a charge or a credit. Under the provisions related to imbalance energy service, Entergy would aggregate and net all loads/generation/schedules to determine the net hourly energy imbalance within the Settlement Area.

9. Attachment R also provides that a CR that commits to self-arrange spinning and supplemental reserve services faces reduced penalties.¹¹ However, if a CR fails to self supply five times in the same calendar month, it then may not self supply services under Schedules 3, 5, and 6 for six months and must purchase ancillary services from Entergy for two months. Attachment R also provides that the Control Area Operator will resolve local congestion and congestion from transactions that source, sink, or wheel through the Entergy Control Area. It further provides that the Control Area Operator will communicate with CRs regarding constraints, TLRs¹² and resumption of schedules. Additionally, Attachment R provides that the Transmission Authority may designate reliability must run units¹³ for load pockets.

10. Entergy has requested waiver of the Commission's 120-day advance notice requirement, but does not request a specific effective date. Entergy states that it must receive final approval of the Market Protocols before it can implement the retail choice program within the Settlement Area.

II. Notice and Responsive Filings

11. Notice of Entergy's filing was published in the Federal Register, 68 Fed. Reg. 65,262-63 (2003), with interventions, protests and comments due on or before October 30, 2003. The Texas Commission filed a timely notice of intervention and the

¹¹ Under Schedules 5 and 6 of Entergy's OATT, a transmission customer who agrees to self supply may incur a penalty for failure to provide reserves a single time during a twenty four hour period. Under Attachment R a penalty does not occur until a fifth default in the same calendar month.

¹²TLRs are situations that require transmission line loading relief.

¹³A reliability must run unit is a generator that a transmission provider can call upon when necessary to provide energy and ancillary services essential to the reliability of the transmission network. That is, some generating units "must run" at certain times to protect the transmission system from voltage collapse, instability, and thermal overloading. See *AES Southland, Inc., et al.*, 94 FERC ¶ 61,248 at 61,871 & n.2 (2001); *Duke Energy Oakland, LLC*, 85 FERC ¶ 61,047 at 61,141-42 n.1 (1998).

following parties filed timely interventions and protests: Arkansas Electrical Cooperative Corporation (Arkansas Electrical), Brazos, ETC, Entergy Solutions,¹⁴ Intergen Services, Inc. (Intergen),¹⁵ Reliant, Southeast Electricity Consumers Association (Southeast Consumers), Strategic Energy, Inc. LLC (Strategic Energy), TECO Power Services Corporation (TECO), Texas Industrials, and TXU. South Mississippi Electric Power Association (South Mississippi) requests permission to intervene out of time.¹⁶

12. On November 5, 2003, ETC filed an answer opposing Entergy Solutions' motion to intervene. On November 14, 2003, Reliant filed an answer in support of TXU's and Strategic Energy's comments and Entergy filed an answer to protests. On November 20, 2003, Entergy Solutions filed an answer to ETC's answer opposing Entergy Solutions' motion to intervene. On November 24, 2003, Strategic Energy filed an answer to Entergy's, Entergy Solutions' and Reliant's answers.

III. Discussion

A. Preliminary Matters

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹⁷ the notice of intervention of the Texas Commission and timely-filed, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We will grant South Mississippi's untimely, unopposed motion to intervene given its interest in this proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay.¹⁸

14. Notwithstanding ETC's opposition, we will permit the intervention of Entergy Solutions. Although the companies that compose Entergy Solutions are wholly-owned

¹⁴Entergy Solutions consists of Entergy Solutions Select, Ltd., Entergy Solutions Essentials, Ltd., and Entergy Solutions, Ltd. These companies are wholly-owned subsidiaries of Entergy Corporation.

¹⁵ Intergen filed on behalf of Cottonwood Energy Company, LP.

¹⁶Arkansas Electrical, Intergen, South Mississippi, and Southeast Consumers filed notices of intervention only, without protest or comments.

¹⁷18 C.F.R. § 385.214 (2003).

¹⁸See 18 C.F.R. § 385.214(d) (2003).

subsidiaries of Entergy, they are separate legal entities, each with its own concerns, distinct business focus and independent interest in this proceeding.¹⁹

15. 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 or to an answer unless otherwise permitted by the decisional authority. We find good cause to accept Entergy's, Entergy Solutions', Reliant's and Strategic Energy's answers, because they have provided information that assisted us in our decision-making process.

16. While some of the intervenors support Entergy's tariff filing,²⁰ other intervenors suggest certain editorial revisions designed to make the proposed tariff more effective and raise issues concerning: (a) clarity of proposed tariff; (b) discriminatory treatment of non-opt-in entities ; (c) cost shifting; (d) requirement to designate network resources for at least a month; (e) jurisdiction over, and the proper calculation of the Administrative Fee; (f) imbalance bandwidth; and (g) allocation of revenues (Section 34.4 of the OATT). We discuss these issues below.

B. Editorial Revisions

1. Protests

17. TXU proposes a modification to Part III of the proposed Market Protocols, Section 6.8.1. TXU would substitute the words "not available" for the word "corresponding" in Section 6.8.1 on Original Sheet No. 165 to eliminate ambiguity in the use of the word "corresponding."²¹ Reliant proposes two changes to proposed Section 6.7.6.2. One

¹⁹There is no rule that a wholly-owned subsidiary cannot intervene in a proceeding in which its parent is involved. We have permitted the intervention of Entergy Corporation subsidiaries in proceedings involving the parent corporation. See, e.g., Entergy Services, Inc., 96 FERC ¶ 61,148 at 61,637 (2001) (Entergy RS Corporation).

²⁰For example, the Texas Commission supports Entergy's filing to the extent that it is consistent with the Texas Commission's Market Protocols Order. The Texas Commission states that wholesale transmission rates and terms are critical to the success of a competitive retail electric market in Texas. Entergy Solutions and Strategic Energy also support Entergy's filing.

²¹TXU Protest at 5.

modification would change acronyms; the other would set forth more clearly the settlement calculations for the various imbalance positions that CRs may experience.²²

2. Entergy's Answer

18. Entergy agrees with these revisions and commits to make a compliance filing incorporating these revisions into the Market Protocols.²³ We direct Entergy to make these revisions as part of the compliance filing that we order herein, to be filed within 60 days of the date of issuance of this order.

C. Clarity of Proposed Tariff

1. Protests

19. ETC argues that the Commission should reject Entergy's tariff because it is vague.²⁴ ETC maintains that the descriptions of CRs and Entergy-affiliated companies (which Entergy sometimes refers to as "Entergy Solutions" and sometimes as Area Retail Energy Providers, or AREPS) are unclear, as are the energy imbalance rates that each of these classes of customers pays.²⁵ ETC also contends that "the portion of the tariff dealing with what Entergy Select pays Entergy Transmission Organization, which runs for some three pages of dense formulas, is impossible to assemble into a coherent charge."²⁶ TXU asks the Commission to direct Entergy to conform the proposed generator operating limits to the Commission's June 4, 2003 Order in the Generator Operating Limits (GOL) proceeding.²⁷

2. Commission Determination

20. Although we agree with ETC that Entergy has not clearly spelled out the terms of the proposed tariff on the issues to which ETC refers, we will not reject the tariff. Rather,

²²Reliant Protest at 3-5.

²³Entergy Answer at 4-5.

²⁴ETC Protest at 15-19.

²⁵*Id.* at 15-18.

²⁶*Id.* at 18.

²⁷ Entergy Services, Inc., 103 FERC ¶ 61,270 (2003) (June 4, 2003 Order). Entergy itself suggests this modification. See VS Riley at 23-24 & Exhibit RCR-1.

we will direct that Entergy make a compliance filing to: (a) clarify the descriptions of CRs and Entergy-affiliated companies and the energy imbalance rates that each of these classes of customers pays; (b) clarify the calculation of the payment that Entergy Select pays to Entergy Transmission Organization; and (c) conform the tariff to the Commission's June 4, 2003 Order.

D. Treatment of Non-Opt-In Entities

1. Protests

21. ETC and Brazos argue that the proposed revisions to Entergy's OATT favor CRs and discriminate against those who have chosen not to participate in retail choice in the Settlement Area (non-opt-in entities) because, for example, CRs receive a larger bandwidth than non-opt-in entities (plus or minus 10 percent versus plus or minus two percent or 2 MW, whichever is greater). CRs also pay a lower rate for shortages within the bandwidth, and receive a higher payment for overages. ETC adds that non-opt-in entities pay added penalties for imbalances during curtailment risk periods²⁸ and low load events.²⁹ ETC also asserts that CRs may hedge up to 50 percent of their imbalance charges by in-kind hedging through participation in an incremental and decremental energy market. Non-opt-in entities state that they do not have this market available to them and may not meet their imbalance charges by in-kind payment. In addition, ETC states that CRs may aggregate their imbalances and may use Entergy Select as an insurer of imbalance payments. ETC states that non-opt-in entities must pay their individual imbalances and receive no insurance.

22. ETC and Brazos argue that these differences are unduly discriminatory. ETC maintains that the only difference between CRs and non-opt-in entities is that the latter have chosen not to participate in retail choice. ETC contends that this difference is not enough to justify the disparity in rates for imbalance energy. ETC cites Arizona Independent Scheduling Administrator Ass'n, 93 FERC ¶ 61,231 (2000), reh'g denied and order clarified, 94 FERC 61,302 (2000) (Arizona), for the proposition that the Commission will not accept such discrimination.

²⁸ Curtailment risk periods are periods during which Entergy must order curtailment of service to customers due to high load conditions.

²⁹ A low load event is any period during which Entergy may be required to take a facility off-line due to low-load conditions, based on criteria such as load profiles and generating schedules, to maintain minimum stable operating levels consistent with prudent utility practice.

2. Commission Determination

23. As an initial matter, we note that in a companion order that we are issuing today,³⁰ the Commission addresses a number of the issues raised by intervenors here. In particular, we reject those portions of Entergy's tariff that: (a) impose penalties for imbalances that fall within the bandwidth; and (b) impose penalties associated with curtailment risk periods and low load events.³¹ We further reject Entergy's proposal to eliminate the return-in-kind provision, and find that a set of graduated penalties for energy imbalances outside of the bandwidth is reasonable.³² With respect to ETC's and Brazos' remaining arguments that the proposed revisions unduly discriminate against those who have chosen not to participate in retail open access in the Settlement Area, we disagree. As set forth below, we will accept the proposal for a ten percent bandwidth.

24. It is well settled that different rates for different classes of customers do not amount to undue or unjust discrimination.³³ Moreover, we have repeatedly rejected discrimination arguments regarding energy imbalance charges in the wholesale/retail context. For example, we have accepted energy imbalance bandwidths for retail customers that were different from those in effect for wholesale customers.³⁴ In our prior

³⁰ Entergy Services, 105 FERC ¶ 61,319.

³¹ Id. at P 4.

³² Id. at P 25-37.

³³ See, e.g., Northern Natural Gas Company, 97 FERC ¶ 61,314 at 62,443-45 (2001), 97 FERC ¶ 61,384 (2001), order on reh'g and compliance filing, 99 FERC ¶ 61,051, at 61,222-23 (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 F2d 533, 549 (D.C. Cir. 1985); United Municipal Distributors Group v. FERC, 732 F. 2d 202, 212 (D.C. Cir. 1984); Entergy Services, Inc., 91 FERC ¶61,156 at 61,592 & n.5, reh'g denied, 93 FERC ¶ 61,156 at 61,525-26 (2000). See also Town of Norwood v. FERC, 587 F.2d 1306, 1313 (D.C. Cir. 1978).

³⁴ See, e.g., American Electric Power Service Corporation, 94 FERC ¶ 61,226 at 61,827 (2001); Entergy Services, Inc., 91 FERC ¶ 61,155, reh'g denied, 93 FERC ¶ 61,156 (2000) (Entergy) (approving bandwidth for retail customers that is larger than bandwidth for wholesale customers); IEC Operating Companies, 89 FERC ¶ 61,175 at 61,529-30 (1999), order denying reh'g, 95 FERC ¶ 61,083 (2001). ETC's reliance on Commonwealth Edison Company, 90 FERC ¶ 61,121 (2000) (Commonwealth Edison) is

(continued)

cases, we have recognized the inherent problems of retail loads and the difficulty in minimizing energy imbalances for retail loads (e.g., retail loads generally lack access to hourly interval meters). We recognize that, as between different classes of customers, there will be some differences that are necessary to implement an open access retail program. But these differences do not rise to the level of undue discrimination.

25. The advent of open access retail choice in Texas results in two classes of electric energy suppliers, those who participate in retail choice (CRs) and those who do not (non-opt-in entities). As noted above, the Commission has previously recognized that the energy imbalance provisions applicable to wholesale service may not be just and reasonable for a retail access program.³⁵ Accordingly, we believe that different rates, terms, and conditions for the settlement of energy imbalances as between CRs and non-opt-in entities are not unduly discriminatory, particularly where, as here, non-opt-in entities may opt into retail open access whenever they wish and receive the same treatment as CRs (as they will then be CRs).³⁶

26. ETC's reliance on Arizona to support its argument is misplaced because that case involved a different factual situation from that before us here. In Arizona there were two different classes of Scheduling Coordinators: (a) Standard Offer Scheduling Coordinators (Standard Offer SCs); and (b) Competitive Scheduling Coordinators (Competitive SCs). Competitive SCs scheduled loads for retail native load customers who switched suppliers under Arizona's retail choice program, while Standard Offer SCs were the incumbent utilities (e.g., Arizona Public Service Company and Tucson Electric Power Company) who scheduled the loads of retail customers who did not elect to purchase power from another supplier. The Arizona Independent System Administrator

misplaced. Commonwealth Edison involved an energy imbalance trading program, not a bandwidth expansion. The two are materially different. See Entergy Services, Inc., 93 FERC ¶ 61,156 at 61,525 (2000).

³⁵ In Entergy, for example, the Commission approved a larger energy imbalance bandwidth for retail providers participating in the Texas pilot program than the bandwidth applicable to wholesale customers. See Entergy, 91 FERC at 61,591-92. One reason for this is that CRs do not have the same load profiles and load following capability as non-opt-in entities. See Entergy Answer at 6-7.

³⁶ Also, non-opt-in entities may obtain the equivalent of "in-kind hedging" by negotiating a self-supply arrangement with Entergy. See Entergy Answer at 14-15.

Association sought to apply different energy imbalance provisions to Competitive SCs and Standard Offer SCs.³⁷

27. The Commission found that the application of different energy imbalance provisions to Competitive SCs and Standard Offer SCs was unreasonable, because both classes of SCs were engaged in the retail market. The only distinction was that Competitive SCs scheduled for retail load that had switched suppliers, while Standard Offer SCs scheduled for retail load that had not switched suppliers.³⁸ Here we have a different set of facts. CRs are engaged in the retail market; therefore, they serve a less stable load and one that is more difficult to forecast. Non-opt-in entities are not engaged in the retail market. Therefore, they retain their historical load, which is more stable and easier to forecast. If non-opt-in entities want to avail themselves of the result in Arizona, they have only to join the Texas open access retail market.

E. Cost Shifting

1. Protests

28. ETC maintains that the difference in rates for energy imbalance service represents a shifting in costs from CRs to non-opt-in entities. ETC also contends that Entergy anticipates that it will experience lower revenues from its bundled retail customers in Texas because of the customer choice that results from the implementation of retail open access at the same time that it will experience increased costs to implement retail choice in Texas. ETC is concerned that Entergy will recoup the decreased revenues and increased expenses from non-opt-in entities. ETC also charges that Entergy Select will not be able to fund the risk that it insures against and that Entergy will have to recoup the funding of that risk from other customers, presumably non-opt-in entities.³⁹

³⁷Arizona, 93 FERC at 61,760-63.

³⁸Arizona, 93 FERC at 61,760. The Commission noted that all of Arizona was opened to retail choice on January 1, 2001. A retail customer that chose to remain with the incumbent supplier (and received scheduling from a Standard Offer SC) was taking unbundled retail transmission just as was the retail customer that chose a new supplier (and received scheduling from a Competitive SC). Arizona, 93 FERC at 61,762.

³⁹ETC Protest at 14-15.

2. Commission Determination

29. ETC's arguments that Entergy will receive lower revenues from its bundled retail customers in Texas and that Entergy Select will not be able to fund the risk that it insures against⁴⁰ are entirely speculative. ETC does not demonstrate how Entergy would make up from non-opt-in entities any shortfall in revenues or insurance expenses (assuming that they occur). The best that ETC can say is that "lowered revenues and increased expenses must be made up somehow."⁴¹ This is supposition; it is not evidence that implementation of retail choice on the Entergy system will result in a shifting of costs from CRs to non-opt-in entities.

F. Designation of Network Resources

1. Protests

30. The Market Protocols require that requests for primary network service must include the designation of network resources for a minimum of one month.⁴² Strategic Energy argues that the Commission should require Entergy to permit designations of one day. Strategic Energy notes that, although the Market Protocols allow participants to modify network resources with as little as a one-day notice, this flexibility only applies after monthly designations have been made and will provide little value because the monthly power purchases will have already been made and, therefore, their costs cannot be avoided. Strategic Energy argues that designations of network resources on time frames of less than a month is workable, feasible, and in use for other retail access programs.⁴³

31. Entergy opposes this change. Entergy notes that the Market Protocols do not include a capacity requirement. Entergy is concerned that, if allowed to schedule network resources on a day-ahead basis, CRs would not designate enough resources to serve their load and would rely inappropriately upon the capacity provided by Entergy under the ancillary services provisions of the Market Protocols. Entergy argues that the

⁴⁰Id.

⁴¹Id. at 14.

⁴²See Entergy Answer at 21; see also Part III, Wholesale Protocols, Section 3.2.1.1, Original Sheet No. 518.

⁴³ Strategic Energy cites Cinergy Operating Companies, 93 FERC ¶ 61,176 at 61,659 (2000) (Cinergy).

ability to modify network resource designations with as little as one-day's notice after the monthly designation has already been made strikes an appropriate balance and provides ample flexibility to CRs. Entergy notes that the Market Protocols as filed were part of an open stakeholder process, in which Strategic Energy had limited involvement. Entergy states that the Commission should reject Strategic Energy's unilateral proposal as inconsistent with the compromise developed through the collaborative sessions and through the hearings before the Texas Commission. In the alternative, Entergy argues that the Commission should encourage Strategic Energy to propose its change through the revision mechanism contained in the Market Protocols.

2. Commission Determination

32. Strategic Energy's reliance on Cinergy is misplaced. In that order, the Commission approved a provision that would permit a transmission customer taking network service to serve unbundled retail load to submit an application to designate a new network resource on as little as fourteen hours' notice provided that the customer notified Cinergy that it would terminate network resources of equal or greater size no later than the time its new network resource will become active. A review of the tariff sheets approved in that order indicates that, prior to receiving network service, a transmission customer would be required to submit an application which, among other things, identifies its network resources, along with a ten-year forecast. Thus, the proposal in Cinergy contemplated that the customer had already designated network resources and was revising that designation, similar to Entergy's proposal that permits changes to network designations on one-day's notice.

33. The Commission denies Strategic Energy's request to revise the Market Protocols to permit designation of network resources for one day rather than for one month. We find that Entergy has adequately explained the basis for requiring a one-month, rather than a one-day resource designation.⁴⁴ Since the Market Protocols do not contain a capacity requirement, a one month resource designation is necessary to ensure that CRs will have sufficient resources to serve their load. Moreover, the Market Protocols were developed through a stakeholder process, are designed to accommodate the specific needs of the retail access program in Texas, and have been reviewed by the Texas Commission. As Entergy points out, the Market Protocols include a process through which a party may suggest revisions. If Strategic Energy thinks itself disadvantaged by the resource-designation provision of the Market Protocols, it has a process by which it may obtain a remedy.

⁴⁴ See Entergy Answer at 22.

G. Administrative Fee

1. Protests

34. TXU opposes the Administrative Fee. TXU notes that Entergy is proposing that the Transmission Authority will collect this fee from CRs in order to recover the incremental costs relating to System Control and Dispatching in the Settlement Area.⁴⁵

35. TXU states that, before Texas retail competition can begin, the Texas Commission must certify the Transmission Authority as an “independent organization” and set the fee that the Transmission Authority can charge market participants. TXU argues that the Administrative Fee is, therefore, within the jurisdiction of the Texas Commission rather than within the jurisdiction of this Commission.

36. TXU contends that, even if the Administrative Fee is properly before this Commission, the proposal lacks sufficient detail to support a finding that it is just and reasonable.⁴⁶ TXU also contends that the formula for recovering the Administrative Fee should contain a true-up mechanism for any over- or under-collection of the estimated costs.⁴⁷ TXU asks that the Commission either reject the Administrative Fee, or suspend it and set it for hearing.⁴⁸

37. Texas Industrials also asks the Commission to reject the Administrative Fee⁴⁹ because Entergy has not provided detailed cost data supporting it.⁵⁰ Reliant asks the Commission to direct Entergy to specify the costs that the Administrative Fee will collect.⁵¹

⁴⁵TXU Protest at 6.

⁴⁶Id. at 7.

⁴⁷Id. at 9.

⁴⁸Id.

⁴⁹The Administrative Fee is Schedule 1-A to Entergy’s filing.

⁵⁰Texas Industrials Protest at 6.

⁵¹Reliant Protest at 3-5.

2. Commission Determination

38. As we explained in Order No. 888:

When a retail transaction is broken into two products that are sold separately (perhaps by two different suppliers: an electric energy supplier and a transmission supplier), we believe that the jurisdictional line changes. In this situation, the state clearly retains jurisdiction over the sale of the power. However, the unbundled transmission service involves only the provision of “transmission in interstate commerce” which, under the FPA, is exclusively within the jurisdiction of the Commission. Therefore, when a bundled retail sale is unbundled and becomes separate transmission and power sales transactions, the resulting transmission transaction falls within the Federal sphere of regulation.⁵²

39. The Texas Commission is, of course, free to decide who will be an “independent organization” for the purpose of competitive retail access in the Settlement Area.⁵³ However, once a state commission adopts a system where generation service is available as a separate product, the transmission service is within this Commission’s exclusive jurisdiction under the Federal Power Act (FPA).⁵⁴ Again, as we explained in Order No. 888:

⁵²Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 Fed. Reg. 21,540 (May 10, 1996), FERC Stats. & Regs., Regulations Preambles, January 1991-June 1996 ¶ 31,036 at 31,781 (1996) (emphasis added), order on reh'g, Order No. 888-A, 62 Fed. Reg., 12,274 (March 4, 1997), FERC Stats. & Regs., Regulations Preambles, July 1996-December 2001 ¶ 31,048 (1997), 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 relevant part sub nom. Transmission Access Policy Study Group, et al., v. FERC, 225 F. 3d 667 (D.C. Cir. 2000), aff'd sub nom. New York v. FERC, 122 S. Ct. 1012 (2002) (Order No. 888). See Arizona at 62,119 and n. 11.

⁵³ On November 26, 2003, Entergy filed an application with the Texas Commission to be recognized as an independent organization.

⁵⁴See Arizona, 94 FERC at 62,119.

[I]f retail transmission in interstate commerce by a public utility occurs voluntarily or as a result of a state retail wheeling program, the Commission has exclusive jurisdiction over the rates, terms, and conditions of such transmission and public utilities offering such transmission must comply with the FPA by filing proposed rate schedules under section 205.⁵⁵

40. We find that, with the addition of an interest component for any over or under collection of estimated costs,⁵⁶ the administrative fee is reasonable. That is, the components of the formula (e.g., personnel and capital expenditures for software and hardware) recoup those elements that would logically go into the administration of retail access in the Settlement Area.

41. We further find that the objections to the cost components of the formula are premature. Entergy should make a filing under section 205 of the FPA⁵⁷ at least sixty days before the start of retail access in the Settlement Area. Entergy's filing must contain the costs that it wishes to recover under the formula. This will afford all interested parties an opportunity to protest and comment on the actual costs that Entergy proposes to recover under the Administrative Fee.

H. Imbalance Bandwidth

1. Aggregation (or Netting) of Imbalances

a. Texas Industrial's Argument

42. Texas Industrials argues that Entergy affiliates should not be able to provide a single schedule against which the Transmission Provider measures deviations from bandwidth, while entities that are not affiliated with Entergy must provide individual schedules. According to Texas Industrials, this provides Entergy affiliates with an

⁵⁵Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,781. See Arizona, 94 FERC at 62,119 n.14.

⁵⁶Entergy does not oppose this modification of the proposed formula. See Entergy Answer at 27.

⁵⁷16 U.S.C. § 824d (2000).

advantage, because, by settling aggregate imbalances, the affiliates get the benefit of load diversity, which can result in the settlement of imbalances on a penalty-free basis.⁵⁸

b. Commission Determination

43. Entergy states that the OATT does not preclude affiliated entities from combining their loads for scheduling purposes. Based on this understanding, we find that it is reasonable to allow the aggregation (or netting) of imbalances so long as any non-Entergy affiliated entities throughout the Settlement Area have the same opportunity. That is to say, if two CRs are affiliated with each other, they should have the same opportunity to aggregate or net their imbalances as an Entergy affiliate has.

2. The Width of the Band

a. Texas Industrials' Argument

44. Texas Industrials also argues that the proposed ten percent (plus or minus) bandwidth does not support retail competition for all retail customers in the Settlement Area because many of those customers (and especially smaller customers) need at least a twenty percent bandwidth on an hour-by-hour basis to avoid imbalance penalties.⁵⁹

b. Commission Determination

45. We will accept the proposed ten percent bandwidth (plus or minus), as discussed above. We agree with Entergy that a larger bandwidth would be too large and would provide insufficient incentive for CRs to properly schedule their load.⁶⁰ We find that a ten percent bandwidth is reasonable because it accounts for CRs' inherent difficulty in minimizing energy imbalances, while simultaneously providing sufficient incentive for them to properly schedule their loads.⁶¹

⁵⁸Texas Industrials Protest at 2-4.

⁵⁹Id. at 5.

⁶⁰See Entergy Answer at 11-12. The Commission has recognized that an objective of Schedule 4 is to promote proper scheduling in order to protect the reliability and safety of the electric system. See Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,233 (1997).

⁶¹ The bandwidth that Entergy proposes is already five times the +/- two percent that the OATT requires.

3. Penalty Free Bandwidth

a. Texas Industrials' Argument

46. Texas Industrials maintains that energy imbalance provisions should include an option to allow retail electric providers to purchase a penalty-free bandwidth of up to 60 percent.⁶²

b. Commission Determination

47. For the same reason that we find a ten percent bandwidth reasonable, we will reject Texas Industrials' requests for the right to purchase a penalty-free bandwidth of sixty percent at cost of service. We find that the existing provision for a ten percent bandwidth affords retail providers sufficient flexibility and requires sufficient commitments to ensure that retail providers will carefully schedule their loads.⁶³ Undercutting that provision with a provision for the purchase of a sixty percent penalty-free bandwidth at cost of service would eliminate the necessary incentive for retail providers to carefully schedule their loads.

I. Allocation of Revenues (Section 34.4 of the OATT)

1. Protest

48. Texas Industrials asks the Commission to reject Entergy's proposed modification to Section 34.4 of the OATT, which allocates the revenues collected from retail electric providers to Entergy Gulf States. Texas Industrials argues that Entergy has not provided a detailed explanation of why Entergy Gulf States should receive the revenues, nor has it identified the effect that this provision will have on rates.

2. Commission Determination

49. We find that Entergy has supported the proposed modification. Upon the advent of Texas retail transmission access, Entergy Gulf States will be providing the transmission services for which the CRs will be paying. As a function of cost causality, Entergy Gulf States should receive the revenues that CRs will pay for the transmission services that they receive. As the other Entergy Operating Companies will not be providing any of the transmission services in the Settlement Area, they should not receive

⁶²Id. at 7.

⁶³See proposed Attachment R, Section 6.4.2 at Original Sheet Nos. 551 through 553.

the transmission revenues from that Area. As Entergy notes, the revised revenue-allocation methodology will not affect transmission services to CRs or to OATT customers.⁶⁴ Accordingly, we will accept the revised revenue-allocation methodology.

J. SeTrans RTO

50. Entergy states that the Market Protocols set out the rules or standards that will apply to retail open access in the ESAT region until a “Day Two-type market” is in place. Entergy defines “Day Two” as the first day of operation of Locational Marginal Pricing, a Firm Transmission Rights market, and the provision of certain ancillary services through bid-based energy markets. Entergy also states that the parties developed the concept of a “Transmission Authority” to administer the Protocols and that it is anticipated that, prior to the development of a FERC-approved RTO, the Entergy Transmission Organization will be that Transmission Authority. The Commission notes that the Sponsors of the SeTrans RTO, including Entergy, recently announced the decision to suspend the SeTrans RTO effort to explore other alternatives. In light of this announcement, the Commission directs Entergy to include in the compliance filing we are ordering in this proceeding, a description of the impact this announcement has on this proceeding and whether there are alternative plans to replace the Entergy Transmission Organization as the Transmission Authority.

IV. Summary

51. We find that Entergy’s proposed revisions to its OATT, as modified above, are consistent with or superior to the pro forma tariff. Accordingly, we will accept the proposed revisions as modified for filing, to become effective on the commencement of retail open access in the Settlement Area. We will direct Entergy to make a compliance filing within 60 days of the date of issuance of this order to revise the tariff as discussed herein.

The Commission orders:

(A) Entergy’s proposed revisions to its OATT, modified as discussed in the body of this order, are hereby accepted for filing, without suspension or hearing, to become effective upon the commencement of retail open access in the Settlement Area.

(B) Entergy is hereby directed to make a compliance filing to revise its OATT and provide additional information, as discussed in the body of this order within 60 days of the date of issuance of this order.

⁶⁴Entergy Answer at 27-28.

(C) Entergy is hereby directed to inform us of the date on which retail open access in the Settlement Area commences.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.