



## I. Background

2. On April 3, 2009, Entergy filed revisions to the Criteria Attachments to its OATT to comply with requirements in two proceedings: the proceeding regarding the development of Entergy's Independent Coordinator of Transmission arrangement (Docket No. ER05-1065-000, *et al.*) and Entergy's Order No. 890 compliance proceeding (Docket No. OA07-32-000, *et al.*).<sup>2</sup> Additionally, on February 1, 2011, Entergy submitted its Transmission Service Request Business Practices, which according to Entergy, "detail the process that Entergy and the [Independent Coordinator of Transmission] will apply when administering Entergy's proposed Attachments C, D and E" to its OATT.<sup>3</sup> Union Power Partners, L.P. (Union Power) filed a protest that, among other things, took issue with Entergy's Transmission Service Request Business Practices with regard to redirected transmission service. Specifically, Union Power argued that the Transmission Service Request Business Practices are inconsistent with the Commission's policy as set forth in *Dynegy Power Marketing, Inc.*<sup>4</sup> It asserted that according to *Dynegy*, a customer requesting a redirect does not lose rights to its original path until the redirect request passes the relevant conditional reservation deadline in section 13.2 of the *pro forma* OATT.<sup>5</sup>

3. On December 15, 2012, the Commission conditionally accepted Entergy's proposed revisions, subject to modification, and rejected Union Power's protest.<sup>6</sup> Specifically, the Commission found that "when a customer requests redirection on a firm

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<sup>2</sup> Entergy had previously filed proposed versions of the Criteria Attachments in Docket No. ER05-1065-008. These proposed versions were superseded by Entergy's April 3, 2009 filing of revised Criteria Attachments in Docket Nos. ER05-1065-011 and OA07-32-008. Because the proposed versions filed in Docket No. ER05-1065-008 were superseded and thus have been overtaken by events, we dismiss the filing in Docket No. ER05-1065-008 and terminate the proceeding.

<sup>3</sup> Entergy February 1, 2011 Informational Filing at 1.

<sup>4</sup> Union Power February 22, 2011 Protest at 4 (citing *Dynegy Power Marketing, Inc.*, 99 FERC ¶ 61,054 (2002) (*Dynegy*)).

<sup>5</sup> *Id.* Section 13.2(iii) of the *pro forma* OATT states that "[i]f the Transmission System becomes oversubscribed, requests for longer term service may preempt requests for shorter term service up to the following deadlines: one day before the commencement for daily service, one week before the commencement of weekly service, and one month before the commencement of monthly service."

<sup>6</sup> Original Order, 137 FERC ¶ 61,199, at P 220.

basis, the customer retains rights to the original path until the redirect request is accepted by the transmission provider and confirmed by the customer” and once “the new request is accepted and confirmed, the transmission customer loses all rights to the original receipt and delivery points.”<sup>7</sup> Union Power filed a request for rehearing to the Original Order. On February 13, 2012, in Docket No. ER12-1071-000, Entergy filed OATT revisions to comply with the directives of the Original Order.

4. On May 16, 2013, in the Rehearing Order, the Commission granted Union Power’s rehearing request with regard to Entergy’s redirect request process.<sup>8</sup> The Commission found that a customer that makes a redirect request retains its rights to its original path until the redirect request becomes unconditional under the applicable preemption deadline set forth in section 13.2 for firm point-to-point service, rather than when the transmission customer confirms its redirect request.<sup>9</sup> The Commission also explicitly affirmed *Dynegy*.<sup>10</sup> Moreover, it clarified that the prior use of the term “confirmed” rather than “unconditional” in Order Nos. 890-A and 676, and in the North American Energy Standards Board (NAESB) standards incorporated in Commission regulations, was intended to convey finality. The Commission explained that in Order Nos. 676 and 890-A the Commission was not addressing the loss of rights on the original path in light of the conditional reservation deadlines.<sup>11</sup> The Commission specified that in the section of Order No. 676 relied upon in the Original Order, the issue was what rollover rights continue on which path after a redirect request is no longer pending, and in Order No. 890-A the issue was whether rights to the original path might be lost as a result of a request for a redirect.<sup>12</sup> The Commission explained that in neither of those matters was the Commission addressing the precise issue addressed here and in *Dynegy*, the

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<sup>7</sup> *Id.* (citing *Standards for Business Practices and Communication Protocols for Public Utilities*, Order No. 676, FERC Stats. & Regs. ¶ 31,216 at P 55, *reh’g denied*, Order No. 676-A, 116 FERC ¶ 61,255 (2006)).

<sup>8</sup> Rehearing Order, 143 FERC ¶ 61,143 at P 32.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* P 31 (discussing *Dynegy*, 99 FERC ¶ 61,054 at P 9 (“[A] transmission customer does not lose its rights to its original path until the redirect request satisfies all of the following criteria: (1) it is accepted by the transmission provider; (2) it is confirmed by the transmission customer; and (3) it passes the conditional reservation deadline under section 13.2”)).

<sup>11</sup> *Id.* P 30.

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

distinction between confirmation and conditional reservation deadlines, and that in both of those matters the Commission intended the term confirmed to convey finality.<sup>13</sup> In further support of its finding, the Commission explained that “requiring a customer to give up rights to the original path after the redirect has been accepted and confirmed but before the request has become unconditional would subject the customer to the risk of losing its rights to both the original path and the redirect path,” a result that would “create a strong disincentive for transmission service customers to request redirect service.”<sup>14</sup> The Commission acknowledged the drawback of tying up transmission capacity on two paths (the original path and the newly requested path) during the time period between the customer’s confirmation of the redirect request and the point at which the redirect request becomes unconditional, but the Commission found that this drawback did not outweigh the importance of not putting the customer at risk of losing all of its transmission service rights.<sup>15</sup> The Rehearing Order also accepted in part, subject to modification, and rejected in part Entergy’s proposed OATT revisions, and ordered a compliance filing.

5. On June 17, 2013, Entergy filed a request for rehearing of the Rehearing Order with regard to the redirect request issue. MISO also filed a request for clarification asking the Commission to clarify that its finding is confined to Entergy and does not apply to other transmission providers. If the Commission does not grant this clarification, MISO requests rehearing on the Commission’s finding.<sup>16</sup> Additionally, on June 17, 2013, Entergy filed the Compliance Filing to comply with the directives of the Rehearing Order.

6. On December 19, 2013, the Entergy Operating Companies became members of MISO. To effectuate this integration into MISO, Entergy, on behalf of the Entergy Operating Companies, filed to cancel the Entergy OATT.<sup>17</sup> Consequently, upon Entergy’s integration into MISO, MISO took functional control of the Entergy transmission system, succeeded to the transmission service agreements under the Entergy OATT, and began providing transmission service to the Entergy Operating Companies’

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

<sup>14</sup> *Id.* P 32.

<sup>15</sup> *Id.*

<sup>16</sup> Along with its request for clarification and rehearing, MISO includes a motion for leave to intervene out-of-time because it failed to intervene in the original proceeding.

<sup>17</sup> A delegated letter order issued on January 31, 2014 accepted this cancellation, effective December 19, 2013. *Entergy Servs., Inc.*, Docket No. ER14-648-000 (Jan. 31, 2014) (delegated letter order).

former transmission customers pursuant to the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff).

## **II. Notice of Filing**

7. Notice of the Compliance Filing was published in the *Federal Register*, 78 Fed. Reg. 38,710 (2013), with interventions and protests due on or before July 8, 2013. On July 8, 2013, Union Power filed a protest. On July 23, 2013, Entergy filed an answer to Union Power's protest.

## **III. Procedural Matters**

8. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 213(a)(2) (2014), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Entergy's answer to Union Power's protest because it has provided information that assisted us in our decision-making process.

## **IV. Discussion**

### **A. Requests for Clarification and Rehearing**

#### **1. Rehearing Petitions**

9. Entergy filed a request for rehearing, and MISO filed a request for clarification or, in the alternative, rehearing of the Commission's finding in the Rehearing Order that a customer that makes a redirect request retains its rights to its original path until the redirect request becomes unconditional under the applicable preemption deadline set forth in OATT section 13.2 for firm point-to-point service, rather than when the transmission customer confirms its redirect request, as set out in *Dynegy*.<sup>18</sup> In support of its request for rehearing, Entergy cites Order No. 676, where the Commission stated that "at the time the transmission customer's request for the redirected capacity is accepted and confirmed, the transmission customer loses all rights to the original receipt and delivery points, including rollover rights associated with the original path."<sup>19</sup> Entergy also argues that in Order No. 890, the Commission emphasized that redirect requests

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<sup>18</sup> Entergy June 17, 2013 Rehearing Request at 5 (citing *Dynegy*, 99 FERC ¶ 61,054 at P 9 ("[A] transmission customer does not lose its rights to its original path until the redirect request satisfies all of the following criteria: (1) it is accepted by the transmission provider; (2) it is confirmed by the transmission customer; and (3) it passes the conditional reservation deadline under section 13.2")).

<sup>19</sup> *Id.* at 8 (citing Order No. 676, FERC Stats. & Regs. ¶ 31,216 at P 57).

should be evaluated under the same assumptions and analysis applicable to new service requests.<sup>20</sup> Entergy also cites NAESB Wholesale Electric Quadrant (WEQ) standard WEQ-001-9.5, which uses the term “confirmed” rather than “unconditional.” Moreover, Entergy contends that its redirect business practices, which require the release of capacity on the original path upon customer confirmation of the redirect, are consistent with this requirement.<sup>21</sup> Additionally, Entergy argues that because *Dynegy* preceded the issuances of Order No. 890, Order No. 676, and WEQ-001-9.5, these rules and standards supersede the principles set forth in *Dynegy*.<sup>22</sup> Entergy also argues that software changes necessary to reflect the Rehearing Order’s requirements could be costly and time-consuming.<sup>23</sup>

## 2. Commission Determination

10. We will deny MISO’s motion to intervene in this proceeding for failure to demonstrate good cause warranting late intervention. When late intervention is sought after the issuance of a dispositive order, the prejudice to other parties and the burden upon the Commission of granting the late intervention may be substantial. Thus, movants bear a higher burden to demonstrate good cause for granting such late intervention. MISO has not met this higher burden.<sup>24</sup>

11. In light of our decision to deny MISO’s late motion to intervene, we will dismiss its request for clarification or, in the alternative, rehearing. Because MISO is not a party to this proceeding, it lacks standing to seek clarification or, in the alternative, rehearing of the Rehearing Order pursuant to the Federal Power Act and the Commission’s regulations.<sup>25</sup>

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<sup>20</sup> *Id.* at 3.

<sup>21</sup> *Id.* at 10.

<sup>22</sup> *Id.* at 4.

<sup>23</sup> *Id.* at 11-12. Regardless of the outcome of the rehearing order, Entergy asks that the Commission allow Entergy to delay implementation of the changes required, as Entergy is preparing to join MISO in December 2013, after which redirects will be handled under the MISO Tariff.

<sup>24</sup> *See, e.g., North American Elec. Reliability Corp.*, 143 FERC ¶ 61,271, at P 12 (2013).

<sup>25</sup> *See* 16 U.S.C. § 8251(a) (2012); 18 C.F.R. § 385.716(b) (2014).

12. We deny Entergy's rehearing request and affirm our finding in the Rehearing Order that *Dynegy* is the guiding precedent on the issue before us and that a customer's rights to the original path do not terminate until the redirect request becomes unconditional pursuant to the conditional reservation deadline in OATT section 13.2.<sup>26</sup> Entergy's rehearing request does not raise any new arguments that provide a compelling reason to reach a new decision here. As we stated in the Rehearing Order, the risk that the customer could lose rights on the original path and the requested redirect path, between the time the redirect request is confirmed and the time the redirect request becomes unconditional, would create a strong disincentive for customers to request redirect service.<sup>27</sup> We again find that while the tying up of transmission capacity on the two paths (the original path and the newly requested path) during the period between the time the customer confirms the redirect request and the time the redirect request becomes unconditional is a drawback, it does not outweigh the importance of not creating a strong disincentive for transmission service customers to request redirect service.<sup>28</sup> While we deny Entergy's rehearing request, we also note that our finding is of limited effect to Entergy, as Entergy has cancelled the tariff underlying its rehearing request.<sup>29</sup> We note, however, that in Order No. 676-H, which is being issued concurrently with this order, the Commission requests that NAESB revise Standard WEQ-001-9.5 to conform with *Dynegy* to "help avoid confusion by public utilities as to their responsibilities under the Commission's policy and under the NAESB standards."<sup>30</sup>

## **B. Compliance Requirements**

### **1. Compliance Filing**

13. In the Compliance Filing, Entergy submits several revisions that the Commission directed in the Rehearing Order (described below). However, Entergy did not submit all the required revisions and explanations. Instead, Entergy requests an extension of 30 days from December 19, 2013 (the date of its integration into MISO) to submit the

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<sup>26</sup> Rehearing Order, 143 FERC ¶ 61,143 at P 31.

<sup>27</sup> *Id.* P 32.

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

<sup>29</sup> *Entergy Servs., Inc.*, Docket No. ER14-648-000 (Jan. 31, 2014) (delegated letter order).

<sup>30</sup> *Standards for Business Practices and Communication Protocols for Public Utilities*, Order No. 676-H, 148 FERC ¶ 61,205 at P 49.

remaining revisions and explanations.<sup>31</sup> In support of this request, Entergy states that the outstanding compliance directives could become unnecessary upon integration. Upon integration, Entergy states that the MISO Tariff would govern the Entergy Operating Companies' participation in MISO, and the Entergy OATT would no longer be operative. Entergy also asserts that implementing all the directed revisions would require significant software redesign, process revision, or development and that this would be a wasted effort, given that it is likely to cancel the Entergy OATT.

14. Entergy's Compliance Filing does propose the several revisions to its OATT in compliance with the Rehearing Order that it asserts will not require significant efforts. In Attachment D, section 3.2.1, Entergy proposes to insert a statement to indicate that the Independent Coordinator of Transmission will request clarification from the customer if customer-provided economic dispatch data are not available. To comply with the Rehearing Order's requirement that Entergy revise section 3.2.1 to clarify the meaning of "proportional," Entergy proposes to revise section 3.2.1 to define "proportional" as "an increase not relative to the current level of dispatch." Entergy further proposes to revise section 3.2.2.1 to clarify the differences between "generation-to-generation" analysis and "generation-to-load" analysis. Additionally, Entergy proposes to correct a typographical error by renumbering the second section numbered 4.2.1 as 4.2.3.

15. Finally, in Attachment E, section 7.9.3, Entergy proposes to delete the following statement: "[t]o the extent a Network Resource is designated for a period of less than five years but is still eligible for rollover rights because it will be designated as a Network Resource at the time the Service Agreement expires, the Network Customer must request that a System Impact Study be performed in order to evaluate the availability of rollover rights."

## **2. Protest**

16. Union Power argues that the Commission should require further revision to two of the proposed revisions. Specifically, Union Power claims the proposed revision to Attachment D, section 3.2.1 to clarify the definition of "proportionally" is non-compliant

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<sup>31</sup> Entergy proposes extensions for the required revisions and explanations regarding the following provisions: (i) in Attachment C, section 6.4, a method to reflect unscheduled QF energy in models; and section 7.1.2, a method to account for load-serving entity shortfalls in AFC models; (ii) in Attachment D, section 2.3.1.1, the process for native load upgrade documentation; an explanation of when an upgrade without an agreement would be included in models; a justification for including a native load upgrade in the models prior to an agreement; and an explanation of when a native load upgrade would be in the third category described in the provision; and (iii) in Attachment E, section 3, a rounding method for transmission losses.

because the Rehearing Order expressly directed Entergy to define “proportionally” by what it is relative to instead of what it is not relative to. Union Power also argues that Entergy’s proposed revision to Attachment D, section 3.2.2.1 does not clarify the difference between the “generation-to-generation” analysis and the “generation-to-load” analysis. Union Power asks the Commission to direct Entergy to revise section 3.2.2.1 to “provide greater transparency with respect to the differences in the two studies that could lead to the different results” and “based on the range of the results from the two studies . . . , indicate whether or not the obligation to construct upgrades is triggered.”<sup>32</sup>

17. Union Power also argues that the Commission should reject Entergy’s request for an extension for the other revisions required in the Rehearing Order as these provisions are important and will not necessarily be either made obsolete by or governed by the MISO Tariff. Union Power further argues that contrary to Entergy’s claim, revising these provisions would not necessarily require software or process redesign. In addition, Union Power notes that Entergy is not clear as to whether Entergy will file revisions after joining MISO.

### 3. Answer

18. Entergy claims that it was unable to submit the remaining revisions because its focus was its integration into MISO. Entergy repeats its assertion that the remaining required revisions would require software and process revisions and stakeholder consultations, could not be finished before MISO integration on December 19, 2013, and would be a wasteful effort as the MISO Tariff would govern instead. As an example, Entergy mentions the required revisions to include unscheduled qualifying facility energy in models. It states that the Independent Coordinator of Transmission Joint Task Force closed the matter in June 2013 because the process would be merged with the Available Flowgate Capacity model review process, a distinct part of the MISO integration process. Entergy clarifies that its extension request is for permission to file a status report 30 days after December 19, 2013 as to the status of Entergy’s integration into MISO, and if Entergy has not integrated into MISO by that time, then Entergy will report on how it will address the remaining requirements of the Rehearing Order.<sup>33</sup>

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<sup>32</sup> Union Power July 8, 2013 Protest at 9.

<sup>33</sup> As noted above, Entergy was integrated into MISO on December 19, 2013, and Entergy’s cancellation of its OATT was accepted on January 31, 2014, effective December 19, 2013.

#### 4. Commission Determination

19. Because the Compliance Filing contains revisions to Entergy's OATT, which, as noted above, has been cancelled in light of Entergy's December 19, 2013 integration into MISO, we accept the proposed revisions for the period from the requested effective date of June 17, 2013 through the OATT's cancellation date of December 19, 2013, and we decline to require further revisions to address deficiencies identified in Union Power's protest or items for which Entergy requested an extension.<sup>34</sup>

#### The Commission orders:

(A) MISO's motion to intervene out-of-time is hereby denied and therefore, its request for clarification or, in the alternative, rehearing is hereby dismissed, as discussed in the body of this order.

(B) Entergy's rehearing request is hereby denied, as discussed in the body of this order.

(C) Entergy's compliance filing is accepted, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>34</sup> See *Kelson Energy III LLC*, 123 FERC ¶ 61,303 (2008) (finding a notice of change in status moot because of the cancellation of the underlying market-based rate tariff).