

105 FERC ¶ 61,319
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Entergy Services, Inc.

Docket No. ER01-2214-002

ORDER ON INITIAL DECISION

(Issued December 22, 2003)

Introduction

1. This case is before the Commission on exceptions to an Initial Decision issued January 24, 2003.¹ As we discuss below, with certain enumerated exceptions, we summarily affirm the findings of the presiding administrative law judge.
2. This order benefits customers by ensuring that rates, terms, and conditions for certain ancillary services are just and reasonable.

Background

3. A detailed history of this proceeding is provided in the Initial Decision.² In brief, this proceeding involves the rates, terms, and conditions proposed for each of Entergy Corporation's operating companies³ (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 its Open Access Transmission Tariff (OATT).

¹Entergy Services, Inc., 102 FERC ¶ 63,016 (2003) (Initial Decision).

²Initial Decision, 102 FERC ¶ 63,016 at P 2-7.

³The Entergy operating companies include Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc.

Discussion

4. 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;⁴ (B) rejecting the alternative method of determining the appropriate Load Following Capacity (LFC) charge;⁵ (C) revising the minimum terms for capacity-related ancillary services purchased from Entergy;⁶ (D) dividing the LFC purchase obligation in two;⁷ (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;⁸ (F) eliminating the penalty for imbalances that fall within the bandwidth and eliminating the additional penalties for curtailment risk periods and low load events;⁹ (G) requiring Entergy to provide advance notice to customers of the imminence of a curtailment risk period;¹⁰ (H) requiring Entergy to credit non-offending transmission customers with ancillary service penalty revenues plus interest;¹¹ (I) requiring Entergy to develop its rates using the net non-levelized methodology;¹² (J) accepting the stipulated return on equity allowance;¹³ (K) requiring Entergy to utilize a gross plant allocatr to allocate production related costs to the Automatic Generator Control (AGC)-equipped units;¹⁴ (L) requiring Entergy to adjust its rates, minimum terms and proposed penalties for Schedules 5 and 6 to be consistent

⁴Initial Decision, 102 FERC ¶ 63,016 at P 44-49.

⁵Id. at P 38-39.

⁶Id. at P 55-61.

⁷Id. at P 31-37.

⁸Id. at P 43.

⁹Id. at P 69-72, 73-88.

¹⁰Id. at P 87-88.

¹¹Id. at P 89-92.

¹²Id. at P 95-100.

¹³Id. at P 101-102.

¹⁴Id. at P 103-106; see infra note 17.

with the changes required in Schedule 4;¹⁵ and (M) requiring Entergy to remove the proposed audit provisions.¹⁶

5. 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.

A. Regulation and Frequency Response Service

1. Initial Decision

6. Entergy originally proposed to revise Schedule 3¹⁷ to provide that each transmission customer must purchase or supply an amount of Regulation and Frequency Response Service, *i.e.*, regulation service or LFC, equal to "4% of a Customer's maximum integrated peak load." An alternative method of fixing the customer's quota of LFC was also proposed if either Entergy or the customer believes that the 4% figure either overstates or understates the customer's need for LFC.¹⁸

¹⁵*Id.* at P 112-114.

¹⁶*Id.* at P 120-124. To the extent an issue is not discussed herein, we affirm and adopt the Initial Decision as our own decision on that issue.

¹⁷When the loads of Entergy's customers change, Entergy must add or subtract generation on an almost-instantaneous basis to keep the transmission system stable and reliable. To accomplish this task, Entergy has on its system Automatic Generator Control, or AGC, generating units. AGC units are computer-controlled and designed to increase or decrease their output automatically and near-instantaneously in response to moment-by-moment changes in system loads.

¹⁸The alternative method provided that the parties could negotiate for a different amount. If negotiations failed, then the customer could install, at its own expense, measuring equipment to determine the maximum instantaneous difference between the customer's load and its resources. The customer would then be obliged to purchase the amount of measured service. *See* Initial Decision, 102 FERC ¶ 63,016 at P 25, *citing* Ex. ETR-10 at 2-3.

7. Entergy chose 4% based on its operating personnel's estimates that on average the maximum instantaneous deviation between customers' loads and the output of their generation resources is 2% in each direction, i.e., ranging from 2% over to 2% under the output of their generation resources.¹⁹
8. The capacity-based rate that Entergy proposed to charge for this service was \$3.06 per kW-month for the months of September through May and \$10.90/kW-month for service during June, July, and August.²⁰ Trial Staff objected to including summer purchases in the rate since summer capacity was not used to provide regulation service (and also spinning and supplemental reserve services). Trial Staff proposed a rate based on Entergy's AGC-equipped generating units of \$1.94/kw/month.
9. The judge agreed with Entergy's rationale that its summer purchases freed up its AGC-equipped units to provide the service at issue. The judge also reasoned that transmission customers should not be protected from Entergy's relatively high cost summer capacity purchases because these purchases, in part, allowed Entergy to provide regulation service (and also spinning and supplemental reserve services). The judge therefore permitted Entergy to include the purchased summer capacity costs in the rate.
10. The intervenors and Trial Staff objected to the 4% LFC purchase requirement.²¹ They questioned the validity of Entergy's study because it only examined June and July without showing that these months were representative of Entergy's load during a longer period.

¹⁹See Ex. ETR-1 at 7. After its original filing was made, Entergy installed computerized measuring equipment that enabled it to measure actual variations from capacity output at 4 second intervals. Entergy performed a study on the variation in its generation as a percentage of its load during the months of June and July 2001. The study, described in Mr. Hurstle's supplemental testimony (Ex. ETR-11 at 5-7), indicated that the average variation was 4.15% (+2.01%/-2.14%) in June 2001 and 4.24% (+2.03%/-2.21%) in July 2001. Entergy did not propose to change its tariff to reflect these percentages but it did use them to argue that they provide a basis for declaring that the 4% figure is conservative and, therefore, just and reasonable.

²⁰ In supplemental direct testimony filed by Entergy, the proposed non-summer rate was reduced from \$3.06/kw/month to \$2.85/kw/month.

²¹In response to objections to use of the customers' non-coincident peak, rather than the customers' coincident peak, as a basis for measurement, Entergy agreed in Mr. Hurstle's rebuttal testimony to use the customers' maximum integrated loads at the time of the system's peak to develop their LFC responsibility. See Ex. ETR-19 at 4.

11. The judge found that there was no indication in the record that Entergy had chosen to study an unrepresentative period. The judge also noted that generator output rather than load was studied because the available data related to output and not load; the judge decided, though, that it was not unreasonable for Entergy to assume that the change in output of AGC-equipped units is roughly equivalent to the change in system load or that the amount of off-system generation serving load on the Entergy system was roughly equal to the amount of Entergy-produced electricity inadvertently flowing onto neighboring systems.²²

12. The judge rejected Trial Staff's alternative method of developing the percentage of regulation service that customers demand because that method assumes that the peak amount of LFC that transmission customers require occurs on the same day of the month as the system's peak load is experienced. The judge pointed out that the Commission had previously rejected this assumption in Allegheny Power Service Corporation, 85 FERC & 61,275 at 62,120 (1998) (Allegheny Power).²³

13. However, the judge reduced by half Entergy's proposed 4% LFC purchase requirement, to 2%, in light of the Commission's decisions in Kentucky Utilities Company, 85 FERC ¶ 61,275 (1998) (Kentucky Utilities),²⁴ and Allegheny Power.²⁵

²²Initial Decision, 102 FERC ¶ 63,016 at P 28.

²³Id. at P 29-30.

²⁴In Kentucky Utilities, the Commission rejected the assumption that the amount of LFC that customers must purchase is equal, on average, to the entire change in load from maximum purchases to maximum sales and vice versa during a given hour. Kentucky Utilities, 85 FERC & 61,275 at 62,109.

²⁵In Allegheny Power, the Commission affirmed an initial decision that had limited the amount of LFC that customers were required to purchase to half of the instantaneous change in load the utility experienced during any given hour. Allegheny Power, 85 FERC ¶ 61,275 at 62,121. Moreover, recently, in Consumers Energy Company, 87 FERC ¶ 61,170 (1999) (Consumers), the Commission summarily affirmed the initial decision's requirement that the LFC be developed by dividing the absolute load change by two.

14. The judge rejected Entergy's alternative methodology because that method would countenance negotiated LFC rates known only to Entergy and the other party.²⁶ Finally, the judge noted that, in response to intervenors' objections, Entergy conceded that the percentage rate could be applied to the customers' coincident peaks rather than the originally proposed non-coincident peaks. This concession was approved by the judge as being consistent with the Commission's decision in Kentucky Utilities, 85 FERC ¶ 61,275 at 62,120.

2. Exceptions

15. Trial Staff reiterates its position that the summer purchases cannot provide the relevant services. They assert that only AGC-equipped generating units can provide these services. Trial Staff points out that Entergy admits that its summer purchases do not provide the ancillary services at issue. Consequently, Trial Staff argues that the inclusion of these costs violates basic cost causation ratemaking principles. Trial Staff also takes issue with Entergy's assertion that its summer capacity purchases free up the AGC-equipped generators. Trial Staff points out that a transmission customer is required to make an election concerning ancillary services when its service agreement is filed and Entergy is required to ensure that it has sufficient generation capacity to provide these services. Therefore Trial Staff argues that Entergy should have already committed its AGC-equipped generation to provide those ancillary services and subsequent purchases do not "free-up" the AGC capacity to provide the ancillary services.

16. Entergy argues that the judge erred when he reduced the proposed 4% LFC purchase requirement because he did not: (1) recognize the importance of thwarting gaming; (2) address Entergy's contention that it is necessary to define capacity requirements using the maximum amount of capacity required, not the average amount; (3) recognize Entergy incurs costs in supplying negative capacity to transmission customers; and (4) consider its rebuttal evidence that the 4% requirement is very conservative because the actual difference over the two months of data studied is 8.4% according to its study.

²⁶The judge was also unimpressed by Entergy's assertion that it should not be forced to use a single default rate applicable to all because of the possibility of customers gaming Entergy's system by competing for an industrial end-user with a highly fluctuating load, opting to pay the default rate and possibly curtailing service to that customer during Entergy's system peak. The judge pointed out that Entergy conceded that no customer has attempted to game its system in this or any other manner. The judge also pointed out that if system gaming became a reality Entergy's remedy is to amend its tariff. Initial Decision, 102 FERC ¶ 63,016 at P 40-42.

17. Entergy also objects to the judge's determination that its alternative methodology is unjust and unreasonable. According to Entergy, the judge erred because he failed to: (1) recognize that the burden that a transmission customer places on Entergy is not necessarily related to its peak load; (2) recognize that customers who do not have dramatic load swings may place less of a burden on Entergy's system than is recovered by the default purchase obligation; (3) consider Entergy's rebuttal testimony that Entergy is willing to recalculate the default amount when the alternative method is used in order to prevent any over-or-under collection; (4) recognize that the proposed negotiated LFC rates would be memorialized in a service agreement filed with the Commission; (5) recognize that a future tariff amendment is not adequate protection against gaming that would force Entergy's native load to subsidize a transmission customer that places a large burden on the Entergy system, but pays only a fraction of the cost.

18. Trial Staff takes exception to the judge's decision to the extent that he accepts Entergy's methodology. Trial Staff argues that Entergy's methodology is flawed because it uses data not only from the AGC-equipped units that actually provide this service but all of its other generation units as well (reflecting ramp-up/down activity by merchant generation both inside and outside of Entergy's control area). Trial Staff adds that under Entergy's Generator Imbalance Agreement, generators on Entergy's system are required to compensate Entergy for imbalances they cause and inclusion of these amounts would allow Entergy to double-recover a portion of its costs.

19. Trial Staff asserts that the judge erred when he accepted Entergy's two-month data period without Entergy demonstrating that this short period is representative of annual conditions on its system. Trial Staff maintains that the judge's rejection of Trial Staff's methodology for determining the appropriate purchase percentage for customers is based upon an erroneous interpretation of Allegheny Power.²⁷ According to Trial Staff, the methodology that Trial Staff proposed is based on the all-hours approach approved in Allegheny Power.²⁸ Trial Staff also argues that Entergy's methodology of using moment-

²⁷Trial Staff points out that in Allegheny Power the utility had relied on a study of the average of all hourly load changes in the year, while Trial Staff had used a study of hourly load changes during the peak hours of the 12 monthly peak days, and the Commission accepted the use of the utility's all-hours approach.

²⁸Trial Staff here used an approach based on the average load changes during all 24 hours of each of the 12 monthly peak days in 2000, and that resulted in 1.41%. Trial Staff argues that, if the Commission does not accept its calculation and apply the 1.41%, the Commission should adopt the methodology proposed in Allegheny Power (one based on 24 hours for every day in the year) and use the resulting 1.11%.

to-moment changes overstates the amount of regulation service required by its customers when compared to the methodology accepted in Allegheny Power and Kentucky Utilities.

20. Allied Intervenors²⁹ assert that the judge erred when he did not discuss or adopt their alternative purchase obligation of 1.48%, which was determined on the basis of the average of the maximum and minimum differences between the instantaneous load each hour and the average hourly loads for June and July 2001. Allied Intervenors point out that their method of determining the purchase obligation differs from Trial Staff's method because Trial Staff's method did not account for the effects of instantaneous load swings which the control area operator is required to follow, generally using generation units that are subject to AGC.

21. Allied Intervenors also assert that the judge erred when he accepted Entergy's concession that the customer's coincident peak load may be used as the unit of measurement to determine the LFC purchase requirement rather than the customer's non-coincident peak load. They argue that this concession fails to cure the other major problem regarding the underlying faulty percentage calculation, which the judge ignores; that is, the incongruity between calculation of the percentage factor based on daily-peak percentages and application of that factor to a single peak for the month to determine the LFC purchase requirement under Schedule 3. This will result in an excessive LFC purchase requirement.

3. Commission Determination

22. We agree with Trial Staff that 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.

23. In Allegheny Power, the Commission affirmed the judge's finding that load changes during the hours around the time of the system peak are normally less than the load changes in other hours and therefore measuring load following service only at the

²⁹The 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.

time of the system peak underestimates the capacity needed for the service.³⁰ Thus, the Commission determined that the measurement should be based on all hours and not just the peak hours. Use of an all-hours approach, applied to the 12 monthly peak-days in 2000, produces an LFC purchase requirement of 1.41% as calculated by Trial Staff. We therefore direct Entergy to reduce the LFC purchase requirement to 1.41%.³¹

24. Since Trial Staff's methodology produces a result, 1.41%, that is more favorable to Entergy's customers than that produced by Allied Intervenors, we see no reason to further consider Allied Intervenors' proposed alternative LFC purchase requirement of 1.48%.

B. Energy Imbalance Service

1. Initial Decision

25. Entergy proposed to replace the return-in-kind provision for energy imbalance service that the Commission approved in Order No. 888-A,³² with a financial settlement. This financial settlement would be based on Entergy's System Incremental Cost (ESIC), which is defined as:

The most expensive source of energy generated or purchased by Entergy, excluding any multi-year energy purchases, any Entergy generation that would not be operating in that hour but for transmission reliability purposes, and 24% of the

³⁰Allegheny Power, 85 FERC ¶ 61,275 at 62,120.

³¹As noted earlier in this order, we are summarily affirming the judge's determination that the entire, absolute percentage charge should be divided by two. See supra note 6 and accompanying text. Dividing by two, which is consistent with Kentucky Utilities, Allegheny Power, and Consumers, supra notes 25-26, reflects that customer's rates should not be based on the entire, absolute change from the maximum purchase to the maximum sale or vice versa.

³²See 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 at 30,229, 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).

cost of any monthly energy purchases during the months of June, July, and August.

Ex. ETR-10 at 5.

26. Within the energy imbalance bandwidth, Entergy proposed a 10% premium/discount. Entergy proposed to charge 110% of ESIC to any customers that are deficient within its 2% energy imbalance bandwidth. Entergy further proposed to purchase any excess energy within the energy imbalance bandwidth at 90% of its avoided cost.

27. Entergy proposed a set of graduated penalties for energy imbalances outside of its energy imbalance bandwidth. Specifically, Entergy proposed to charge 125% of the ESIC to any customer that was deficient by more than 2% (and also greater than 2 MWh). The prior charge was 120%. Similarly, when a customer had excess energy, Entergy would purchase the excess at either (1) 80% of Entergy's avoided cost when the customer had excess energy of more than 2% but less than 10% of its load and was equal to or less than 20 MWh, or (2) 70% of Entergy's avoided cost when the customer's excess energy was greater than 10% of its load and which exceeded 20 MWh.

28. The judge pointed out that Entergy had not submitted a recent systematic study that supported its claim that transmission customers were deliberately leaning on Entergy's generation. Rather, the judge stated that Entergy instead had provided "anecdotal evidence" that a particular customer was leaning on Entergy's system during peak periods when the customer's cost would be the highest. Based on this "anecdotal evidence" of the conduct of one customer, the judge accepted as reasonable Entergy's proposal to eliminate the return-in-kind provision for clearing energy imbalances within the proposed 2% bandwidth.

29. The judge, however, found that Entergy's rate based on ESIC may not be the same as Entergy's incremental cost since it added a 24% factor for energy supplied during June, July, and August. The judge cited data that Entergy submitted which showed that ESIC was higher than the market price for energy by 100% or more during the relevant period. The judge also noted that when the energy imbalance was in the customer's favor Entergy used the commonly accepted term "avoided cost," but created its own term, ESIC, to calculate the charge when the customer was deficient. The judge reasoned that ESIC may include difficult to quantify costs, which if true, does not justify the 10% that Entergy proposed to apply to ESIC. Accordingly, the judge held that Entergy must amend Schedule 4 of its tariff to eliminate the penalty for imbalances within its bandwidth and, if it did so, it could revert to the 3% bandwidth (1.5% on either side) found in the pro forma tariff. Finally, the judge held that, if Entergy continued to require

financial settlements, it would have to pay its full avoided cost for excess energy supplied by customers.

2. Exceptions

30. Entergy asserts that its “concept” of ESIC does not include difficult to quantify costs. Entergy states that it defined ESIC to include the cost of purchased power but not incidental costs. According to Entergy, its witness’ testimony clearly shows that the 10% premium/discount is designed to recover those incidental costs incurred when it provides energy imbalance service.

31. Trial Staff argues that the judge erred by allowing Entergy to eliminate the return-in-kind provisions and to substitute financial settlement provisions for imbalances within the bandwidth. According to Trial Staff, its position is supported by Order No. 888. Trial Staff supports the judge’s rejection of the proposed 10% premium/discount and notes that Entergy’s argument that the 10% is for hard to quantify and out-of-pocket costs was not made until Entergy submitted its rebuttal testimony.

32. Trial Staff also argues that the judge erred when he relied on Niagara Mohawk Power Corporation³³ where the Commission permitted elimination of the return-in-kind provision in favor of a financial settlement. Trial Staff points out that NIMO involved generation imbalance service and not energy imbalance service, which is at issue here. According to Trial Staff, financial settlements for energy imbalances within the bandwidth are not appropriate unless the transmission provider has mitigated its proposal for financial settlement with other terms that are consistent with or superior to the pro forma tariff. Trial Staff also points out that Entergy has failed to adequately justify its need to eliminate the return-in-kind provision.

33. Entergy states that the judge did not clearly state his ruling regarding its proposed charges for imbalances outside of the bandwidth and Entergy interprets the initial decision as accepting the proposed graduated penalties since they are consistent with the case law discussed by the judge. However, Entergy objects to the judge's ruling to the extent that it can be read to suggest that all excess energy outside of the bandwidth must be priced at 100% of avoided cost. According to Entergy, these penalties encourage proper scheduling and discourage gaming the system. Entergy also points out that the Commission has permitted utilities to pay less than 100% of avoided cost for excess energy outside the energy imbalance bandwidth.

³³ Niagara Mohawk Power Corp., 86 FERC ¶ 61,009 (1999) (NIMO).

3. Commission Determination

34. Entergy's "anecdotal evidence" of the conduct of a single customer does not persuade us to follow its recommended approach. We also agree with Trial Staff that Entergy's reliance on other Commission cases to justify its replacement of the return-in-kind provision is misplaced. In each of those cases where financial settlement provisions were allowed to replace return-in-kind provisions, the Commission found that proposed change was consistent or superior to the return-in-kind provision in the pro forma tariff.

³⁴ Furthermore, we do not find Entergy's arguments made in its Brief Opposing Exceptions to be convincing. Entergy's belated proposal to broaden the deadband by one half of one percent (from 1.5% to 2%) and reduce the percentage mark-up from 120% to 110% for deviations between 1.5% and 2%, has not been shown to mitigate replacement of the return-in-kind provision with a financial settlement provision. Similarly, we find that Entergy's proposal to remove the 100 mill/kwh minimum for deviations outside of the deviation band has not been shown to mitigate the proposal to utilize financial settlements of deviations within the deviation band. Accordingly, we reverse the judge's decision to permit Entergy to eliminate the return-in-kind provision. Since we direct Entergy to retain the return-in-kind provision for imbalances within the deviation band, Entergy's argument supporting the proposed 10% premium/discount to recover out-of-pocket and difficult to quantify costs is moot.

35. With respect to penalties outside of the bandwidth, the judge cites data in the record showing that two transmission customers had failed to stay within the bandwidth during a substantial number of hours (41% and 89% respectively, over an eight-month period).³⁵ The judge goes on to state that the data "suggest that an increase in the amount of penalties for under-supply may be called for." The judge then states that the data "also support the notion that Entergy is entitled to graduate its penalty provisions, so that under-deliveries at times when supply may be critical (i.e., curtailment risk periods) are penalized more harshly than under-deliveries at other times." With this statement, the judge acknowledges that increased, graduated penalties for imbalance service outside the bandwidth are acceptable. We agree with the judge that this data provides sufficient

³⁴ See PacifiCorp, 95 FERC ¶ 61,145 at 61,464, order on reh'g, 95 FERC ¶ 61,467 (2001); Commonwealth Edison Company, 88 FERC ¶ 61,296 at 61,901 (1999); Duquesne Light Company, 87 FERC ¶ 61,352 at 62,354, reh'g denied, 88 FERC ¶ 61,273 (1999).

³⁵Initial Decision, 102 FERC ¶ 63,016 at P 78.

support for increased penalties when transmission customers either under-supply or provide excess energy outside the bandwidth.³⁶

36. From the judge's discussion, it is clear to us that he intended to allow Entergy to increase its penalties for imbalances outside of the bandwidth to its proposed levels of 125%, 80% and 70% depending on the situation (as described above). We find these graduated penalties to be reasonable, accordingly, Entergy's proposed penalties of 125%, 80% and 70% for imbalances outside of the bandwidth will be approved.

37. As a result of our determinations, Entergy may, if it chooses, revert to its pre-existing, pro forma - conforming OATT that contains a penalty-free bandwidth with customers being allowed to return imbalances within the bandwidth 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.

C. Spinning Reserve and Supplemental Reserve Services

1. Initial Decision

38. Trial Staff and the Allied Intervenors supported transmission operating reserve requirements based on the criteria established by the Southwest Power Pool (SPP), of which Entergy's customers are members. According to that criteria, Entergy's load ratio share of operating reserves is 760 MW, which, when divided by Entergy's 12 CP demand for calendar year 2000, indicates that Entergy's operating reserve requirement is 4.35%.

39. Entergy's testimony suggested that its system required higher operating reserves than provided for by the SPP criteria, i.e., weather conditions within its system are more severe than those within the SPP system, on average. Entergy also asserted that the additional reserves were necessary to guard against operational problems, such as tube leaks in its generating equipment. In addition, Entergy testified that capacity is added in blocks rather than incrementally, so a higher level of capacity may be necessary for operational reserves. Consequently, Entergy proposed that it be permitted to charge another 3% for spinning reserves and another 3% for supplemental services.

40. The judge accepted Entergy's proposal as reasonable. He noted that when Order No. 888 was issued the Commission anticipated that operating reserve requirements

³⁶The judge also recognized, see id. at P 79, and we summarily affirm, that the proposed penalties during risk curtailment periods and low load events are excessive.

would mirror the reserve requirements that RTOs and similar entities imposed on individual utilities. The judge reasoned, however, that the SPP criteria only specified minimum reserve requirements. The judge also determined that Entergy's higher operating reserves benefit its transmission customers as well as its native load customers.

2. Exceptions

41. Trial Staff argues that the Commission should give substantial weight to SPP's criteria concerning the level of operating reserves needed to maintain safe and reliable operations, because SPP is financially disinterested. Trial Staff explains that SPP's recommendations are objective from an operational and engineering standpoint because SPP's organizational purpose is to define safe, efficient and reliable reserve levels. Trial Staff also argues that Commission policy is that the regional reliability body should set the rules to ensure the efficient and reliable operation of member utilities.

3. Commission Determination

42. Providing reliable service is an important aspect of a utility's operations. As Trial Staff points out, it is Commission policy to give deference to the reliability standards set by independent and thus disinterested (from a financial, *i.e.*, profit perspective) regional entities. We find that SPP's reliability criteria do not merely set minimum reserve requirements that Entergy can exceed absent a systematic study that shows that Entergy's system, in fact, requires additional operating reserves so that Entergy can provide reliable service. And the record does not include such a study. Accordingly, we direct Entergy to adopt the operating reserve percentages calculated using the SPP criteria.

D. Motion to Strike

43. The Allied Intervenors filed a motion to strike Section IV.A of Entergy's Brief on Exceptions, which argues that the proposed tariff changes will result in a decrease in rates. They argue that the first time that Entergy presented its computations on this matter was in its Reply Brief and that they did not have an opportunity to submit discovery requests, to cross-examine witnesses, or to file responsive testimony.

44. Entergy filed an answer objecting to the motion to strike. It points out that the arguments and calculations are not new. It asserts that the underlying computations are based upon Mississippi Delta Energy Agency's actual bill, included in the record as Exhibit MCY-24. Entergy further argues that Allied Intervenors, in fact, seek to strike counsel's arguments.

45. We agree with Entergy that the contested language does not contain new evidence to which the parties were denied an opportunity to evaluate and possibly challenge.

The Commission orders:

(A) The Initial Decision issued on January 24, 2003 in this proceeding is hereby affirmed in part and modified in part, 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. If requests for rehearing are pending at the close of the 30-day period, required filing shall be made within 30 days from the date the rehearings are disposed of by the Commission.

(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. If requests for rehearing are pending at the close of the 30-day period, required filing shall be made within 30 days from the date the rehearings are disposed of by the Commission.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.