

133 FERC ¶ 61,211
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Entergy Arkansas, Inc.; Entergy Gulf States Louisiana, L.L.C.; Entergy Louisiana, LLC; Entergy Mississippi, Inc.; Entergy New Orleans, Inc. and Entergy Texas, Inc. Docket No. ER11-1923-000

ORDER ACCEPTING REVISED TARIFF

(Issued December 16, 2010)

1. On October 27, 2010, Entergy Services, Inc., acting as agent and on behalf of the Entergy Operating Companies¹ (collectively, Entergy), submitted a new attachment to its Open Access Transmission Tariff (OATT) titled Attachment X (Entergy Regional State Committee Authority). Attachment X sets forth the tariff provisions whereby Entergy seeks to give the Entergy-Regional State Committee (E-RSC), a committee of Entergy's retail regulators, certain transmission planning and cost allocation authorities. Specifically, this proposal would give the E-RSC the authority to direct Entergy to: (1) make a filing under section 205 of the Federal Power Act² to change the cost allocation for transmission upgrades or modify the time horizon of the Entergy Base Plan; and (2) add projects to Entergy's Construction Plan. As discussed further below, we accept the proposed Attachment X effective December 26, 2010, as requested.

¹ The Entergy Operating Companies are Entergy Arkansas, Inc., Entergy Gulf States Louisiana, LLC, Entergy Louisiana, LLC, Entergy Mississippi, Inc., Entergy New Orleans, Inc., and Entergy Texas, Inc.

² 16 U.S.C. § 824e (2006).

I. Background

2. On April 24, 2006, the Commission issued an order³ conditionally approving Entergy's proposal to implement the Independent Coordinator of Transmission (ICT), the Weekly Procurement Process⁴ and a new transmission pricing structure based on participant funding for the Entergy transmission system. In the ICT Order, the Commission accepted Entergy's proposal for Southwest Power Pool, Inc. (SPP) to serve as the ICT for the Entergy transmission system and in that role, SPP would function as an administrator of Entergy's OATT and as Entergy's Reliability Coordinator.⁵ The Commission accepted the ICT arrangement for an initial term of four years and required that the ICT arrangement sunset, or expire on its own terms, at the end of the four years, unless Entergy makes, and the Commission accepts, a section 205 filing to continue the ICT arrangement.⁶

3. On March 29, 2009, the Commission commenced a process to assess the continuing benefits of the ICT arrangement.⁷ As part of this process, the Commission stated that it would seek input from Entergy's retail regulators.⁸ In response, a Joint Commission and State Regulator Conference was held on June 24, 2009 to discuss issues involving the current ICT arrangement, transmission access, and construction on the Entergy transmission system. Entergy states that this conference resulted in two important developments. First, Entergy's retail regulators formed the E-RSC to provide collective retail regulatory agency input on the operation and construction of the Entergy transmission system and the operations and functions of the ICT.⁹ Second, the

³ *Entergy Services Inc.*, 115 FERC ¶ 61,095 (ICT Order), *order on reh'g*, 116 FERC ¶ 61,275, *order on compliance*, 117 FERC ¶ 61,055 (2006), *order on clarification*, 119 FERC ¶ 61,013 (2007).

⁴ The Weekly Procurement Process is a weekly, bilateral exchange market designed to allow other generators on the system to displace Entergy's more inefficient oil and gas units. ICT Order, 115 FERC ¶ 61,095 at P 3.

⁵ Among other things, the ICT was given authority to grant or deny requests for transmission service, calculate available flowgate capability, administer Entergy's Open Access Same Time Information System, and perform an enhanced planning function. *Id.* P 2, 44-47, 61-66.

⁶ ICT Order, 115 FERC ¶ 61,095 at P 96.

⁷ *Entergy Services Inc.*, 126 FERC ¶ 61,227 (2009).

⁸ *Id.* P 82.

⁹ The E-RSC includes five members: the Arkansas Public Service Commission (Arkansas Commission), the Louisiana Public Service Commission (Louisiana

(continued...)

Commission and the E-RSC committed to sponsor cost-benefit analyses to evaluate the costs and benefits of possible alternatives to the current ICT arrangement.¹⁰

4. On November 16, 2010, the Commission accepted a proposal by Entergy to extend the ICT arrangement for an additional two years.¹¹ In that filing, Entergy indicated that the E-RSC would soon consider a proposal, supported by Entergy, to grant the E-RSC the authority described in the instant filing. In its October 20-21, 2010 meetings, the E-RSC unanimously voted in favor of the proposal.

II. Entergy's Filing

5. The proposal in this filing pertains to Entergy's transmission planning process and cost allocation methodology for transmission upgrades.¹² Entergy's proposal to grant authorities to the E-RSC is two-pronged. First, Entergy proposes that the E-RSC, upon the unanimous consent of its members, would have the authority to direct Entergy to make a section 205 filing with the Commission to change the terms and conditions that apply to cost allocation of transmission upgrades on a going-forward basis. The E-RSC would also have the authority to direct Entergy to make a section 205 filing with the Commission to change the time horizon used for cost allocation under the ICT's Base Plan. Entergy states this proposal addresses certain concerns that have arisen regarding

Commission), the Mississippi Public Service Commission (Mississippi Commission), the Public Utility Commission of Texas (Texas Commission), and the City of New Orleans' City Council (New Orleans Council).

¹⁰ The Commission-funded phase of these analyses was completed on September 30, 2010 and involved a study of the costs and benefits of Entergy joining the SPP regional transmission organization (RTO) as a transmission-owning member.

¹¹ *Entergy Services, Inc.*, 133 FERC ¶ 61,136 (2010) (ICT Extension Order).

¹² Entergy's transmission planning process consists of two plans. The first is the Base Plan, which is used for cost allocation on the Entergy system and is developed by the ICT. The second is the Construction Plan, which is a list of projects that will actually be built, and is developed by Entergy.

the participant funding cost allocation approach approved by the Commission in 2006.¹³ Entergy explains that the E-RSC could use this authority, for example, to direct Entergy to make a section 205 filing to end participant funding and select an alternative cost allocation methodology. Entergy also states that the proposed provision would allow the E-RSC to propose an allocation methodology that allocates the costs of a new transmission project in a manner that recognizes the benefits of the added project to all parties, including parties other than the Entergy Operating Companies' native load customers.

6. Second, Entergy proposes to give the E-RSC, upon the unanimous consent of its members, the authority to direct Entergy to add transmission projects to the Construction Plan. Entergy explains that this modification would allow the E-RSC to independently determine what additional transmission projects beyond those listed in the Construction Plan should be built.

7. Entergy states that, under the current ICT arrangement, it already regularly conducts analyses of transmission upgrades that may produce net benefits for native load customers. Moreover, the ICT, as provided under the OATT, annually conducts an independent evaluation, known as the ICT Strategic Transmission Expansion Plan (ISTEP), to preliminarily assess whether specific transmission upgrades may be economic to the transmission system as a whole and may be worthy of consideration by Entergy and the other users of the transmission system. Entergy contends that it has established a process to identify, study, and, if warranted, build projects identified through the ISTEP that are expected to produce net benefits to Entergy's transmission customers. Entergy states that this proposed modification would allow the E-RSC to independently determine what additional transmission projects, if any, beyond those listed in the then-current Construction Plan, should be built and to direct that they be built.

¹³ Under this approach, Entergy explains, the cost of any transmission upgrades needed to maintain the reliability of the transmission system over the following three-year planning horizon, as determined by the ICT, were "rolled in" to the Entergy OATT rates and funded largely by the Operating Companies' native load customers. Conversely, the cost of transmission upgrades that were necessary to fulfill a party's transmission service request, but that were not included in the ICT's Base Plan as being necessary to maintain reliability over the following three-year planning horizon, generally were allocated to the OATT customer who submitted the request.

8. Entergy proposes a new Attachment X to its OATT to codify the E-RSC's authority as it relates to Entergy.¹⁴ Further, Attachment X provides that nothing in that Attachment shall restrict the E-RSC's ability to make recommendations to Entergy on matters not addressed in Attachment X. Also, nothing in Attachment X restricts Entergy from filing its own cost allocation proposals, opposing any section 205 filing made under Attachment X, requesting rehearing or seeking judicial review of any Commission orders addressing cost allocation, opposing the addition of a facility to the Construction Plan, or taking any other action available to them under equity or law.

9. Lastly, with respect to termination, Attachment X provides the following circumstances whereby it will terminate: (1) immediately upon a determination by the Commission that the E-RSC is subject to Commission jurisdiction; (2) on the date all of Entergy's transmission facilities are placed under the transmission tariff of an RTO or independent system operator; (3) if any E-RSC member withdraws from the E-RSC, but the transmission facilities regulated by the member remain under Entergy's tariff; (4) upon termination of the Memorandum of Understanding between Entergy and the E-RSC; or (5) as otherwise approved by the Commission. Entergy requests that its proposed Attachment X be made effective as of December 26, 2010.

III. Notice of Filings and Responsive Pleadings

10. Notice of Entergy's filing was published in the *Federal Register*, 75 Fed. Reg. 68,340 (2010), with interventions and protests due on or before November 17, 2010. A notice of intervention and comments was filed by the Public Utility Commission of Texas (Texas Commission). Timely motions to intervene were filed by the Arkansas Electric Cooperative Corporation; NRG Power Marketing LLC, Bayou Cove Peaking Power LLC, Big Cajun I Peaking Power LLC, Louisiana Generating LLC, NRG Sterlington Power LLC and Cottonwood Energy Company LP. (collectively, NRG); South Mississippi Electric Power Association; and the Conway Corporation, the West Memphis Utilities Commission, the City of Prescott, the Hope Water & Light Commission, the City of Osceola, Arkansas and the City of Benton, Arkansas (collectively, Arkansas Cities). Timely motions to intervene and comments were filed by East Texas Electric Cooperative, Inc., Sam Rayburn G&T Electric Cooperative, Inc., and Tex-La Electric Cooperative of Texas (collectively, East Texas Cooperatives) and Union Power Partners, L.P. (Union Power). The Louisiana Public Service Commission (Louisiana Commission), the Council of the City of New Orleans (New Orleans Council), the Arkansas Public Service Commission (Arkansas Commission), GDF SUEZ

¹⁴ Entergy also attaches for informational purposes only a Memorandum of Understanding between Entergy and the E-RSC that governs the relationship between Entergy and the E-RSC.

Marketing NA, Inc. (GDF SUEZ), the Lafayette Utilities System, the Louisiana Energy and Power Authority, the Municipal Energy Agency of Mississippi, and the Mississippi Delta Energy Agency, and its members the Public Service Commission of the City of Yazoo City, Mississippi and the Clarksdale Public Utilities Commission of Clarksdale, Mississippi (collectively, L-M Municipals) filed motions to intervene out of time.

11. Union Power states that while it is optimistic that the E-RSC can contribute to bringing much needed improvement to the provision of transmission service under Entergy's OATT, it is important to recognize that the rights afforded to the E-RSC under proposed Attachment X should not be construed as a waiver of the rights of other stakeholders on the Entergy transmission system to continue to challenge the rates, terms, and conditions of service under the Entergy OATT. Additionally, Union Power states that proposed Attachment X should not be construed as a waiver of the rights of other stakeholders on the Entergy transmission system to challenge the actions of the E-RSC to the extent it directs the actions permitted by Attachment X. Union Power maintains that nothing in Entergy's filing, or proposed Attachment X, should be construed as eliminating the right of stakeholders to raise issues at the Commission with respect to transmission service on the Entergy transmission system, even if those issues are raised in the context of E-RSC action under proposed Attachment X.

12. East Texas Cooperatives maintain that they have long argued for both enhancing the ICT arrangement and studying the benefits of joining an RTO. East Texas Cooperatives state that Entergy's filing supports these goals. East Texas Cooperatives further state that the procedures granted to the E-RSC under proposed Attachment X will serve as a solid initial step toward providing the enhancements the Commission recognizes must be made. East Texas Cooperatives state that they support these efforts to resolve the problems of transmission cost allocation and the necessity of building transmission upgrades.

IV. Discussion

A. Procedural Matters

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

14. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2010), the Commission will grant the Louisiana Commission, New Orleans Council, Arkansas Commission, GDF SUEZ, and L-M Municipals' late-filed motions to intervene given the early stage of this proceeding, their interest in the proceeding and the absence of undue prejudice or delay.

B. Commission Determination

15. We accept Entergy's proposed Attachment X, which is essentially unopposed,¹⁵ to be effective December 26, 2010, as requested. We find that Entergy's proposal directly responds to the issues and concerns of the state regulators and stakeholders on the Entergy system. This proposal also provides the state regulators the opportunity to propose enhancements to the transmission system and propose a transmission upgrade cost allocation methodology that is appropriate for the region. The Commission has approved a similar provision in the SPP bylaws, allowing the SPP RSC to direct SPP to make section 205 filings in several areas, including cost allocation decisions.¹⁶

16. As discussed in the ICT Extension Order, the Commission stated that it was accepting the two-year extension of the existing ICT arrangement with the understanding that an additional two years would be needed to facilitate improvements and enhancements to the ICT structure and to evaluate the possibility of Entergy joining an RTO or establishing a permanent long-term ICT arrangement. Entergy's proposal here represents an enhancement to the ICT structure in the areas of transmission planning and cost allocation. We recognize that these two issues were raised by stakeholders in the ICT Extension Order proceeding and Entergy's proposed Attachment X will directly address stakeholders' concerns.¹⁷

17. With respect to Union Power's concerns, our acceptance of the proposed Attachment X does not affect stakeholders' rights to address issues on the Entergy transmission system and raise them with the Commission. We expect that stakeholders will continue to work with Entergy and the E-RSC to improve the Entergy transmission system and will also raise issues, as they have done in the past, with the Commission.

¹⁵ Union Power does not oppose Entergy's proposal, but requests that the Commission recognize that nothing in Entergy's proposal should be construed as eliminating the right of stakeholders to raise issues at the Commission with respect to transmission service or the Entergy transmission system, even if those issues are raised in the context of E-RSC action under proposed Attachment X.

¹⁶ *Southwest Power Pool, Inc.*, 106 FERC ¶ 61,110, at P 219, *order on reh'g*, 109 FERC ¶ 61,010 (2004).

¹⁷ ICT Extension Order, 133 FERC ¶ 61,136 at P 23-24.

The Commission orders:

Entergy's proposed Attachment X is hereby accepted, to be effective December 26, 2010, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.