

128 FERC ¶ 61,054  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Suedeen G. Kelly, Marc Spitzer,  
and Philip D. Moeller.

Entergy Services, Inc.	Docket Nos. ER91-569-038 ER91-569-039 ER91-569-040 ER91-569-041 ER91-569-042 ER91-569-043 ER91-569-044
Entergy Power Ventures, LP	ER02-862-010 ER02-862-011
EWO Marketing, LP	ER01-666-010 ER01-666-011
Entergy Power, Inc. Warren Power, LLC	ER91-569-043 ER01-1804-008

ORDER ACCEPTING UPDATED MARKET POWER ANALYSIS  
AND COMPLIANCE FILINGS

(Issued July 16, 2009)

1. In this order, the Commission accepts an updated market power analysis filed by Entergy Services, Inc. (Entergy Services), Entergy Power Ventures, LP (Entergy Ventures), EWO Marketing, LP (EWO Marketing), Entergy Power, Inc. (Entergy Power), and the Entergy Operating Companies (collectively, Entergy Affiliates).<sup>1</sup> As

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<sup>1</sup>The Entergy Operating Companies are the following wholly-owned subsidiaries of Entergy Corporation (Entergy): Entergy Arkansas, Inc. (Entergy Arkansas), Entergy Gulf States Louisiana, L.L.C., Entergy Louisiana, LLC (Entergy Louisiana), Entergy Mississippi, Inc. (Entergy Mississippi), Entergy New Orleans, Inc., and Entergy Texas, Inc. (Entergy Texas).

discussed below, the Commission concludes that Entergy Affiliates continue to satisfy the Commission's standards for market-based rate authority in the Southeast region, excluding the Entergy balancing authority area.<sup>2</sup>

2. The Commission also accepts Entergy Affiliates' proposed revisions to their market-based rate tariffs filed on March 31, 2008, that incorporate provisions as adopted in Order Nos. 697 and 697-A,<sup>3</sup> to be effective September 18, 2007, as requested. The Commission also accepts the notices of change in status filed on January 30, 2008, April 23, 2008, June 30, 2008, and October 10, 2008.

3. Additionally, the Commission finds that Entergy Affiliates meet the criteria for Category 2 sellers in the Southwest Power Pool (SPP), Southeast, Northeast and Central regions and are so designated. Entergy Affiliates' next updated market power analysis must be filed according to the regional schedule adopted in Order No. 697.<sup>4</sup>

### **I. Background**

4. Energy Operating Companies are public utilities under the Federal Power Act (FPA), and they own and operate generation, transmission, and distribution facilities in Arkansas, Mississippi, Louisiana, and Texas. The Entergy Operating Companies plan, construct, and operate their generation and bulk transmission facilities as a single, integrated electric system pursuant to the Entergy System Agreement. The Entergy Operating Companies originally received market-based rate authority from the

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<sup>2</sup> Entergy Affiliates are subject to cost-based rates in the Entergy balancing authority area. *See Entergy Services, Inc.*, 115 FERC ¶ 61,260 (2006).

<sup>3</sup> *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, *clarified*, 121 FERC ¶ 61,260 (2007) (Order Clarifying Final Rule), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009).

<sup>4</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 882-893, App. D; Order Clarifying Final Rule, 121 FERC ¶ 61,260 at P 9, 10, App. D-1, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at Apps. D, D-1, and D-2; *see also* Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 at P 47-48 (amending in part App. D-2).

Commission in Docket No. ER91-569-000, *et al.*<sup>5</sup> As noted above, the Entergy Affiliates are currently subject to cost-based mitigation in the Entergy balancing authority area and are not seeking market-based rate authority there.

5. Entergy Ventures owns an interest in the 550 MW Harrison County combined cycle power plant near Marshall, Texas, which is not within the Entergy balancing authority area.<sup>6</sup>

6. EWO Marketing purchases from the City of Jonesboro 60 MW of the output of Nelson 6, and purchases 200 MW of the net dependable capacity of RS Cogen from its affiliate, RS Cogen, LLC.<sup>7</sup>

7. Entergy Power owns an interest in the 550 MW Unit 2 coal plant in Newark, Arkansas and the 544 MW Robert Ritchie 2 oil-fired plant in Helena, Arkansas.<sup>8</sup>

**A. Updated Market Power Analysis**

8. On August 29, 2008, in Docket Nos. ER91-569-043, ER02-862-011, ER01-666-011, and ER91-569-043, Entergy Affiliates filed an updated market power analysis in accordance with the regional schedule adopted in Order No. 697.<sup>9</sup> Entergy Affiliates also

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<sup>5</sup> See, e.g., *Entergy Services Inc.*, 109 FERC ¶ 61,282 (2004), *order on reh'g*, 111 FERC ¶ 61,145 (2005). *Entergy Services, Inc.*, 115 FERC ¶ 61,260 (2006), *Entergy Services, Inc.*, 116 FERC ¶ 61,276 (2006), *Entergy Services, Inc.*, 119 FERC ¶ 61,139 (2007).

<sup>6</sup> Entergy Ventures was authorized by the Commission to sell electric energy and capacity at wholesale at market-based rates in Docket No. ER02-862-000.

<sup>7</sup> EWO Marketing was authorized by the Commission to sell electric energy and capacity at wholesale at market-based rates in Docket No. ER01-666-000.

<sup>8</sup> Entergy Power was authorized by the Commission to sell electric energy and capacity at wholesale at market-based rates in Docket No. ER91-569-000.

<sup>9</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 882. The Commission stated that “both the Commission and market participants will benefit from greater data consistency that will result from regional examination of updated market power analyses and a methodical study of all sellers in the same region. This will give the Commission a more complete view of market forces in each region and the opportunity to reconcile conflicting submissions, enhancing our ability to ensure that sellers’ rates remain just and reasonable.” See also Order Clarifying Final Rule, 121 FERC ¶ 61,260 at P 13.

filed proposed revisions to their market-based rate tariffs to comply with Order Nos. 697 and 697-A.

9. On December 23, 2008, Commission Staff issued a request that Entergy Affiliates submit additional information regarding the Simultaneous Transmission Import Limit (SIL) study Entergy Affiliates submitted on August 29, 2008. On January 13, 2009, Entergy Affiliates submitted a filing in response to Commission Staff's December 23, 2008 request. On April 9, 2009, Commission Staff issued another request to Entergy Affiliates notifying them that additional information concerning Entergy Affiliates' SIL study was still needed. On May 4, 2009, Entergy Affiliates submitted additional information in response to Commission Staff's April 9, 2009 request.

10. On July 9, 2009, in Docket No. ER02-862-011, Entergy Services, on behalf of Entergy Ventures, submitted an errata notice to correct a typographical error in the filing made on August 29, 2008.

#### **B. Notices of Change in Status and Compliance Filing**

11. On January 30, 2008, in Docket No. ER91-569-038, Entergy Affiliates filed a notice of change in status reporting the initiation of a 100 MW purchase power contract entered into by Entergy Affiliates and the expiration of power purchase contracts since the date of filing its last change in status report.

12. On April 23, 2008, in Docket No. ER91-569-041, Entergy Affiliates filed another notice of change in status reporting that Entergy Gulf States Louisiana, L.L.C. acquired a 310 MW generation facility (Calcasieu Facility) located in Louisiana. Entergy Affiliates represent that Entergy Operating Companies previously purchased the output from the Calcasieu Facility under two call options agreements.

13. Then, on June 30, 2008, in Docket No. ER91-569-042, Entergy Affiliates submitted a notice of change in status describing their current long-term power purchase agreements in effect as of July 1, 2008, to account for changes in their power purchase portfolios.

14. Finally, on October 10, 2008, in Docket No. ER09-569-044, Entergy Affiliates submitted a notice of change in status stating that, on September 30, 2008, Entergy Arkansas acquired a 789 MW generation facility (Quachita Facility) located in Louisiana. Entergy Affiliates state that the Entergy Operating Companies previously purchased the output of the Quachita Facility under a tolling agreement. Entergy Affiliates represent that the actual purchase of the Quachita Facility does not change the results of its August 29, 2008 updated market power analysis since it included the output of the Quachita Facility as being owned or controlled by Entergy Arkansas.

15. On March 31, 2008, in Docket Nos. ER91-569-039, ER02-862-010, ER01-666-010, and ER01-1804-008, Entergy Affiliates filed revised market-based rate tariffs in compliance with Order No. 697.

## **II. Notice and Responsive Pleadings**

16. Notice of Entergy Affiliates' August 29, 2008 updated market power analysis filing was published in the *Federal Register*, 73 Fed. Reg. 53,857-58 (2008), with interventions or protests due on or before October 28, 2008. Occidental Chemical Corporation filed a motion to intervene and the Council of the City of New Orleans (New Orleans) filed a notice of intervention and protest (Protest). On November 12, 2008, on behalf of the Entergy Affiliates, Entergy Services filed an answer to the Protest (Answer). On November 21, 2008, New Orleans filed an answer to Entergy Services' answer (Response).

17. Notice of Entergy Affiliates' January 13, 2009 filing was published in the *Federal Register*, 74 Fed. Reg. 4,422 (2009), with interventions or protests due on or before February 3, 2009. None was filed.

18. Notice of Entergy Affiliates' May 4, 2009 filing was published in the *Federal Register*, 74 Fed. Reg. 23,181 (2009), with interventions or protests due on or before May 26, 2009. None was filed.

19. Notice of Entergy Services' July 9, 2009 filing was published in the *Federal Register*, 74 Fed. Reg. \_\_\_ (2009), with interventions or protests due on or before July 14, 2009. None was filed.

20. Notice of Entergy Affiliates' March 31, 2008 filing was published in the *Federal Register*, 73 Fed. Reg. 19,201 (2008), with interventions or protests due on or before April 21, 2008. None was filed.

21. Notices of Entergy Affiliates' January 30, 2008, April 23, 2008, June 30, 2008, and October 10, 2008 filings were published in the *Federal Register*,<sup>10</sup> with interventions or protests due on or before February 20, 2008, May 14, 2008, July 21, 2008, and October 31, 2008, respectively. None was filed.

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<sup>10</sup> 73 Fed. Reg. 58,575 (2008); 73 Fed. Reg. 24,273 (2008); 73 Fed. Reg. 7,736-37 (2008); 73 Fed. Reg. 65,597 (2008).

### **III. Discussion**

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

22. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the notice of intervention and timely, unopposed motion to intervene serve to make the entities that filed them parties to this proceeding.

23. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept Entergy Affiliates' and New Orleans' answers because they have provided information that assisted us in our decision-making process.

#### **B. Market-Based Rate Authorization**

24. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, horizontal and vertical market power.<sup>11</sup> The Commission concludes that Entergy Affiliates satisfy the Commission's standards for market-based rate authority, as discussed below.

##### **1. Horizontal Market Power**

25. The Commission adopted two indicative screens for assessing horizontal market power, the pivotal supplier screen and the wholesale market share screen.<sup>12</sup>

26. Entergy Affiliates prepared the pivotal supplier and wholesale market share screens for the Associated Electric Cooperative, Inc. (Associated Electric Coop), Central and Southwest, Ameren Transmission (Ameren), Central Louisiana Electric Company (Central Louisiana), Empire District Electric Company (Empire District), Oklahoma Gas & Electric Company (Oklahoma Gas & Electric), South Mississippi Electric Power Association, Southern Company Services, Inc. (Southern), Southwestern Power Administration, and Tennessee Valley Authority (TVA) balancing authority areas, which are first-tier to the Entergy balancing authority area, consistent with the requirements of Order No. 697.<sup>13</sup>

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<sup>11</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 62, 399, 408, and 440.

<sup>12</sup> *Id.* P 62.

<sup>13</sup> *Id.* P 231.

27. The Commission has reviewed Entergy Affiliates' pivotal supplier and wholesale market share screens. As noted above, Commission Staff issued data requests on December 23, 2008, and April 9, 2009, requesting that Entergy Affiliates provide additional information regarding the SIL study Entergy Affiliates submitted as part of its updated market power analysis. In response to those requests, Entergy Affiliates submitted additional information and revised SIL studies. Commission Staff requested the other transmission owners in the Southeast that filed SIL studies with their updated market power analyses (Southeast Transmission Owners)<sup>14</sup> to submit similar information as well. As detailed in an order being issued concurrently with this order, the Commission has made adjustments to the SIL studies submitted by the Southeast Transmission Owners, which we will use in evaluating market power analyses filed in the Southeast region.<sup>15</sup>

28. We find that Entergy Affiliates pass the pivotal supplier and wholesale market share screens in Associated Electric Coop, Central and Southwest, Ameren, Central Louisiana, Empire District, Oklahoma Gas & Electric, South Mississippi Electric Power Association, Southern, Southwestern Power Administration, and TVA balancing authority areas. Specifically, using the Commission-adjusted SIL study results, Entergy Affiliates' market shares for the relevant balancing authority areas are as follows: Associated Electric Coop market shares range from 4.9 to 10.3 percent; Central and Southwest market shares range from 8.4 to 12.7 percent; Ameren market shares range from 3.1 to 6.0 percent; Central Louisiana market shares range from 0.0 to 12.3 percent; Empire District market shares range from 0.0 to 18.7 percent; Oklahoma Gas & Electric market shares range from 0.0 to 6.5 percent; South Mississippi Electric Power Association market shares range from 0.0 to 1.6 percent; Southern market shares range from 0.4 to 2.9 percent; Southwestern Power Administration market share is 0.0 percent in all periods; and TVA market shares range from 0.0 to 4.4 percent.

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<sup>14</sup> There were seven separate updated market power filings submitted on behalf of Southeast Transmission Owners. They include submissions by: (1) Duke Energy Carolinas, LLC; (2) South Carolina Electric & Gas Company; (3) Tampa Electric Company; (4) Carolina Power & Light Co. and Florida Power Corporation; (5) Entergy Services, Inc., Entergy Power Ventures, LP, EWO Marketing, LP, and Entergy Power, Inc.; (6) LG&E Energy Marketing Inc., Louisville Gas & Electric Company, Kentucky Utilities Company, and Western Kentucky Energy Corporation; and (7) Southern Company Services, Inc., Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Southern Power Company.

<sup>15</sup> *Carolina Power & Light Co.*, 128 FERC ¶ 61,039 (2009).

29. Accordingly, as discussed herein, we find that Entergy Affiliates satisfy the Commission's requirements for market-based rate authority regarding horizontal market power, excluding the Entergy balancing authority area.

## 2. Vertical Market Power

30. In cases where a public utility, or any of its affiliates, owns, operates, or controls transmission facilities, the Commission requires that there be a Commission-approved open access transmission tariff (OATT) on file before granting that utility or affiliate market-based rate authorization.<sup>16</sup>

31. Entergy Affiliates state that the Entergy Operating Companies' transmission assets are subject to its OATT, which the Commission has deemed to mitigate a seller's market power. Additionally, Entergy Affiliates state that, in *Entergy Services, Inc.*,<sup>17</sup> the Commission approved the Entergy Operating Companies' request to contract with an independent entity, currently the SPP, as the independent coordinator of transmission (ICT), to provide oversight over the operations of the Entergy Operating Companies' transmission system. Entergy Affiliates argue that the Entergy Operating Companies' OATT, and the ICT agreement that they have adopted, eliminate any potential vertical market power concerns.

32. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.<sup>18</sup> The Commission requires a seller to provide a description of its ownership or control of, or affiliation with, an entity that owns or controls, intrastate natural gas transportation, storage, or distribution facilities; sites for generation capacity development; and physical coal supply sources and ownership of or control over who may access transportation of coal supplies (collectively, inputs to electric power production).<sup>19</sup> The Commission also requires sellers to make an affirmative statement that they have not erected barriers to entry into the relevant market and will not erect barriers to entry into the relevant market.<sup>20</sup>

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<sup>16</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408.

<sup>17</sup> 115 FERC ¶ 61,095 (2006).

<sup>18</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 440.

<sup>19</sup> *Id.* P 447; Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

<sup>20</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

33. With regard to other barriers to entry, Entergy Affiliates state that they do not have dominant control over power plant sites for new capacity development in relevant markets. Entergy Affiliates state that Entergy Louisiana presently owns one undeveloped site in Louisiana that could be used for generation capacity development in the Entergy balancing authority. The Entergy Operating Companies also own and/or control sites at existing generating facilities that may be used to develop new generation capacity development in the Entergy balancing authority area. However, Entergy Affiliates argue that the Entergy Operating Companies do not have the ability to prevent the siting of new generation facilities owned by their competitors.

34. With respect to other inputs to generation, Entergy Affiliates state that Entergy Texas owns the Spindletop Gas Storage Facility (Spindletop Facility), which is located in Orange and Jefferson Counties, Texas, in the Entergy balancing authority area. Entergy Affiliates state that the Spindletop Facility consists of two natural gas caverns, above ground electric compression and withdrawal facilities, leaching facilities, an electrical substation, and approximately 23 miles of intrastate pipeline that connects to Entergy Texas' electric generation facilities and to other intrastate and interstate pipelines located in Southeast Texas. Entergy Affiliates argue that there are abundant alternatives for generators to receive gas supplies in the region and the Spindletop Facility is dedicated to serving affiliated generation. Entergy Affiliates state that they do not control coal supplies or barges and rail cars used for the transportation of coal supplies, except rail cars leased solely to deliver fuel for their coal-fired generating plants.

35. The Commission adopted a rebuttable presumption that the ownership or control of, or affiliation with any entity that owns or controls, inputs to electric power production does not allow a seller to raise entry barriers but will allow intervenors to demonstrate otherwise.<sup>21</sup>

36. Entergy Affiliates affirmatively state that their affiliates have not erected barriers to entry in the relevant markets and will not erect barriers to entry in the relevant markets in the future.

37. Based on Entergy Affiliates' representations, as discussed herein, we find that Entergy Affiliates satisfy the Commission's requirements for market-based rate authority regarding vertical market power.

### **3. Protest**

38. Entergy Arkansas and Entergy Mississippi gave notice of their intent to terminate their participation in the Entergy System Agreement on December 19, 2005 and

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<sup>21</sup> *Id.* P 446.

November 8, 2007, respectively. New Orleans argues that Entergy Affiliates failed to provide sufficient information in their filing for the Commission to assess whether Entergy Arkansas' and Entergy Mississippi's withdrawal from or the restructuring of the Entergy System Agreement will affect their application for continued market-based rate authority. New Orleans states that, aside from a single sentence and footnote, the Entergy Affiliates' filing provides no additional information or analysis regarding Entergy's operations under a revised Entergy System Agreement without Entergy Arkansas or Entergy Mississippi, nor do Entergy Affiliates explain whether Entergy Arkansas or Entergy Mississippi will operate their own balancing authority areas, whether they will file company-specific OATT, whether SPP will function as the ICT for Entergy Arkansas and Entergy Mississippi, how transmission and generation planning will be conducted, how Entergy Arkansas' and Entergy Mississippi's generation and the generation of non-affiliated entities will be dispatched, or other issues relevant to whether the Entergy holding company system, including the Entergy Affiliates and the Entergy Operating Companies, will have vertical or horizontal market power. New Orleans concludes that the Commission should therefore reject the application and require Entergy Affiliates to re-file with an explanation of the impact of these changes to the Entergy System Agreement on Entergy Affiliates or set the application for evidentiary hearing.<sup>22</sup>

39. In their Answer, Entergy Affiliates explain that Entergy Arkansas and Entergy Mississippi are not terminating their participation in the Entergy System Agreement until 2013 and 2015, respectively,<sup>23</sup> and point out that, therefore, Entergy Affiliates will be making at least one additional triennial update filing prior to any such withdrawal.<sup>24</sup> Additionally, Entergy Affiliates assert that any issues associated with Entergy Arkansas and/or Entergy Mississippi's withdrawal from the Entergy System Agreement would be addressed at such time when Entergy Affiliates make a filing under section 205 of the FPA<sup>25</sup> to reflect Entergy Arkansas' or Entergy Mississippi's withdrawal from the Entergy System Agreement.<sup>26</sup> Accordingly, they argue that the issues raised by New Orleans are beyond the scope of this proceeding.

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<sup>22</sup> New Orleans Protest at 3-5.

<sup>23</sup> Entergy Affiliates Answer at 1.

<sup>24</sup> *Id.* at 3.

<sup>25</sup> 16 U.S.C. § 824d (2006).

<sup>26</sup> *Id.* at 5.

40. In its Response, New Orleans requests that the Commission reject Entergy Affiliates' Answer as not helpful to the Commission in its analysis, or in the alternative, that the Commission either reject Entergy Affiliates' August 29 filing or issue an order instituting hearing procedures with respect to the Entergy Affiliates' market-based rate authorization. In support of its request to have the Commission waive Rule 213(a)(2) of its Rules of Practice and Procedure, New Orleans provides statements of Mr. Hugh T. McDonald, President and Chief Executive Officer of Entergy Arkansas back in December 2007, suggesting that the Entergy System Agreement would be replaced in 2009, rather than 2013, as Entergy Affiliates state in their Answer.

41. We agree with Entergy Affiliates that New Orleans' arguments are improper in this proceeding. As Entergy Affiliates point out, the Commission recently addressed a similar challenge raised by the Louisiana Public Service Commission in Docket No. EL07-25-000,<sup>27</sup> and determined that any issues concerning Entergy Arkansas' withdrawal from the Entergy System Agreement should be addressed when Entergy makes a section 205 filing to reflect Entergy Arkansas' withdrawal from the Entergy System Agreement. Accordingly, we need not address the issues raised in New Orleans' Protest because they are not ripe for review.

### **C. Compliance Filings**

42. In Order No. 697, the Commission adopted two standard required provisions that each seller must include in its market-based rate tariff: (1) a provision requiring compliance with the Commission's regulations; and (2) a provision identifying any limitations and exemptions regarding the seller's market-based rate authority.<sup>28</sup> In addition to the required tariff provisions, the Commission adopted a set of standard provisions that must be included in a seller's market-based rate tariff to the extent that they are applicable.<sup>29</sup> In Order No. 697-A, the Commission also required that each seller include in its market-based rate tariff a provision identifying which category of seller it qualifies as in each region.<sup>30</sup>

43. Entergy Affiliates state that they are revising, where applicable, the required language concerning (i) sales of ancillary services, (ii) the mitigated sales provision,

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<sup>27</sup> *Louisiana Pub. Serv. Comm'n v. Entergy Corp.*, 119 FERC ¶ 61,224, at P 48 (2007).

<sup>28</sup> *Id.* P 914.

<sup>29</sup> *Id.* P 917.

<sup>30</sup> Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 391-393.

and (iii) seller category, in compliance with Order No. 697 and Order No. 697-A. Entergy Affiliates also include a list of assets as required by Order No. 697.<sup>31</sup>

44. Entergy Affiliates' revised market-based rate tariffs therefore satisfy the Commission's requirements set forth in Order No. 697 and Order No. 697-A. Accordingly, we will accept Entergy Affiliates' revised market-based rate tariffs, as modified by the July 9, 2009 errata notice correcting a typographical error, effective September 18, 2007, as requested.<sup>32</sup>

#### **D. Reporting Requirements**

45. Consistent with the procedures the Commission adopted in Order No. 2001, an entity with market-based rates must file electronically with the Commission an Electric Quarterly Report containing: (1) a summary of the contractual terms and conditions in every effective service agreement for market-based power sales; and (2) transaction information for effective short-term (less than one year) and long-term (one year or longer) market-based power sales during the most recent calendar quarter.<sup>33</sup> Public

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<sup>31</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 894-895.

<sup>32</sup> Entergy Services Inc., FERC Electric Tariff, Third Revised Vol. No. 4, First Revised Sheet Nos. 1-4 (superseding Original Sheet Nos. 1-4), EWO Marketing, LP, FERC Electric Tariff, First Revised Volume 1, First Revised Sheet Nos. 1-4 (superseding Original Sheet Nos. 1-4), Entergy Power Ventures, L.P., FERC Electric Tariff, First Revised Volume No. 1, Revised Sheet Nos. 1-3 (superseding Original Sheet Nos. 1-3), Entergy Power, Inc. FERC Electric Tariff, Second Revised Vol. No. 1, First Revised Sheet Nos. 1-4 (superseding Original Sheet Nos. 1-4).

<sup>33</sup> *Revised Public Utility Filing Requirements*, Order No. 2001, FERC Stats. & Regs. ¶ 31,127, *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reh'g denied*, Order No. 2001-B, 100 FERC ¶ 61,342, *order directing filing*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002), *order directing filing*, Order No. 2001-D, 102 FERC ¶ 61,334 (2003). Attachments B and C of Order No. 2001 describe the required data sets for contractual and transaction information. Public utilities must submit Electric Quarterly Reports to the Commission using the EQR Submission System Software, which may be downloaded from the Commission's website at <http://www.ferc.gov/docs-filing/eqr.asp>.

utilities must file Electric Quarterly Reports no later than 30 days after the end of the reporting quarter.<sup>34</sup>

46. Entergy Affiliates must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.<sup>35</sup>

47. Additionally, in Order No. 697, the Commission created two categories of sellers.<sup>36</sup> Category 1 sellers are not required to file regularly scheduled updated market power analyses. Category 1 sellers are wholesale power marketers and wholesale power producers that own or control 500 MW or less of generation in aggregate per region; that do not own, operate or control transmission facilities other than limited equipment necessary to connect individual generation facilities to the transmission grid (or have been granted waiver of the requirements of Order No. 888<sup>37</sup>); that are not affiliated with anyone that owns, operates or controls transmission facilities in the same region as the seller's generation assets; that are not affiliated with a franchised public utility in the same region as the seller's generation assets; and that do not raise other vertical market

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<sup>34</sup> The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2008). Failure to file an Electric Quarterly Report (without an appropriate request for extension), or failure to report an agreement in an Electric Quarterly Report, may result in forfeiture of market-based rate authority, requiring filing of a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

<sup>35</sup> *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005); 18 C.F.R. § 35.42(a) (2008).

<sup>36</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 848.

<sup>37</sup> *Promoting 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, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

power issues.<sup>38</sup> Sellers that do not fall into Category 1 are designated as Category 2 and are required to file an updated market power analysis.<sup>39</sup>

48. Based on Entergy Affiliates' representations, we find that Entergy Affiliates meet the criteria for a Category 2 seller in the SPP, Southeast, Northeast, and Central regions and are so designated. Thus, Entergy Affiliates must file an updated market power analysis in compliance with the regional reporting schedule adopted in Order No. 697.<sup>40</sup> The Commission also reserves the right to require such an analysis at any intervening time.

The Commission orders:

(A) Entergy Affiliates' updated market power analysis is hereby accepted for filing, as discussed in the body of this order.

(B) Entergy Affiliates' notices of change in status are hereby accepted for filing, as discussed in the body of this order.

(C) Entergy Affiliates' revisions to their market-based rate tariff sheets are hereby accepted for filing, effective September 18, 2007, as requested.

(D) Entergy Affiliates are hereby directed to file an updated market power analysis according to the regional reporting schedule adopted in Order No. 697.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>38</sup> 18 C.F.R. § 35.36(a)(2) (2008).

<sup>39</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 850.

<sup>40</sup> *Id.* P 882.