

129 FERC ¶ 61,243  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

ConocoPhillips Company

Docket No. EL08-59-001

v.

Entergy Services, Inc.

ORDER ON REHEARING

(Issued December 17, 2009)

1. ConocoPhillips Company (ConocoPhillips) filed a complaint alleging that Entergy Services, Inc. (Entergy) improperly terminated two of ConocoPhillips's confirmed reservations for firm transmission service, violating Entergy's Open Access Transmission Tariff (OATT). The Commission granted in part the relief requested in ConocoPhillips's complaint, holding that Entergy's OATT was violated when the confirmed service reservations were terminated instead of curtailed on a *pro rata* basis with other confirmed service reservations at the interface.<sup>1</sup>

2. In this order, the Commission denies Entergy's request for clarification or rehearing of the Commission's July 24 Order, and the rehearing request of Southwest Power Pool, Inc., Entergy's Independent Coordinator of Transmission (ICT).

**I. Background**

3. In March 2007, ConocoPhillips submitted two requests for short-term firm point-to-point transmission on Entergy's system over the Entergy-Ameren interface, one for June 1 through August 31, 2007 (June Transaction) and the other for July 1 through August 31, 2007 (July Transaction). The ICT accepted both requests, and ConocoPhillips confirmed them.

4. On May 30, 2007, the ICT learned from a customer that the Entergy-Ameren interface was oversold. On June 1, 2007, the ICT determined that the oversell was

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<sup>1</sup> *ConocoPhillips Co. v. Entergy Services, Inc.*, 124 FERC ¶ 61,085 (2008) (July 24 Order).

caused by an error in Entergy's Available Flowgate Capability (AFC) software. On June 15, 2007, Entergy filed a notice in the Commission's docket regarding approval of the ICT, describing the software error and resulting oversell.<sup>2</sup> On June 26, 2007, the ICT posted a notice on Entergy's Open Access Same-Time Information System website, stating that, if no transmission customer voluntarily terminated its transmission service on the Entergy-Ameren interface, the ICT would resolve the oversell by terminating service in reverse queue order of requests. On June 29, 2007, the ICT notified ConocoPhillips that the June and July Transactions were terminated, effective July 1, 2007.

5. Due to the termination of the two reservations, ConocoPhillips asserted that it was unable to sell its energy into the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) market and had to sell its energy to Entergy at Entergy's avoided-cost rate, rather than the Midwest ISO market rates at the Entergy-Ameren interface.<sup>3</sup> ConocoPhillips alleged that its damages were approximately \$438,000.

6. In the July 24 Order, the Commission determined that terminating the reservations in reverse queue order of request, rather than curtailing service on a *pro rata* basis, violated Entergy's OATT. The Commission explained that section 13.6 of Entergy's OATT (Curtailment of Firm Transmission Service) sets forth a procedure for making curtailments for system reliability. Absent a specific provision addressing software errors, the Commission stated that Entergy and the ICT should have looked to section 13.6 to address the constraint.

7. The Commission further noted that, under the provisions of Entergy's OATT, customers with confirmed firm service were similarly situated, regardless of queue position. The Commission concluded that resolving the oversell by terminating reservations in reverse queue order of request unduly discriminated against the holders of reservations whose requests were at the end of the queue, because it placed on them the entire burden of easing the constraint.

8. The Commission further noted that, in certain cases where transmission capacity was erroneously oversold, the Commission had allowed transmission providers to reorder transmission request queues or terminate firm reservations or service. In those cases, the transmission provider had acted promptly to correct the error, and the customers had an opportunity to receive all or some portion of their service once the queue was reordered.<sup>4</sup>

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<sup>2</sup> Letter, Entergy Services, Inc, Report of OASIS Software Error, Docket No. ER05-1065-000 (June 15, 2007).

<sup>3</sup> ConocoPhillips Complaint at 3, 9-10, and Appendix C.

<sup>4</sup> July 24 Order, 124 FERC ¶ 61,085 at P 28-29 (citing *Williams Energy v. Southern Company Services, Inc.*, 101 FERC ¶ 61,144 (2002) (*Williams*); *Powerex Corp. v. U.S. Dept of Energy*, 95 FERC ¶ 61,241, at 61,827 (2001) (*Powerex*)).

By contrast, the ICT terminated ConocoPhillips' reservations 28 days after service under the June Transaction had started and two days before service under the July Transaction was to start, without providing ConocoPhillips a reasonable alternative for service.

## **II. Requests for Rehearing or Clarification and Answers**

### **A. The ICT's Request for Rehearing**

9. The ICT argues that the Commission erred by finding that ConocoPhillips' reservation was properly granted and therefore similarly situated to other reservations that had been granted earlier. The ICT contends that the Commission should have considered the factual distinctions between ConocoPhillips' reservation and the other reservations instead of concluding that the curtailment was discriminatory.<sup>5</sup>

10. The ICT asserts that the Commission has recognized that the manner by which a customer secures a confirmed reservation may provide a basis for differential treatment. The ICT argues that, in *Tenaska*, the Commission set aside the Midwest ISO's practice of allowing incumbent customers to confirm rollover rights without regard to bid-matching procedures triggered by competing requests under section 2.2 of the *pro forma* OATT.<sup>6</sup> The Commission directed the Midwest ISO to reprocess the requests, terminate the improperly-granted service, and restore the queue to the state it would have been in but for the improper processing of requests.<sup>7</sup> The ICT argues that a similar remedy is appropriate here, and that restoring the queue would have put ConocoPhillips at the end and termination of service would have been the proper remedy.

11. The ICT also objects to the Commission's attempt to distinguish *Williams* and *Powerex* from the case at hand.<sup>8</sup> The ICT compares its actions to those in *Williams*, arguing that, in both instances, the improperly-confirmed requests were terminated and the system was restored to its original state, but for the error. The ICT states that it, in effect, restored ConocoPhillips's queue position and properly processed its requests by denying them for a lack of capacity on the Entergy-Ameren interface – similar to Southern Company's action of annulling Williams's confirmed redirect request. The ICT

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<sup>5</sup> ICT Request at 12 (*citing, e.g., Dominion Transmission, Inc.*, 115 FERC ¶ 61,144, at 13 (2006) (“similarly situated” inquiry involves consideration of specific factual questions)).

<sup>6</sup> *Id.* at 12 (*citing Tenaska Power Servs. Co. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 106 FERC ¶ 61,230 (2004) (*Tenaska*), *order on reh'g*, 107 FERC ¶ 61,308 (2004)).

<sup>7</sup> *Tenaska*, 106 FERC ¶ 61,230 at P 53.

<sup>8</sup> ICT Request at 13 (*citing Williams*, 101 FERC ¶ 61,144; *Powerex*, 95 FERC ¶ 61,241 at 61,827).

argues that Williams's opportunity to have the request studied is not relevant to this case because Williams's request was more than three years from its start date, whereas the ICT had to terminate ConocoPhillips's reservations because they were at the end of the queue.

12. Moreover, the ICT argues that the Commission's distinction between this case and *Williams* and *Powerex* based on timing considerations evades the question of whether ConocoPhillips was similarly situated to customers holding "properly confirmed and uncompromised" reservations. The ICT also argues that the Commission's timing rationale is undercut by its decisions in *Idaho Power* and *Tenaska*, since in both those cases service was terminated after service had begun.<sup>9</sup> The ICT further states that the record shows that it considered several alternatives and took corrective action as soon as practicable after discovery of the error.

13. The ICT also objects to the Commission's reliance on section 13.6 of Entergy's OATT, arguing that provision does not specifically address transmission system constraints that are due to erroneously-accepted transmission requests.<sup>10</sup> According to the ICT, the requirement in section 13.6 of the OATT (Curtailed Firm Transmission Service) only applies to real-time emergencies, and not to instances when service is oversold in advance.<sup>11</sup> The ICT asserts that, in the absence of any clear tariff direction for how to resolve an oversell in advance, it was not a violation of Entergy's OATT to terminate reservations in reverse queue order of requests.

#### **B. Entergy's Request for Rehearing or Clarification**

14. Similar to the ICT, Entergy argues that it was not a violation of its OATT or Commission policy to terminate ConocoPhillips's service. Entergy states that, because service was terminated prior to real time and prior to the submission of real-time transmission schedules, section 13.6 of the OATT did not apply. Entergy argues that the Commission has applied section 13.6 to "set curtailment priorities when system overloads *actually occur*," but that section 13.6 does not apply to avoiding overloads in advance.<sup>12</sup> Accordingly, Entergy argues that section 13.6 applies to curtailments that are required

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<sup>9</sup> *Id.* at 16 (citing Motion to Intervene and Comments of Powerex Corp. Opposing Complaint of Idaho Power Company at 5-6, *Idaho Power Co. v. PacifiCorp*, Docket No. EL01-61-000 (April 6, 2001) (*Idaho Power*)).

<sup>10</sup> *Id.* at 16.

<sup>11</sup> *Id.* at 9 n.13, n.14.

<sup>12</sup> Entergy Request at 9 (citing *N. Amer. Elec. Reliability Council*, 85 FERC ¶ 61,353, at 62,363 (1998) (emphasis added) (*NERC*)).

during real-time in accordance with transmission loading relief or local area procedures.<sup>13</sup> Entergy also notes that in the July 24 Order the Commission referred to “reservations,” which are in effect prior to real time, rather than “schedules,” which are in effect in real time.<sup>14</sup>

15. Like the ICT, Entergy argues that the Commission erred when it concluded that customers are similarly situated if they have confirmed transmission service reservations. Entergy contends that ConocoPhillips was not similarly situated to the other transmission service customers with earlier reservations because ConocoPhillips’ reservations never should have been granted. Entergy claims, moreover, that terminating reservations in reverse queue order of requests was consistent with Commission precedent, as well as with Commission policy and the requirement in section 13.2(i) of Entergy’s OATT that transmission service be awarded on a “first-come, first-served” basis.

16. Entergy argues that, if the Commission adheres to its earlier decision that ConocoPhillips’s service should have been curtailed on a *pro rata* basis, the law and policy underlying that decision were, at best, ambiguous. Therefore, Entergy contends that the Commission’s decision should apply on a prospective basis only, and that the Commission should find that, in this case, there was no violation of Entergy’s OATT.

17. Entergy further argues that, if the Commission declines to grant rehearing of the July 24 Order or to apply its earlier decision only on a prospective basis, the Commission should clarify that Entergy did not commit the OATT violation. Entergy argues that it is required by Commission order to follow the ICT’s decisions, and that, under its OATT, Entergy did not have authority to address the oversell of transmission capacity. Entergy warns that holding it responsible for the ICT’s decisions will have broad implications to other transmission providers with reliability coordinators making decisions with which transmission providers must comply, but over which they have no control.

### C. Answers

18. ConocoPhillips filed an answer to Entergy’s request for rehearing or clarification and the ICT’s request for rehearing, and Entergy filed an answer to ConocoPhillips’s answer.

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<sup>13</sup> Entergy further suggests that the transmission loading relief procedures developed by the North American Electric Reliability Council (NERC) confirm that the curtailment procedures under section 13.6 are designed to address real-time operating conditions. *Id.* at 10 (*citing, e.g., NERC Reliability Standards for the Bulk Electric Systems of North America*, NERC Standard IRO-006-3, Attachment 1-IRO-006 § 2.7.1 (identifying application of TLR Level 5b)).

<sup>14</sup> *Id.* (*citing* July 24 Order, 124 FERC ¶ 61,085 at P 27).

### III. Discussion

#### A. Procedural Matters

19. Section 385.713(d) of the Commission's regulations prohibits answers to rehearing requests. Therefore, we will reject ConocoPhillips's and Entergy's answers to the requests for rehearing.

#### B. Commission Determination

20. We will deny the ICT's request for rehearing and Entergy's request for rehearing or clarification. In arguing against the finding of an OATT violation, both the ICT and Entergy rely on the premise that ConocoPhillips, a customer with confirmed reservations for firm transmission service, was not similarly situated to other customers with reservations for firm service because ConocoPhillips' reservation would not have been granted but for a software error. We disagree with this premise. We affirm our prior finding that Entergy and the ICT were required to follow Entergy's OATT once ConocoPhillips's reservations were accepted and confirmed; therefore, the only issue in this proceeding pertains to the curtailment of ConocoPhillips's service.

21. At the outset, we note that the focus of Entergy and the ICT on the validity of the reservation is misplaced. The complaint alleged that Entergy and the ICT erred in the termination of service, as discussed in the July 24 Order and further below, resulting in the OATT violation found in the July 24 Order. Entergy and the ICT contend, essentially, that Entergy's OATT does not apply because the reservation never should have been made in the first place. But, even if our analysis focused on the validity of the reservation, we found that the reservation was granted, and confirmed, by the ICT in accordance with its standard practice.<sup>15</sup> In contrast, in *Idaho Power*, the Commission found that the transmission provider erred in accepting one customer over the other because the transmission provider applied criteria inconsistent with Order No. 638.<sup>16</sup> In *Tenaska*, the Commission addressed Midwest ISO procedures for processing rollover rights and found that the Midwest ISO's practice differed from its stated policy without providing reasonable notice or vetting through its stakeholder process.<sup>17</sup> Because Entergy and the ICT acted consistently with the standards for accepting and confirming

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<sup>15</sup> July 24 Order, 124 FERC ¶ 61,085 at P 23 (noting that the ICT notified ConocoPhillips that short-term firm point-to-point service was available and, on the next day, ConocoPhillips confirmed its requests and had a confirmed firm reservation for service on Entergy's system, subject to the provisions of Entergy's OATT).

<sup>16</sup> *Idaho Power*, 95 FERC ¶ 61,148, at 61,476 (2001) (citing Order No. 638, FERC Stats. & Regs. ¶ 31,093, at 31,462 (2000)).

<sup>17</sup> *Tenaska*, 106 FERC ¶ 61,230 at P 48-49.

reservations set forth in Entergy's OATT, even though the confirmation was based on faulty information, the Entergy OATT applies, and the Commission's decisions in *Idaho Power* and *Tenaska* provide no guidance in this case.

22. With regard to curtailment, we disagree with the ICT's argument that the Commission erred in distinguishing *Williams* and *Powerex*. As we stated in the July 24 Order, in *Williams* and *Powerex*, the transmission providers took action to correct reservation errors within a reasonable amount of time after the errors were discovered. Moreover, the termination took place after the customer was given a meaningful alternative to the intended service, and well before the service was to start. By contrast, as noted in the July 24 Order, ConocoPhillips's service was terminated 106 days after the service reservations were confirmed. Service on the June Transaction was terminated 28 days after it began, and service on the July Transaction was canceled only two days before it was to begin. Moreover, Entergy and the ICT only offered ConocoPhillips the alternative of "voluntarily" withdrawing its request. Thus, unlike the transmission providers in both *Williams* and *Powerex*, Entergy and the ICT left ConocoPhillips with no realistic scenario for securing alternative service.

23. As we stated in the July 24 Order and above, Entergy and the ICT were obligated to follow Entergy's OATT once ConocoPhillips's request for service was accepted and confirmed in accordance with the OATT.<sup>18</sup> Once a constraint was identified, the OATT called for curtailing all existing relevant reservations on a *pro rata* basis, pursuant to section 13.6.<sup>19</sup> Accordingly, once a customer has confirmed service for firm transmission in accordance with the OATT, such a customer is similarly situated to others with firm transmission service. Nothing in Entergy's OATT allows for that customer's service to be terminated or for that customer to be placed at the back of the queue.

24. Entergy and the ICT, however, advance various theories to support the ICT's decision to terminate service in reverse queue order. We disagree with each of these theories, and therefore with Entergy's and the ICT's arguments that there was no violation of Entergy's OATT.

25. We find no merit in Entergy's argument that NERC standards provide for *pro rata* curtailment to relieve real-time constraints, but allow transmission providers to use other

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<sup>18</sup> July 24 Order, 124 FERC ¶ 61,085 at P 23 n.18 (citing *Open Access Same-Time Information System and Standards of Conduct*, Order No. 638, FERC Stats. & Regs. ¶ 31,093, at 31,417 (2000) ("Once a request has been 'CONFIRMED,' a transmission service reservation exists.")).

<sup>19</sup> *Id.* P 27. We note that Entergy is correct in stating that the July 24 Order referred to "reservations" which are in effect prior to real-time, rather than "schedules," which are in effect in real-time. However, this inadvertent error does not alter the Commission's finding on the applicability of section 13.6 to resolving this problem.

methods to deal with constraints prior to real time. Such other methods cannot include discriminating among similarly-situated customers with confirmed firm service.

26. We also disagree with Entergy's argument that termination in reverse queue order was correct under the "first-come, first-served" requirement in section 13.2(i) of Entergy's OATT. The "first-come, first-served" requirement determines which customer's request is accepted, not which customer's request is curtailed. As ConocoPhillips's request had already been accepted and confirmed in accordance with the OATT at the time of the curtailment, the issue of which customers' requests should have been accepted in the first place is irrelevant here.

27. We will deny Entergy's request that the Commission's decision should be applied only on a prospective basis. As Entergy argued, "when the Commission finds that a party has violated a tariff or contract but the tariff or contract provisions at issue are ambiguous, the Commission *has applied remedies* on a prospective basis only."<sup>20</sup> ConocoPhillips has not asked us to provide any remedies, nor did the Commission supply any in the July 24 Order. Because we are not providing any remedies, we need not determine that our decision applies only to future occurrences.

28. As a final matter, we will deny Entergy's request to clarify that Entergy did not commit the OATT violation. As noted above, we have determined that Entergy's OATT was violated but we are not providing any remedies; thus, we need not determine which entity committed the violation. Such a decision would only be relevant to a determination of which entity may be liable for reparations or civil damages, which is beyond our purview.<sup>21</sup> Therefore, we will deny Entergy's request for clarification.

The Commission orders:

The ICT's request for rehearing and Entergy's request for rehearing or clarification are hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>20</sup> Entergy Request at 18 (*citing Golden Spread Electric Cooperative, Inc.*, Opinion No. 501, 123 FERC ¶ 61,047, at P 53 (2008), *reh'g pending*) (emphasis added).

<sup>21</sup> *See Public Service Co. of New Mexico*, 27 FERC ¶ 61,007, at 61,011 n.5 (1984) (*citing, e.g., Montana-Dakota Utilities Co.*, 341 U.S. 246, 254 (1951)).