115 FERC ¶61,095
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Entergy Services, Inc. Docket No. ER05-1065-000

ORDER CONDITIONALLY APPROVING
INDEPENDENT COORDINATOR OF TRANSMISSION FILING

(Issued April 24, 2006)

1. On May 27, 2005, Entergy Services, Inc. submitted, on behalf of the Entergy Operating Companies[1] (collectively, Entergy), proposed revisions to its Open Access Transmission Tariff (OATT) reflecting its proposal to establish an Independent Coordinator of Transmission (ICT) for the Entergy System and a Weekly Procurement Process. It also filed a draft contract between it and the ICT (ICT Agreement). Entergy states that it expects to be able to file a final, executed ICT Agreement within 60 days after Commission approval of the instant filing and have the ICT ready to begin operations within 30 days following a Commission order approving that contract.[2] Entergy asserts that the Weekly Procurement Process will become effective later, when the optimization software needed for it is developed and tested. Based on Entergy's original requested action date, Entergy states that it expects that the Weekly Procurement Process will begin by approximately fourteen months from the date of this order.

2. Entergy proposes that the ICT, among other things, would grant or deny requests for transmission service, calculate available flowgate capability (AFC), administer Entergy's Open Access Same Time Information System (OASIS), and perform an enhanced planning function. The Weekly Procurement Process is designed to allow merchant generation and other wholesale suppliers to compete to serve Entergy's native

---

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

[2] *See* Entergy at 1-2, citing *Entergy Services, Inc.*, 111 FERC ¶ 61,222 at P 23 (2005) (Clarification Order).

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

load customers through bids submitted to Entergy's Weekly Operations. It also establishes an additional mechanism for granting short-term firm transmission service through redispatch. The results of the Weekly Procurement Process optimization will be treated as requests for new point-to-point transmission service and the designation of new Network Resources, including offers of redispatch needed to grant the new service. Entergy represents the ICT will review these requests and grant or deny transmission service under the OATT.

3. We find that Entergy's ICT proposal, with modifications, is consistent with or superior to the Order No. 888 tariff. Our approval of the entire package of the ICT, Weekly Procurement Process and Entergy's pricing proposal is predicated in part on Entergy's representations of the substantial benefits associated with the Weekly Procurement Process as discussed in this order. Entergy's ICT proposal is intended to improve transparency of transmission information, enhance transmission access, and relieve transmission congestion. An ICT role is supported for Entergy based on the particular circumstances of its system, such as the significant internal transmission constraints on that system and the problems that Entergy has experienced in the area of data access, quality, and retention. We therefore accept Entergy's ICT proposal, as modified herein. The Commission also approves, with modification, Entergy's Weekly Procurement Process proposal and transmission pricing proposal. Entergy's proposal represents that merchant generators and other wholesale suppliers will be permitted to compete to serve loads that participate in the Weekly Procurement Process and the ICT's oversight of the transmission aspects of the Weekly Procurement Process is intended to assure that transmission access would be granted on a fair and nondiscriminatory basis. The tariff sheets concerning the ICT proposal and transmission pricing proposal will not become effective until such time as the Commission approves the ICT contract. The tariff sheets concerning the Weekly Procurement Process will also be effective at a date to be set by the Commission upon Entergy's making a filing stating that the optimization software has been developed and tested.

I. Background

4. The history of Entergy's requests to improve access to transmission service on Entergy's system is extensive. The ICT proposal is the third variation the Commission, state regulators, and market participants have worked with Entergy on to ensure Entergy's proposed variations are consistent with or superior to the Order No. 888 OATT and that the OATT is implemented on a nondiscriminatory basis.

5. On June 3, 2002, Entergy filed its initial proposed Generator Operating Limits (GOL) procedure as Attachment Q to its OATT to address local transmission constraints on the Entergy transmission system and to provide a process for generators to participate in short-term bulk power markets without first submitting each proposed transaction for a

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

System Impact Study. Entergy stated that the GOL procedure set forth the methodology for evaluating local transmission constraints on Entergy's transmission system. In an order issued August 2, 2002, the Commission accepted the initial proposed GOL filing, suspended its effective date until January 3, 2003, and directed staff to convene a technical conference to explore the issues raised by the parties.[3]

6. On January 15, 2003, Entergy filed a revised Attachment Q and other explanatory information, setting forth in more detail its proposed revisions to the GOL proposal. Under revised Attachment Q, Entergy would calculate GOLs in the direction of each of the fourteen control areas that are directly interconnected to the Entergy transmission system and to which Entergy calculates export capability.[4] Generators subject to Entergy's GOL process were to use Entergy's OASIS to reserve transmission service and were to receive the same information as all other Entergy transmission customers on a real-time basis. Upon request, Entergy would provide to a generator the base case it used to determine GOLs on a post hoc basis by posting the requested base case on its OASIS. Upon request, Entergy would also provide owners of generating facilities information on constraints that limit the GOL of their facilities by posting this information publicly on OASIS.[5] Intervenors generally supported the amended Attachment Q, but noted that while progress had been made, there were still needed modifications.[6] The intervenors also raised a number of technical issues about the GOL methodology and implementation; however, the Commission found that these involved a policy issue of how to best balance the competing goals of reliability and accessibility. The Commission reasoned that setting these issues for hearing would not likely resolve these issues quickly or definitively, or satisfy the parties that the proposal strikes a fair balance. Accordingly, the Commission allowed these GOL procedures to be put into effect, with specific reporting requirements that would allow the Commission and the market participants to evaluate the performance of the procedures.[7]

7. The Commission concluded that the revised GOL procedure appeared likely to increase the availability to generators of transmission on the Entergy system. Although the Commission noted it was not without flaws, the Commission concluded Entergy's GOL proposal appeared at that point to strike a reasonable balance between the need to

---

[3] *Entergy Services, Inc.*, 100 FERC ¶ 61,147 (2002).

[4] *Entergy Services, Inc.*, 102 FERC ¶ 61,281 (2003) at P 8.

[5] *Id.* at P 10.

[6] *Id.* at P 25.

[7] *Id.* at P 26.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

ensure reliability and the mandate to make transmission capacity available on a non-discriminatory basis for open access transmission service. However, the Commission established procedures for continuing to investigate the GOL procedure as the parties gained experience with it.[8]

8. On June 4, 2003, the Commission issued two additional orders regarding Entergy's GOL procedure. First, the Commission issued an order accepting an amendment to the GOL filing that adopted the internal GOL procedure.[9] The internal GOL procedure calculates a value for the Entergy control area to be used to reserve transmission service (network and point-to-point) internal to the Entergy control area. The Commission also issued an order denying rehearing of the March 13 order and modifying Entergy's GOL process to require, among other things, that Entergy (1) perform transaction-specific System Impact Studies for daily and weekly transmission service requests and (2) use its knowledge of the system to identify any additional capacity not identified in the GOL calculation.[10]

9. In an Audit Report, dated December 17, 2004 and issued by the Divisions of Operational Investigations and Enforcement of the Office of Market Oversight and Investigations (OMOI), OMOI evaluated the computer modeling methodology used by Entergy to create the GOLs that Entergy implemented under the Commission's Order on Amended Generator Operating Limits Filing.[11] OMOI concluded that there were significant errors in Entergy's performance of the GOL and Local Area Limits methodology during an April through September 2003 study period. The Audit Report stated that these errors included Entergy's creation of base cases for GOLs using long-term transmission reservations that fell outside the date range of the study period, software programming bugs, and Entergy's failure to apply uniformly the criteria for determining the generators that were subject to the Local Area Limits. In addition, according to the Audit Report, Entergy failed to accurately document which transmission service requests were evaluated by which GOL studies, and the reasons for denying service.

---

[8] *Id.* at P 63.

[9] 103 FERC ¶ 61,270 (2003).

[10] 103 FERC ¶ 61,271 (2003).

[11] *See* Audit Report on Generator Operating Limits, Docket No. PA04-17-000, December 17, 2004.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

10. The Audit Report found that the errors in the GOL and Local Area Limits methodology affected GOL values for both affiliates and non-affiliates and resulted in GOL values that were both higher and lower than they should have been. The Audit Report noted that as a result of the errors, hundreds of transmission requests — affecting both Entergy affiliates and non-affiliated generators — were, or may have been, erroneously granted or denied. In light of these errors, the Audit Report concluded that Entergy had failed to comply with the March Order's requirement to provide sufficient information for the Commission and parties in the GOL proceeding to determine whether the GOL methodology resulted in restricting or withholding available transmission capacity from independent power producers and other generators that use transmission service. As the Audit Report noted, Entergy no longer used GOLs to evaluate transmission service requests; it was by then using AFC to evaluate short-term transmission service requests. The Audit Report also stated that due to the numerous problems identified regarding GOL transmission modeling practices, OMOI was concerned that similar quality control issues may exist with respect to the AFC methodology that Entergy uses to assess transmission capacity.

11. On October 29, 2003, Entergy filed a proposal to replace both its ATC and GOL methodologies with an AFC methodology, a flow-based methodology for calculating transfer capability and evaluating short-term transmission service requests that fall within an 18-month horizon. All other transmission service requests – including short-term transmission service requests that fall outside of the 18-month horizon – would be evaluated using a transaction-specific System Impact Study.[12] In an order issued on February 11, 2004, the Commission accepted and suspended for a nominal period, subject to further review and a further order, proposed revised tariff sheets to implement the AFC proposal to become effective on April 1, 2004. The proposed AFC procedure was to replace Entergy's current method of evaluating short-term transmission service requests, which used ATC values and GOLs to determine when, and if, a transmission customer may acquire short-term transmission service.[13]

12. In general, intervenors agreed that, if implemented properly, Entergy's proposed AFC process would be an improvement over the current ATC/GOL process.[14] The Commission directed Entergy to provide more detailed, and virtually instantaneous, source-to-sink analysis, which was previously available only as a part of a transaction-specific System Impact Study under the GOL methodology. The Commission reasoned

---

[12] *Entergy Services, Inc.*, 106 FERC ¶ 61,115 (2004) at P5.

[13] *Id.* at P 1.

[14] *Id.* at P 24.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

the AFC methodology would improve the accuracy of calculations of transfer capability by evaluating power flows based on the expected effect of proposed transmission service on significantly affected flow gates, rather than on the contract path. Furthermore, under the GOL methodology, Entergy had limited ability to determine the effect of the proposed transmission service on other paths. In contrast, the AFC procedure was to use information that was either real time or frequently updated, so Entergy would use the most accurate information available. Moreover, the GOL values were to be updated on a daily basis, while under the AFC process, the base case model would be updated hourly in the Operating Horizon (Day 1 to Day 2) and at least every eight hours for the first seven days of the Planning Horizon. This frequent updating was to reflect the nearly real-time operating conditions as much as reasonably possible at that time. Finally, because of the frequent updating of system data, the AFC process was to enable the parties to evaluate the simultaneous effects of multiple reservations, even when those reservations did not involve the same contract path. In comparison, under the GOL procedure, the transmission customer was limited to the lowest GOL of multiple reservations.[15]

13. Based upon those representations, the Commission found that with modification, the Entergy AFC proposal appeared to be consistent with or superior to Entergy's OATT.[16] Because the Commission was concerned that Entergy's original AFC proposal was not sufficiently transparent and could allow Entergy to discriminate in favor of its generators when assigning transmission service, the Commission ordered modifications to ensure transmission service would be provided in a nondiscriminatory manner.[17] The Commission required Entergy to make a compliance filing with revised tariff sheets to provide more specific details regarding the following aspects of its AFC proposal: (1) the specific criteria used to identify the flowgates that Entergy would monitor; (2) the criteria and procedures for adding or delisting flowgates; (3) the method that would be used to evaluate the percent of counterflows to use in the power flow model; (4) the response factor threshold and the criteria for modifications to the threshold; and (5) the bases for the transmission line ratings.[18]

14. On July 12, 2004, the Commission issued its order on Entergy's compliance filing. The Commission found that the revisions were not sufficient. Entergy was ordered to revise its tariff provisions to clearly indicate criteria and numerical values of those

---

[15] *Id.* at P 25.

[16] *Id.* at P 26.

[17] *Id.* at P 29.

[18] *Id.* at P 33.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

criteria that it would use to identify relevant flowgates and to select/delist flowgates. Also, terms such as "excessive loading" were to be clearly defined and Entergy was to explain how its definitions differed from those used in North American Electric Reliability Council (NERC) Standard 1.A and the Southeastern Electric Reliability Council (SERC) supplement to that standard. Also as required, Entergy was to post to its OASIS various engineering data and the AFC Process Manual.[19] However, the Commission found that additional data were required and directed Entergy to make another compliance filing. The Commission found Entergy's tariff revisions lacked sufficient detail as to the process through which Entergy assessed counterflows. Entergy was directed to revise its tariff to provide sufficient specificity, including equations and detailed methodology, so that others could judge the reasonableness of its method and its results. In addition, the Commission directed Entergy to revise the AFC Process Manual so that it showed the actual counterflow calculations, including the workpapers, with any historical data used to derive the counterflow percentages. Furthermore, the Commission directed Entergy to revise its AFC Process Manual to address frequency of reviews of counterflows and to provide sufficient detail to address reasonable inquiries as to counterflows in each study horizon and for firm and non-firm, short-term and long-term, scheduled and nonscheduled transactions.[20]

15. On August 13, 2004, Entergy submitted its second compliance filing. On December 17, 2004, The Commission accepted Entergy's proposed filing made in compliance with the Commission's order of July 12, 2004, and *sua sponte* instituted an investigation pursuant to section 206 of the Federal Power Act (FPA). Because of the number and seriousness of the concerns raised concerning the second compliance filing and the number of customers raising these concerns, the Commission granted the requests of Occidental, Cottonwood and Mississippi Delta to launch an investigation into: (1) Entergy's implementation of the AFC program; (2) whether Entergy had complied with the Commission's prior orders on AFC matters; and (3) whether Entergy's provision of access to its transmission system was just, reasonable and not unduly discriminatory. Specifically, because many of these allegations involved contested issues of fact, we initiated an investigation under section 206 of the FPA and convened a trial-type evidentiary hearing concerning each of the AFC and transmission access concerns raised in the New Orleans or Jackson technical conferences, or in the comments filed by Occidental, InterGen, Cottonwood, NRG, Mississippi Delta and L-M Municipals. The

---

[19] *Id.* P 5-6.

[20] *Id.* P 21.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

investigation and hearing were to examine whether there were violations of the OATT or Commission orders and whether Entergy's provision of access to its transmission system had been unduly discriminatory or preferential.[21]

16. The issues raised by commenters included the following: (1) claims that transmission customers have suffered a significant loss of access to transmission since the AFC program began; (2) claims that there was a lack of transparency in the AFC process that precludes customers from being able to discern why their transmission request was denied (including not providing workpapers or applicable power flow models); (3) claims that Entergy's AFC model was based on overly conservative or otherwise faulty assumptions (*e.g.*, treatment of counterflows, the appropriate Response Factor, whether non-firm service uses should be included in the AFC calculations); (4) claims that Entergy's AFC scenario analyzer provided incorrect information regarding the actual availability of transmission capacity; (5) whether Entergy had made alterations to the AFC software from the versions used by SPP and MISO that have contributed to the alleged problems; and (6) whether Entergy's calculation of AFC values on a generator-specific basis (which is different from how SPP and MISO compute AFC values) had contributed to the alleged problems.[22]

17. Additionally, because some of the errors and problems associated with the GOL program that were found in the OMOI Audit Report and OMOI raised concerns similar quality control issues may exist with respect to the AFC methodology that Entergy would use to assess transmission capacity, the Commission included this matter as an issue to be examined as part of the section 206 investigation and hearing.[23]

18. On March 22, 2005, the Commission ordered the AFC hearing to be held in abeyance pending Entergy's response to the ICT declaratory order in Docket No. EL05-52-000.[24] In the order holding the AFC hearing in abeyance,[25] the Commission noted that as a result of the extensive discussions with Entergy's customers and retail regulators in the technical conferences, Entergy had submitted, in Docket No. EL05-52-000 a petition for declaratory order requesting guidance on issues associated with its proposal to establish an ICT. In addition, Entergy proposed enhancements to its original ICT

---

[21] 109 FERC ¶ 61,281 at P 45.

[22] *Id.* at P 46.

[23] *Id.* at P 50-51.

[24] 110 FERC ¶ 61,295 (2005).

[25] 110 FERC ¶ 61,296 (2005).

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

proposal that would give the ICT authority to grant or deny requests for transmission service, calculate AFC, administer Entergy's OASIS, and perform an enhanced planning function (integrating the plans of Entergy and other potential transmission owners to identify regional synergies).

19. The Commission stated that because the implementation of Entergy's ICT proposal may resolve matters at issue in the AFC hearing, the Commission was willing to hold that hearing in abeyance beginning on the date that Entergy notifies the Commission of its intent to file its section 205 filing, in accordance with the directives of the order in Docket No. EL05-52-000, including the modifications required therein.[26]

20. On December 17, 2004, the Commission issued an order on Entergy's updated market power analysis, which instituted a proceeding pursuant to section 206 of the FPA to investigate generation market power issues; in particular, the Commission sought to investigate whether Entergy satisfied the Commission's transmission market power and affiliate abuse or reciprocal dealing standards for the grant of market-based rate authority.[27] However, in light of the recently-issued Commission order involving Entergy's ICT proposal in Docket No. EL05-52-000, which the Commission believed may resolve most of the petitioners' concerns, the Commission decided to hold the investigation of Entergy's transmission market power in abeyance in the updated market power analysis proceeding until 60 days after the issuance of a Commission order approving Entergy's section 205 filing to implement the ICT proposal, unless superceded by a future order in Docket No. EL05-105-000.

21. On May 27, 2005, Entergy notified the Commission through the 205 filing that is the basis of the instant order.

A. ICT Proposal

22. On April 1, 2004, in Docket No. ER04-699-000,[28] Entergy filed revisions to its OATT (Original ICT Proposal) proposing: (1) to contract with an independent entity, the ICT, to provide oversight over the operations of the Entergy transmission system; (2) a new process and standard for assigning cost responsibility for transmission upgrades; and

---

[26] *Id.* at P 5.

[27] 111 FERC ¶ 61,145 (2005).

[28] Upon an order in Docket No. EL05-52-000, Entergy filed to withdraw its Original ICT Proposal in Docket No. ER04-699-000. The Commission accepted the withdrawal on June 30, 2005. *Entergy Services, Inc.*, 111 FERC ¶ 61,503 (2005).

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

(3) a new Weekly Procurement Process. The Commission convened a series of technical conferences to discuss issues raised by this proposal. As a result of extensive discussions with Entergy's customers and retail regulators in the technical conferences, on January 3, 2005, in Docket No. EL05-52-000, Entergy filed a petition for declaratory order to obtain general guidance from the Commission on a proposal to enhance the functions of the ICT from those in the Original ICT Proposal (Enhanced ICT Proposal).

23. Entergy's proposed enhancements would give the ICT authority to grant or deny requests for transmission service, calculate AFC, administer Entergy's OASIS, and perform an enhanced planning function (integrating the plans of Entergy and other potential transmission owners to identify regional synergies). Entergy sought a Commission decision on (1) whether the functions performed by the ICT would cause it to become a "public utility" under the Federal Power Act (FPA)[29] or the "Transmission Provider" under Entergy's OATT; and (2) whether Entergy's transmission pricing proposal, as administered by the ICT, would satisfy the Commission's transmission pricing policies.

24. The Commission issued two orders on Entergy's Enhanced ICT Proposal.[30] In the Guidance Order, the Commission stated that it was prepared to accept Entergy's proposed ICT and grant Entergy's transmission pricing proposal on a two-year experimental basis, subject to certain enhancements and monitoring and reporting conditions, if Entergy submitted an acceptable section 205 filing. We stated that the section 205 filing would need to more fully specify in the tariff the responsibilities and duties of the ICT and that it must unambiguously give the ICT authority to grant or deny requests for transmission service. The Commission said that this must include performing any necessary feasibility studies, system impact analyses, or other studies necessary to evaluate a request for transmission service. In addition, the ICT must be given authority to independently administer Entergy's OASIS -- including calculating and posting available transmission and flowgate capability on the Entergy system.

25. Further, the Commission set out certain other enhancements and modifications that were needed to support the pricing sought by Entergy. The Commission required that the ICT develop the original Base Plan, including any inputs and numerical values that go into the Base Plan.

---

[29] 16 U.S.C. § 824 (e) (2000).

[30] *Entergy Services, Inc.*, 110 FERC ¶ 61,295 (Guidance Order), *order on clarification, Entergy Services, Inc.*, 111 FERC ¶ 61,222 (2005) (Clarification Order) (collectively ICT Orders).

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

26. The Commission found that Entergy's proposal to have the ICT review previously incurred interconnection costs (except for those upgrades that are "subject to judicial appeal") was not adequately explained. We stated that the ICT must determine that the appropriate data inputs were used in performing the necessary studies. Further, it was unclear how the ICT would be able to go back and reevaluate the validity of the input data to ascertain that the upgrade had been properly classified. In addition, we had concerns about whether it is appropriate to retroactively re-examine and re-allocate costs that might affect underlying contractual commitments and financial guarantees. Moreover, establishing a process to generically reexamine these arrangements would be very difficult, because the contracts involved may contain differing legal standards for being revised. Finally, it was not clear how the ICT would recreate the pre-existing system conditions and the criteria it would use to determine whether an upgrade is properly classified as either a Base or Supplemental Upgrade. We required Entergy to address these concerns and said we would then address the justness and reasonableness of any reexamination of previously incurred costs by the ICT.

27. In addition, the Commission stated that before any approval of Entergy's ICT proposal and transmission pricing proposal could be given, Entergy would need to make a section 205 filing in a new docket detailing the enhanced functions that the ICT will perform.

28. On May 27, 2005, Entergy made its section 205 filing in this docket in accordance with the Guidance Order. Several intervenors requested that a technical conference be held on Entergy's proposal. This technical conference was held in New Orleans, Louisiana on June 30, 2005.

II. Notice and Responsive Pleadings

29. Notice of Entergy's filing was published in the *Federal Register*, 70 Fed. Reg. 34,119 (2005), as amended on 70 Fed. Reg. 36,934 (2005) and on July 15, 2005, with comments, protests, and interventions due on or before August 5, 2005. A list of comments, protests, and interventions can be found in Appendix A to this order. On August 22, 2005, Entergy filed an answer. On September 6, 2005, the Generator Coalition[31] and Duke Energy North America, LLC (Duke Energy) filed answers to Entergy's Answer. On September 19, 2005, SeECA filed an answer to Entergy's answer. Entergy filed further answers on October 14, 2005 and November 21, 2005. The East

[31] The Generator Coalition is Cottonwood Energy Company LP, KGEN Power Management, Inc., NRG Energy, Inc., Suez Energy North America, Inc., and Union Power Partners, LP. The Generator Coalition corrected its answer on September 9, 2005.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

Texas Cooperatives filed an answer on December 6, 2005. On December 7, 2005, the Missouri Joint Municipal Electric Utility Commission filed a late intervention, protest, and answer. On February 7, 2006, Lafayette, LEPA, MEAM, and MDEA (collectively L-M Municipals) filed a supplemental protest. On February 22, 2006, Entergy and SPP individually filed answers to the L-M Municipals' supplemental protest. On February 23, 2006, the Arkansas Cities filed supplemental comments. On March 22, 2006, the Arkansas Commission filed supplemental comments. On March 24, 2006, Dow Chemical filed a supplement to its protest.

30. On October 31, 2005 Entergy provided notice to the Commission and intervenors of a data retention issue concerning allegedly unintentional and inadvertent errors associated with certain historical data related to Entergy's AFC process.

31. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Entergy's August 22, 2005 answer and the Missouri Joint Municipal Electric Utility Commission's late intervention, protest and answer because they have provided information that assisted us in our decision-making process. We are not persuaded to accept the Generator Coalition's, Duke Energy's, SeECA's, the East Texas Cooperatives or Entergy's October 14, 2005 and November 21, 2005 answers and will, therefore, reject them. We are also not persuaded to accept the L-M Municipals and Dow Chemical's supplemental protests, and Entergy's and SPP's answer to the L-M Municipals supplemental protest and will, therefore, reject them. We will accept the supplemental comments filed by the Arkansas Commission because it has provided information that assisted us in our decision-making process.

III. Retail Regulator Comments

32. The following retail regulators submitted comments that generally support Entergy's filing. We note these comments separately because the retail commissions have or plan to undertake proceedings that will address their questions about Entergy's ICT proposal.

33. The Louisiana Public Service Commission's (Louisiana PSC) primary concern with Entergy's proposal is about the costs and benefits for Louisiana native load ratepayers. The Louisiana PSC states that a net benefit is required for it to approve the ICT proposal, as detailed below. In addition, any expansion of the ICT to perform functions for other entities should be subject to further regulatory review to ensure that

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

the costs to serve those entities are not borne by existing ratepayers. It also stresses that the proposed jurisdictional balance between Entergy and the ICT regarding the formation of the Base Plan should not be disturbed.

34. The Louisiana PSC asserts that the Commission should approve Entergy's proposal to have the ICT independently review the classification (Base Plan or Supplemental Upgrade) of previously incurred interconnection costs. It says that if that proposal is not approved, native load ratepayers in Louisiana and in the City of New Orleans will face net costs and, thus, it would be very difficult for the Louisiana PSC to find that approval of the ICT is in the public interest.[32]

35. The Arkansas Public Service Commission (Arkansas PSC) supports the ICT as an appropriate step to address the planning and operation of the Entergy transmission system. The ICT proposal is a substantial improvement over the status quo, and the fact that Southwest Power Pool (SPP) will be the ICT gives the Arkansas PSC confidence that independence, transparency, operational and planning synergies and net benefits will be achieved.

36. The Arkansas PSC states that it hopes the ICT will institute a comprehensive stakeholder participation process, including representatives of the affected retail jurisdictions, with respect to the Base Plan as well as with respect to the identification of Economic and Supplemental Upgrades that could provide cost-saving opportunities. The Arkansas PSC also sees the Weekly Procurement Process as a promising development that should lead to a greater awareness and use of cost-saving wholesale market generation options in Entergy's territory. The Arkansas PSC states its expectations that the ICT will use its stakeholder process to address numerous technical and tactical issues and that the Weekly Procurement Process is a starting point that can be improved upon.

37. The Arkansas PSC states that although some market participants have expressed concern, that Entergy has reserved the right not to construct Base Plan upgrades that are recommended by the ICT, the Arkansas PSC does not expect this to result in an inappropriately diminished level of transmission upgrades. The results of the ICT's transmission planning process, along with all of its upgrade recommendations and rationale, will be presented to all of Entergy's retail regulators and to transmission customers and other stakeholders. If there are any disagreements regarding the level of transmission investment, the Arkansas PSC intends to be fully engaged and expects the other retail regulators to do the same. It suggests that the Commission require any

---

[32] We note that Entergy's proposal is pending before the Louisiana PSC on exceptions to an Initial Decision issued on March 23, 2006.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

differences between ICT recommendations and Entergy construction plans for Base Plan Upgrades to be brought to the attention of Entergy's retail regulators so that they can investigate and resolve the disagreement.

38. The Arkansas PSC states in its supplemental comments that it supports a limited two-year term of the ICT and that it believes certain refinements to Entergy's pricing proposal are necessary. The first change that the Arkansas PSC recommends is that the ICT should incorporate Aggregate Transmission Service Studies similar to the procedures outlined in SPP's Attachment Z. An aggregate study would take all long-term point-to-point and network resource requests received during a specified period of time and aggregate these requests into a single transmission service study. The Arkansas PSC states that this could be accomplished through sequential open seasons of several months' duration. The costs of each transmission upgrade would be allocated to requesters on a pro-rata basis using incremental power flows. The Arkansas PSC asserts that this approach is an improvement to Entergy's proposed single-request sequential approach and is more cost-efficient.

39. The Arkansas PSC also recommends a modification to Entergy's crediting procedure discussed in Attachment T of Entergy's proposal. Currently, Entergy's proposal only allows for credits for long-term transmission service. The Arkansas PSC recommends also including credits for short-term (less than one-year) transmission service. The Arkansas PSC states that this approach is more consistent with the "beneficiaries pay" principle. The Arkansas PSC also recommends two modifications to the procedures in Attachment T, section 5, Treatment of Previously Incurred Interconnection Costs. These modifications include: (1) using a current requirements basis for the Upgrade analysis as opposed to Entergy's retrospective analysis, and (2) aggregating upgrades to assess the beneficial impact instead of Entergy's proposal to add back upgrades sequentially.

40. The Council of the City of New Orleans, Louisiana (New Orleans) states that it supports the ICT proposal, with a few caveats. It supports the proposal as long as currently projected costs and benefits are maintained and New Orleans ratepayers are not saddled with any significant additional costs of implementing the ICT Proposal. New Orleans also states that it has concerns about the ICT's independence if SPP is the ICT because SPP, influenced by the market participants in its existing SPP RTO footprint, may put a higher priority on transmission upgrades in the western portion of Entergy's system than on those in the eastern portion.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

IV. Discussion

41. Our review of the proposed tariff changes indicates that with certain revisions discussed below, they appear to be just and reasonable, and that they have not been shown to be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. The Commission therefore accepts the tariff sheets, subject to compliance as described below. We will grant waiver of the Commission's 120-day prior notice requirement, 18 C.F.R. § 35.3 (2005), to allow the tariff sheets concerning the ICT proposal to be effective pursuant to further order by the Commission approving the ICT contract and the tariff sheets concerning the Weekly Procurement Process, to be effective at a date to be set by the Commission, as requested.[33]

A. ICT Independence and Authority

1. Commission Directives in the Guidance Order

42. In the Guidance Order, the Commission noted that SPP was the only entity that Entergy had identified that could be selected as the ICT. Therefore, the Commission assumed that SPP would be selected as the ICT and stated that it would be willing to approve Entergy's transmission pricing proposal if SPP became the ICT. The Commission also noted that it has already ruled that SPP complies with the independence requirement of Order No. 2000.[34] However, in the Clarification Order, the Commission clarified that although SPP meets the independence requirements in its role as a regional transmission organization (RTO) under Order No. 2000, SPP's independence from Entergy should be further examined at the time Entergy files its section 205 filing. The Commission recognized that the contract between the ICT and Entergy must provide that the ICT perform its functions in an independent manner. The Commission further clarified that it had not prejudged the issue of SPP being selected as the ICT and would address the selection of the ICT when a specific filing on this matter is made at the Commission.

---

[33] *See Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106, *order on reh'g*, 61 FERC ¶ 61,089 (1992).

[34] *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Public Utility District No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

43. We also stated that the section 205 filing would need to more fully specify in the tariff the responsibilities and duties of the ICT and that it must unambiguously give the ICT authority to grant or deny requests for transmission service. This includes performing any necessary feasibility studies, system impact analyses, or other studies necessary to evaluate a request for transmission service. In addition, the Guidance Order stated that the ICT must be given authority to independently administer Entergy's OASIS – including calculating and posting available transmission and flowgate capability on the Entergy system. The Commission required the process for requesting transmission service on the Entergy system and the standards under which the ICT will evaluate such requests to be transparent and understandable to market participants. The Commission stated that it will evaluate the section 205 filing to determine whether, in granting or denying transmission service, the ICT has sufficient authority to ensure that the terms and conditions of Entergy's OATT (including AFC procedures) will be applied in a fair and non-discriminatory manner.

2. ICT Responsibilities and Duties

a. Entergy Proposal

44. Attachment S to the current ICT proposal governs the functions of the ICT, including the enhanced functions required by the Guidance and Clarification Orders. Entergy asserts that it has revised Attachment S as necessary to comply with the ICT Guidance Order, including adding three protocols as appendices to Attachment S that describe, with more specificity, the enhanced functions of the ICT. These three protocols are: (1) Transmission Service Protocol, (2) Interconnection Service Protocol, and (3) Transmission Planning Protocol (Planning Protocol). The protocols provide the detail on these functions required by the ICT Guidance Order.[35]

45. Entergy also states that it has made other changes required by the ICT Guidance Order, including a two-year sunset provision,[36] identifying SPP as the initial ICT, adopting a dispute resolution procedure,[37] clarifying that the Commission will have authority to decide disputes over access to data and budgets, and giving the ICT authority to establish a stakeholder process.

46. Entergy proposed that SPP perform an independent audit of the AFC process and

---

[35] Entergy at 4, citing Guidance Order at P 66-67.

[36] *Id.*, citing Attachment S § 1.3

[37] The dispute resolution provisions are discussed further below.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

prepare a report recommending any changes it considered appropriate. The report was completed on February 15, 2006 and submitted to the Commission on March 7, 2006 in Docket Nos. EL05-22-000 and ER03-1272-000. Entergy stated that once the audit was complete and the report was prepared, Entergy would file the report in this docket and would provide the report to its retail regulators and stakeholders.

47. As part of the stakeholder process addressing transmission service issues, Entergy stated that it, the ICT and stakeholders will be able to consider the ICT's report and attempt to reach agreement on any changes or enhancements discussed therein. Entergy stated that if it agrees with certain changes recommended in the report and discussed with stakeholders, it would submit the revisions to its OATT for approval under section 205 of the FPA (or will revise its business practices accordingly). According to Entergy's proposal, if there are recommendations with which Entergy disagrees after discussing them with stakeholders and the ICT, the ICT will notify the Commission of the disagreement, and the Commission can decide, after allowing interested parties the opportunity to comment, whether any further steps should be taken with respect to the report.

b. <u>Comments</u>

48. Many protesters argue that Entergy's section 205 filing fails to clearly grant the ICT sufficient authority and independence to justify Entergy's pricing proposal. Occidental states that for Entergy to meet the Commission's standard for reviewing proposed amendments to a transmission provider's OATT, it must show that the changes are "consistent with or superior to" the *pro forma* tariff and that Entergy has not done so.

49. The TDU Intervenors and Williams state that the ICT's role would be limited to implementing criteria, standards and policies developed by Entergy. For example, they contend that the ICT would not have the authority to change the AFC criteria because the ICT will not have section 205 filing rights. In addition, they argue that the ICT will process and evaluate transmission requests, but will be required to do so based on criteria determined by Entergy. The ICT may not change these criteria, but only suggest changes to Entergy. The TDU Intervenors assert that it is not clear that the ICT would have the right under section 206 to file a complaint. They also state that Entergy will similarly retain policy-making and decisional authority over requests for interconnections and that the ICT will simply conform to the Entergy-determined studies and criteria. Williams states that the ICT must be completely independent and must have the authority to gather relevant data from all stakeholders, analyze the data, and then convey its independent analysis to market participants without undue influence from any party or particular group. Williams states that it is concerned that the ICT proposal does not fully support the ICT's independence.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

50. Many protesters also request that Entergy be required to provide a more comprehensive stakeholder process. For example, the Arkansas PSC states that the ICT should institute a comprehensive stakeholder participation process, including representatives of the affected retail jurisdictions, with respect to the Base Plan as well as with respect to the identification of economic and Supplemental Upgrades that could provide cost-saving opportunities. Calpine asserts that under Entergy's proposal, stakeholder participation is limited to after-the-fact notices of critical processes and decisions and in some cases to no review at all. Calpine asks that the Commission make clear that market participants who have experienced repeated denials of transmission requests may air their concerns during the development process itself, as opposed to merely commenting after the fact.

51. The Generator Coalition asserts that while the ICT proposal does not need to incorporate the full level of stakeholder participation used in RTOs, stakeholders should at least be able to participate in developing the Base Plan and Base Case Model. Generator Coalition states that SPP has processes for stakeholder participation in Base Plan and Base Case Models.

52. While Nucor acknowledges that the ICT should have some latitude in shaping the stakeholder process, it believes that the stakeholder process must be required, and that it should become a permanent feature of the ICT. Nucor asserts that Entergy's stakeholders must also have a voice in the Weekly Procurement Process because the Weekly Procurement Process will likely have a significant effect on many market participants.

53. Nucor requests that Entergy provide more detail on how the stakeholder process will be organized and how stakeholders will convey their concerns and recommendations to the ICT and Entergy. It states that since Entergy will retain significant control over key elements of transmission service and the Weekly Procurement Process, stakeholders must have a strong voice to serve as a check on Entergy. For example, it asserts that Entergy should explain whether the stakeholder process will be open to all interested parties, or whether representatives of the various stakeholder sectors will participate on a committee.

54. Williams contends that there needs to be a comprehensive stakeholder participation at every juncture of the transmission planning process. The process should consider all cost-effective solutions, including traditional transmission upgrades, as well as alternative transmission solutions and generation-oriented solutions.

55. Calpine asserts that initiation of the stakeholder process may be delayed because that process is not scheduled to begin until after the ICT's AFC audit is complete and the

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

ICT is not expected to conclude that audit for some time (*i.e.*, it may not be completed until just before the ICT begins operations).[38] Occidental also states that market participants should have more input in shaping the audit or the audit report. Calpine contends that Entergy's proposal that the ICT will not have unilateral authority to change the AFC criteria is particularly egregious because the Commission held in abeyance its section 206 review of Entergy's AFC and other transmission practices so that Entergy could remedy such matters through its ICT filing.

c. <u>Entergy Answer</u>

56. Entergy states that its proposal is consistent with the Guidance and Clarification Orders' directives as to the ICT's functionality and independence. Entergy's proposal provides the ICT with a level of authority over studies, criteria, and data inputs that is similar to a Day 1 RTO[39] and is therefore superior to the transmission service offered under Order No. 888. Entergy asserts that the intervenors are essentially requesting that the Commission require the ICT to have greater authority than do RTOs. Further, the ICT will not have the expertise, knowledge or staffing to perform every function requested by the intervenors, and the imposition of these functions could cause a jurisdictional shift away from Entergy's retail regulators.

57. Entergy argues that the ICT is not merely "implementing" Entergy's existing procedures. For example, it states that the role of the ICT in modeling qualifying facilities (QFs)[40] would be as follows: (1) the ICT will review the AFC criteria for transparency and reasonableness, including QF modeling, (2) the ICT will report its findings to the Commission, (3) the Commission will have the authority to modify the procedure and (4) the ICT will apply any criteria and inputs, as modified by the Commission, on an independent basis in administering the AFC process. Additionally, Entergy states that the ICT will have continuing authority to ensure that QF modeling complies with AFC criteria and to evaluate the AFC criteria and propose additional modifications.

---

[38] Calpine at 8-9.

[39] A Day-1 RTO is a grid management organization that manages open-access transmission, scheduling and Available Transmission Capacity determination, redispatch for congestion management, ancillary services, planning, parallel path flow mitigation, interregional coordination and market monitoring.

[40] *See* Public Utility Regulatory Policies Act of 1978, 16 U.S.C. § 2601, et seq. (2000).

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

58. In response to parties' claims that the Commission should mandate a formal stakeholder process, Entergy states that it does not believe that a formal stakeholder process is necessary. Although under Entergy's proposal, the ICT will have authority to create a stakeholder process whenever it deems appropriate, the ICT is not an RTO and stakeholders will not be voting on proposals in stakeholder committees. Entergy also notes that existing stakeholder processes for the AFC methodology and transmission planning will continue, with the ICT leading those meetings.[41]

59. Entergy also says it is not true that it will conduct all System Impact Studies and most other studies; it says that the ICT will perform all System Impact Studies. The only area where Entergy will perform the initial study is in the identification of system upgrades (Facilities Studies) because of its familiarity with its transmission system.[42]

60. Several intervenors protest Entergy's proposal to have the ICT perform an audit of the AFC methodology, saying that the ICT will not have independent authority to improve the AFC process. Entergy states that it cannot, as protesters request, agree in advance to support the ICT's recommendations on the AFC. However, Entergy argues that this is beside the point because the ICT's report on the AFC process will be filed with the Commission and the Commission will determine whether such changes are just, reasonable, and not unduly discriminatory. Finally, Entergy does not object to the proposal to permit stakeholder participation in the AFC audit process and says that SPP has already asked for input on the scope of the AFC audit from stakeholders.

d. Commission Determination

61. The Commission finds that Entergy's proposal is consistent with or superior to the Order No. 888 tariff and as represented, an improvement on the present situation. The ICT appears to have sufficient authority to independently and fairly grant or deny transmission service, perform necessary feasibility and system impact studies, administer Entergy's OASIS, and ensure that the terms of Entergy's OATT are administered fairly and in a non-discriminatory manner.

---

[41] Entergy Answer at 19-20, citing Transmission Protocol § 9.

[42] Entergy states that this is the same process used by SPP as an RTO. Entergy Answer at 20, citing Rew Affidavit at ¶ 15. The Commission believes that the study to which Entergy cites is actually a Feasibility Study.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

62. The Commission recognizes that under Entergy's proposal, the ICT's role is limited to implementing criteria, standards and policies developed by Entergy. However, although the ICT will not have filing rights under section 205 of the FPA and therefore cannot itself propose to change criteria, standards and policies, any criteria used by Entergy to grant and deny transmission service, including calculating AFC, must be filed under section 205 of the FPA and accepted by the Commission. Any interested party, including the ICT, may protest these filings or file a complaint under section 206 of the FPA. Of course, any party filing a compliant under section 206 possesses the legal burden to show that the existing provisions are unjust, unreasonable or unduly discriminatory. Thus, we will be able to ensure that the criteria, standards and policies remain just and reasonable.

63. The Guidance Order stated that other stakeholders must be included in any process developed by the ICT, Entergy, and the affected state commissions to vet the regional transmission plan so that it reflects regional needs.[43] Further, the Commission clarified that Entergy is to work with the ICT and Entergy's stakeholders to develop the procedures by which the ICT will calculate AFC.[44] Section 9 of Attachment S merely allows the ICT to establish stakeholder processes as it deems necessary regarding the functions it performs. However, section 9 of the Transmission Protocol states:

> The ICT *will* develop and chair a stakeholder process designed to: (i) ensure that the provision of transmission service under the Tariff is transparent and understandable; (ii) provide the Transmission Provider and Transmission Customers a forum for discussing issues and areas of concern; and (iii) provide an opportunity to develop consensus-based resolutions to such issues or concerns to the extent possible. The focus of this stakeholder process will be issues or concerns related to the provision of transmission service under the Tariff and this protocol, including the AFC process, transmission modeling and studies, and commercial practices associated with reserving service over OASIS.[[45]]

64. We find that section 9 of the Transmission Service Protocol addresses Calpine's concern that market participants who have experienced repeated denials of transmission requests be able to air their concerns during the development process. The ICT cannot create a consensus resolution if it does not seek stakeholder input while developing the

---

[43] Guidance Order at P 68.

[44] Clarification Order at P 13.

[45] Emphasis added.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

process to be used to grant or deny service. Further, if the ICT does not seek stakeholder input into the development of the processes involved in the performance of the ICT's duties, once Entergy files the criteria that the ICT must follow in evaluating transmission service requests with the Commission, the parties may protest that filing. Therefore, not only will parties have input at the stakeholder level, but they can also raise their concerns in the Commission proceeding to consider the specific processes and criteria the ICT must follow.

65. Calpine and Occidental protest Entergy's filing regarding the manner in which Entergy proposes that the ICT audit its AFC process. Occidental expresses concern that stakeholders did not have input into the audit process. The Commission notes that in developing the AFC audit, SPP requested stakeholder input as to the scope of the AFC audit. SPP has provided the Commission a copy of its final audit report. Further, as noted above, Entergy states that it has no objection to permitting stakeholders to participate in the AFC process.

66. Calpine also argues that the ICT should be able to unilaterally implement its recommendations concerning the AFC process. As stated above, any criteria developed by Entergy to be used by the ICT to grant or deny transmission service, including calculating AFC, must be filed under section 205 of the FPA and accepted by the Commission. Pursuant to Entergy's proposal, the ICT will notify the Commission of any disagreement between it and Entergy as to any of the ICT's recommendations. The Commission is the final judge as to what criteria are necessary for a just, reasonable and not unduly discriminatory AFC process. Should Entergy not follow any recommendations proposed by the ICT, the ICT or any other party will be able to voice that protest when the revised AFC process is filed.

3. ICT Agreement

a. Entergy Proposal

67. Entergy proposes to have SPP be the ICT and states that this selection will ensure that the ICT is independent and will increase market confidence in the ICT. Further, Entergy states that it is negotiating an ICT Agreement with SPP, but that this ICT Agreement is not yet executed. Entergy asserts that, consistent with the Clarification Order, it will submit a final, executed agreement within 60 days of this order.

68. The draft ICT Agreement generally lays out the services that the ICT is to perform and the terms under which the ICT will perform those services. Section 2 provides that

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

the ICT shall be independent of Entergy.[46] Section 3 provides for compensation, billing, and payment of ICT costs. Section 4 implements the Commission's two-year sunset provision and provides that the ICT Agreement may be terminated by mutual agreement, or for cause. Section 4 also specifies that the term of the ICT may be extended if Entergy petitions and receives the approval of the Commission and any necessary approvals from state commissions. Section 4 states that neither party will be obligated to extend the agreement if regulatory approvals for subsequent terms contain conditions that are materially adverse to either party. Section 4 also contains a "regulatory out" provision, which allows either Entergy or the ICT to terminate the ICT Agreement if a regulatory or legislative authority places additional conditions on Entergy, or interprets existing conditions in a manner that causes this Agreement, in Entergy's sole judgment, to be no longer viable for Entergy. If Entergy decides that the ICT Agreement will expire or terminate, Section 4 also provides for a transition period, lasting up to 6 months, during which SPP will provide assistance to transfer the services, which it was performing, to Entergy or another service provider.

69. The ICT's and Entergy's responsibilities with regard to data are in section 8 of the ICT Agreement. Section 8 provides that Entergy shall provide the ICT with all data that the ICT deems reasonably necessary to perform the ICT functions. Section 14 of the draft ICT Agreement implements certain reporting requirements required by the Commission in the Guidance Order.[47]

b. <u>Comments</u>

70. Both Occidental and SeECA state that the draft ICT Agreement fails to provide the detail and specificity required of a filing under section 205 of the FPA, and that this precludes meaningful comment. SeECA argues that the provisions governing the

---

[46] Section 2 of the ICT Agreement provides that:

All Services shall be performed by employees of [the ICT]. No such employees shall be employed by Entergy or any Affiliate (as defined in 18 C.F.R. § 35.34(b)(3) of FERC's regulations) of Entergy. [The ICT] and its employees shall be, and shall remain for throughout the Term (as defined in section 4.1), Independent (as defined below) of Entergy and any Market Participant (as defined in 18 C.F.R. § 35.34(a)(2) of FERC's regulations) and all Affiliates of Entergy and any such Market Participant. For purposes of this Agreement, "Independent" has the meaning set forth in FERC Order No. 2000 and 18 C.F.R. § 35.34(j)(i) and (ii), as they may be revised by FERC from time to time.

[47] Guidance Order at P 74, 79.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

renewal of the ICT need to be clarified and recommends that the Agreement be changed to specify that any renewal of the ICT be for an additional term of two years. Occidental states that the ICT proposal has failed to satisfy the Commission's requirements that implementation of the ICT on a two-year basis go beyond the service offered under Entergy's OATT and allow a decision-making process free of the influence of market participants.

71. Occidental argues that the final contract could contain provisions that compromise the independence of the ICT. The fact that SPP is a Commission-approved RTO under Order No. 2000 does not mean there is no need to analyze this contract.

72. SeECA asserts that the relationship between the ICT Agreement and the Entergy OATT, *i.e.*, Attachments S, T, U, and V, is not clear because the Agreement contains no general reference to the Entergy OATT or specific references to those Attachments or the Protocols. The Commission should require that the ICT Agreement incorporate by reference the material provisions from these Attachments and the Protocols.[48]

73. SeECA says that certain aspects of the ICT Agreement could compromise the independence of the ICT. First, it contends that section 1.2 of the ICT Agreement permits Entergy to influence the ICT's key personnel.[49] SeECA argues that the draft ICT Agreement allows Entergy to influence the ICT's selection of and assignment of duties to key personnel. Therefore, it asks that section 1.2 and Attachment B to the draft ICT Agreement be rejected or, at a minimum, modified to ensure the ICT's independence regarding its key personnel. It also contends that the ICT Agreement enables Entergy to impose itself upon the ICT's decision-making with respect to the key personnel to carry out ICT duties and responsibilities, as well as the assignment of such employees to particular functions, by requiring Entergy's agreement to these decisions.

---

[48] SeECA at 4-5. For instance, SeECA states that the preamble of the Agreement should state that Entergy and the ICT are entering into the contract in accordance with Attachments S, T, U, and V of Entergy's OATT. Moreover, it asserts that Attachment A of the Agreement, which identifies the services to be performed by the ICT, should be defined by reference to the appropriate provisions in Attachments S, T, U, and V.

[49] Section 1.2 of the draft ICT Agreement provides, "Contractor will assign to the performance of the Services the key personnel referred to in Attachment B (To be developed with Contractor.) (the Key Personnel)."

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

74. SeECA argues that the Agreement allows Entergy to exercise significant control over the ICT's budget by requiring Entergy to approve the budget and agree on the costs recoverable under the ICT Agreement. Further, the ICT Agreement does not safeguard against the ICT's compensation being affected by its treatment of Entergy as compared to other market participants. The ICT should have to provide Entergy and all other interested stakeholders an opportunity to comment on a proposed annual budget at the same time and in an open stakeholder forum. After that open stakeholder process, the Commission should review and approve the ICT budget.

75. SeECA also states that the contract limits the ICT's ability to obtain Entergy's data in that Entergy must agree upon the reasonably necessary data and the format and manner in which it is provided. It claims that the ICT's lack of free access to Entergy's data is unlikely to improve the transparency of information on Entergy's transmission system. SeECA argues that unless the ICT has access to all information that it deems necessary and appropriate for its duties under Entergy's OATT, stakeholders cannot be confident that the ICT's decisions are adequately informed, much less independent and impartial. In addition, the ICT's limited access to data will undercut the quality and utility of the ICT's reports and "taint any Commission, state regulator, market participant, or investor decisions that may be based on such reports."[50] It contends that the ICT contract must grant the ICT the explicit right to obtain all Entergy data within the scope of its oversight responsibilities at any time and without notice. SeECA also requests that the ICT have authority to audit Entergy's books and records and that the ICT retain an independent auditor to review its own books and records on a regular basis.

76. SeECA and the TDU Intervenors request that the Commission reject section 4.4 of the ICT Agreement, the "regulatory out" provision, which states that if "a regulatory or legislative authority places additional conditions on Entergy, or interprets existing conditions in a manner that causes this Agreement, in Entergy's sole judgment, to be no longer viable for Entergy," Entergy may seek to negotiate amendments to the Agreement with the ICT. If these negotiations do not rectify the perceived problem, either Entergy or the ICT may terminate the contract. SeECA argues that this provision gives Entergy unilateral discretion to terminate the agreement.

77. Further, the TDU Intervenors state that section 4.4 of the ICT Agreement provides a disincentive for the ICT to file reports to regulators highlighting serious problems because of Entergy's unilateral right to terminate the arrangement if a regulatory action renders it no longer viable. The TDU Intervenors argue that too many provisions in the

---

[50] SeECA at 14.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

tariff filing are designed to preserve Entergy's control over transmission service and market obligations. They ask that the Commission require Commission approval for any termination of the ICT Agreement.

78. In addition, SeECA requests that Entergy clarify the provisions governing renewal of the ICT contract. It states that a plain reading indicates that Entergy would be required to take affirmative action to renew the contract.[51] According to SeECA, this gives the ICT an incentive to side with Entergy on close calls, knowing that Entergy has exclusive authority over renewal of the ICT's contract. SeECA suggests that the Agreement be modified to require Entergy to submit a filing with the Commission six to eight months before the expiration date of the ICT Agreement, expressly stating whether or not it seeks Agreement renewal and explaining its position. At the same time, the ICT should be required to submit a filing recommending whether the ICT arrangement should be renewed and to support its recommendation. Additionally, SeECA states that if the ICT finds that the arrangement should continue, the ICT's filing should include a "self-evaluation" that justifies SPP's continuation as the ICT. Finally, SeECA states that the Agreement should replace the phrase "term of years" with a specific renewal term.

79. According to SeECA, the ICT Agreement unreasonably limits the ICT's ability to engage contractors and consultants. It asserts that as long as the ICT has taken all reasonable and necessary steps to ensure the confidentiality of Entergy's data and the protection of Entergy's intellectual property rights, and that no affiliation with market participants exists, there should be no limitation on the ICT's use of contractors and consultants.

80. Finally, as a part of the ICT's annual reporting requirements, SeECA states that the ICT should be required to submit a self-evaluation, which should show the ICT's progress in carrying out each of its functions, including a clear statement of each function, processes established and steps taken to carry out those functions and difficulties or setbacks experienced during the reporting period, and next steps for the following year. The self-evaluation should be available to all market participants and government agencies.

---

[51] Section 4.1 of the draft ICT Agreement states that "[a]fter the conclusion of the Initial Term, the Term shall be extended if Entergy petitions and receives approval from the FERC, and any necessary approvals from the Retail Regulators, to continue this Agreement with Contractor for an additional term of years…."

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

81. New Orleans also states that it is concerned about the ICT's independence if SPP is the ICT because SPP may place a higher priority on transmission upgrades in the western portion of Entergy's system than on upgrades in the eastern portion. New Orleans also states that the duties of the ICT could result in a jurisdictional shift between retail regulators and the Commission notwithstanding the Commission's assurances in the Declaratory Order that a jurisdictional shift would not occur. It requests the same assurances even if SPP is not the ICT.

c. Entergy Answer

82. Entergy states that it has fully complied with the Commission's directives regarding the ICT Agreement because it filed a draft agreement and will submit a final ICT Agreement once the ICT proposal has been approved. Further, Entergy submits that the ICT Agreement is substantially complete and that the protesters have not identified any areas that lack detail and specificity.

83. In response to SeECA's concern that the draft ICT Agreement does not incorporate Attachment S to Entergy's OATT, Entergy states that Attachment A to the draft ICT Agreement lists those functions to be performed by the ICT and states specifically that they include the functions to be performed "further described and defined in Attachment S of Entergy's [OATT]."[52]

84. In regard to SeECA's concern about Entergy consulting with the ICT on the ICT's key personnel, Entergy states that this will not compromise the ICT's independence because Entergy cannot veto the ICT's personnel decisions. Further, Entergy states that only one person has been identified as key personnel, Bruce Rew. Mr. Rew has already been identified and listed in Attachment B.

85. Entergy disagrees with SeECA's position that Entergy has retained budget-setting authority for itself. The draft ICT Agreement provides for Entergy and the ICT to collaborate on budget matters, which is appropriate given the concerns regarding the costs of the ICT.[53] Further, if disputes arise over the ICT budget or funding, either party may request that the Commission resolve the conflict.[54]

---

[52] Entergy Answer at 7, citing ICT Agreement at 22.

[53] *Id.*, citing Louisiana PSC at 9-14, New Orleans at 2-3.

[54] *Id.* at 7-8, citing Entergy OATT, Attachment S § 9.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

86. Entergy also says that SeECA's objection to the data provisions in the draft ICT Agreement are without merit because Addendum A to Attachment S provides a detailed list of information that is designed to meet the "reasonably necessary" standard in section 8.2 of the draft ICT Agreement and if a dispute arises as to data not included on this list, section 6.1(c) of Attachment S gives the Commission the authority to resolve it.

87. Entergy states that the provision in the draft ICT Agreement permitting Entergy to audit certain ICT books and records is necessary because the Agreement contemplates the ICT flowing through to Entergy its actual cost of service. Entergy disputes the propriety of SeECA's request to have the ICT audit Entergy's books and records because it is unnecessary since the ICT is given access to all necessary data already. Further, Entergy states that a third party audit of the ICT's books and records is also unnecessary because Entergy already audits the ICT's books and records and having the ICT audited by another independent entity is duplicative.

88. Entergy asserts that the draft ICT Agreement's termination rights provision does not give Entergy the power to influence the ICT's behavior. It argues that section 4.4 does not undermine the ICT's independence because the termination right cannot be exercised in response to the actions of the ICT, but only in response to actions of the Commission or Entergy's retail regulators. Additionally, Entergy states that SeECA's assertion that Entergy should not have authority to determine whether to continue the ICT arrangement beyond the sunset provision is inconsistent with the Guidance Order because that order provides that the ICT proposal will terminate after the initial term unless Entergy submits a renewed proposal under section 205.

89. Entergy states that the draft ICT Agreement provides that the ICT shall not use any contractor that is not "independent" of market participants in the Entergy area and specifically identifies the consulting firm of Boston Pacific as one such non-independent party. Entergy argues that SeECA's request that a contractor be excluded only if it has an "affiliation" with a market participant is a potentially weaker standard than the "independence" standard under the draft ICT Agreement (a party may not be an affiliate of a market participant but nonetheless may not be "independent"). Entergy states that Boston Pacific testifies on behalf of market participants in Entergy's area and also currently serves as SPP's market monitor. Moreover, Entergy states that no party, including SPP, has claimed that Boston Pacific can meet either standard.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

90. Finally, Entergy states that SeECA's request that the ICT's annual reports include self-evaluations is unnecessary because Attachment S to Entergy's OATT requires the ICT to make quarterly reports on the matters within its duties, including recommendations of the ICT for improvement of its functions.[55]

d. Commission Determination

i. Specificity of the ICT Agreement

91. The Commission approves the draft ICT Agreement with modifications, as discussed below. Several parties protest the draft ICT Agreement, saying that it is not specific enough to allow for meaningful comment. Further, they assert that since it is unexecuted, the final agreement could contain provisions that compromise the independence of the ICT. Finally, Occidental states that the fact that SPP is a Commission-approved RTO under Order No. 2000 does not mean that the Commission does not need to analyze the contract.

92. The Commission rejects arguments that the draft ICT Agreement is too vague at this stage. First, Entergy's filing of an unexecuted ICT Agreement is not inconsistent with the Commission's directives in the Clarification Order. In that order the Commission stated that "Entergy must file to install an independent entity with the ICT functions (*including the applicable contracts*) within 60 days after a Commission order approving the section 205 filing."[56] Further, the Commission acknowledged that SPP's status as a Commission-approved RTO does not vitiate the need to analyze the contract at every level – both in Entergy's section 205 filing and when the executed contract is filed. In the Clarification Order, the Commission stated that:

> [I]f SPP is selected as the ICT, SPP's independence from Entergy should be further examined at the time Entergy files its section 205 filing. The *ICT Order* made clear that "once Entergy contracts with the ICT, that contract will be subject to Commission review and approval."[57] We realize that, although SPP is an independent entity in its performance of its duties in the SPP market, the contract between it and Entergy must provide for the performance of ICT functions in an

---

[55] Entergy Answer at 11, citing Entergy OATT, Attachment S § 7.

[56] Clarification Order at 23 (emphasis added).

[57] Guidance Order at P 74.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

> independent manner. This issue will be looked at more closely in the section 205 filing and when Entergy files the contract with the ICT. At that time, any party may comment on those filings.[[58]]

93. The Commission will, consistent with the Clarification Order, examine the executed ICT Agreement when Entergy files it. At that time, any party having concerns about the executed ICT Agreement may file comments.

94. SeECA asserts that the draft ICT Agreement does not contain a general reference to Entergy's OATT or specific references to Attachments S, T, U, V or the Protocols. It asks that the Commission require the ICT Agreement to incorporate by reference the material provisions from Attachment S and the Protocols as well as Attachments T, U, and V. Entergy has satisfied this request in Section 1.1 of the draft ICT Agreement, which provides that the "Contractor [ICT] shall perform the services described in Attachment A."[[59]] Attachment A to the draft ICT Agreement provides as follows:

> Pursuant to Section 1.1 of the Agreement, Entergy and Contractor hereby agree that the Contractor will perform the following Services, such Services being further described and defined in *Attachment S of Entergy's Open Access Transmission Tariff* ("OATT"):
>
> - Acting as Reliability Coordinator for Entergy's transmission system
> - Calculating AFC and granting and denying requests for transmission service under Entergy's OATT
> - Granting and denying requests for interconnection service under Entergy's Large Generator Interconnection Procedures ("LGIP") and Large Generator Interconnection Agreement ("LGIA")
> - Operating Entergy's Open Access Same Time Information System ("OASIS")
> - Performing a regional planning function
> - Implementing Entergy's transmission expansion pricing proposal, including preparation of the Base Plan
> - Overseeing the planning and operation of Entergy's transmission, as well as Entergy's Weekly Procurement Process ("Weekly Procurement Process")

---

[58] Clarification Order at P 18.

[59] ICT Agreement § 1.1 (emphasis in original).

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

- Filing such reports as may be required by this Agreement, Attachment S of Entergy's OATT or as otherwise required by the FERC or Entergy's Retail Regulators[[60]]

95. Therefore, SeECA's statement that the draft ICT Agreement does not refer to Entergy's OATT or Attachment S is unfounded. Further, in stating that the ICT must perform the services described in Attachment S, Entergy has made clear that the ICT must follow Attachments T, U, V and the Protocols. Section 3.1 of Attachment S clarifies that the functions to be performed by the ICT are pursuant to the Protocols and Attachment T.[61] Both the draft ICT Agreement and Attachment S represent that the ICT shall oversee and design the operation of the Weekly Procurement Process.[62] Although this provision does not specifically incorporate Attachment V, which contains the Weekly Procurement Process, we find that this satisfies SeECA's concerns.

ii. Term of the ICT Agreement

96. Although the Commission preliminarily limited the term of the ICT to two years in its Guidance Order, after considering Entergy's application, the Commission now believes it is appropriate to extend the initial term of the ICT Agreement to four years. As discussed more fully below, Entergy has stated that it recognizes that there is a theoretical basis for compensating a customer directly funding Supplemental Upgrades for short-term uses of those upgrades, but could not provide for such compensation because the Guidance Order required that the ICT proposal would only be effective for two years. Entergy stated that the necessary revisions to provide short term compensation would take significant time and would require complex and costly modifications to the AFC software that would not be worth the effort for a two-year period.[63] In recognizing Entergy's concerns and their representation of the substantial benefits associated with the Weekly Procurement Process (which is part of the ICT package) intended to be realized by market participants and Entergy's native load customers, we will extend the initial term of the ICT from two years to four years, at

---

[60] ICT Agreement, Attachment A (emphasis added).

[61] Attachment S § 3.1(a) states that the ICT shall perform its functions pursuant to the protocols. Attachment S § 3.1(a)(4) states that "the ICT shall implement Attachment T."

[62] ICT Agreement, Attachment A; Attachment S § 3.2.

[63] *See* Entergy Answer at 42; *see infra* P 193- 194.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

which time the ICT Agreement will sunset, unless Entergy makes a section 205 filing to continue the ICT. Thus, our approval of Entergy's ICT proposal is conditioned on Entergy committing not to file to seek a termination date for the ICT Agreement that is within the first four years of ICT operation. However, as discussed more fully below, we direct that the ICT Agreement will automatically terminate at the end of four years unless Entergy files, and the Commission approves, an extension of the ICT beyond that four year period. Entergy is required to revise its tariff sheets and the ICT Agreement to reflect this modification within 60 days from the date of this order.

97. SeECA and TDU Intervenors request rejection of section 4.4 of the draft ICT Agreement, which relates to termination of the ICT Agreement. Section 4.4 states:

> If a regulatory or legislative authority places additional conditions on Entergy, or interprets existing conditions in a manner that causes this Agreement, in Entergy's sole judgment, to be no longer viable for Entergy, then Entergy shall notify Contractor of such determination and the Parties shall negotiate in good faith to amend this Agreement so as to reestablish the viability of this Agreement for Entergy; however, if the Parties are unable, after using commercially reasonable efforts, to agree on such amendments within forty-five (45) days of Entergy delivering notice of such non-viability to Contractor, either Party may terminate this Agreement upon written notice effective immediately.

98. The parties ask that Commission approval be required before termination of a Commission-approved ICT Agreement. We agree with the concern that this will give the ICT an incentive to not bring concerns to the Commission's or Entergy's retail regulators' attention out of fear that Entergy will terminate a Commission-approved ICT Agreement. Therefore, as stated above, we provide that approval of Entergy's ICT proposal is conditioned upon Entergy not filing to terminate the ICT Agreement within the four-year initial term. At the end of the four-year period, if Entergy requests that the ICT proposal be renewed, the Commission may at that time revisit an appropriate termination provision going forward.

99. In addition, the Commission stated that it was willing to approve Entergy's pricing proposal contingent on the ICT having certain responsibilities during the initial contract term.[64] Therefore, if Entergy terminates the ICT Agreement, the basis for the Commission's approval of Entergy's pricing proposal for any prospective transmission upgrades will no longer exist.

---

[64] *Id.* at P 65.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

100. Further, section 4.4 of the draft ICT Agreement requires Entergy to negotiate with the ICT on any necessary modifications and allows either party to terminate the ICT Agreement if, after 45 days, they are unable to agree on necessary amendments. The Commission notes that any modifications to a Commission-approved ICT Agreement will need to be filed with and approved by the Commission. Other parties would be allowed to comment on such modifications. Therefore, Entergy cannot use the regulatory out provision as a vehicle to change, or terminate for any reason, the Commission-approved ICT Agreement without express Commission approval at that time.

101. The Commission rejects protests with regard to renewal of the ICT Agreement. In the Guidance Order, the Commission provided that:

> [I]f the Commission approves the 205 filing, the ICT as well as Entergy's proposed transmission pricing will sunset after two years of Commission approval of the 205 filing. In other words, Entergy must re-apply under section 205 to continue the ICT (including Entergy's proposed transmission pricing) 60 days before the two year period expires.[[65]]

Section 4.1 of the draft ICT Agreement states that:

> The Agreement shall remain in effect for an initial term of two years (the "Initial Term"). After the conclusion of the Initial Term, the Term shall be extended if Entergy petitions and receives approval from the FERC, and any necessary approvals from the Retail Regulators, to continue this Agreement with Contractor for an additional term of years ("Subsequent Term"), provided, however, that neither Party shall be obligated to continue this Agreement for any Subsequent Term if the regulatory approvals for such Subsequent Term contain conditions that are materially adverse to either Party.

102. SeECA requests that the Commission require Entergy to submit a filing with the Commission before the expiration date of the ICT Agreement, stating whether or not Entergy seeks renewal and explaining its position. SeECA also requests that the ICT should be required to submit a filing recommending whether the ICT arrangement for the Entergy system should be renewed and include support for its recommendation. In the Guidance Order, we stated that we require Entergy to make a section 205 filing renewing its proposal within 60 days before the termination date of the transmission pricing proposal if it intends to continue its ICT proposal after the initial term. It is this filing that will give the Commission, Entergy's retail regulators, and market participants notice

---

[65] *Id.* P 80.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

of Entergy's intent to continue its ICT package and pricing proposals. The Commission notes, however, that if Entergy does not wish to continue the ICT past the four-year period, its pricing proposal must terminate also as it would apply to prospective transmission upgrades. Therefore, if Entergy wishes to continue with an ICT package beyond the initial four-year period (and retain its proposed transmission pricing), then it must file a tariff, to be effective the date the initial term terminates, replacing its proposed pricing proposal. Further, we do not find that the ICT should be required to submit a filing at that time.

103. We generally agree with SeECA's request that the ICT submit self-evaluations. The Guidance Order stated that the ICT is directed to give the Commission a status report one year after it commences work as the ICT, and a final report ten months later. The type of information that SeECA asks for in a self-evaluation will be provided by the ICT to the Commission under its reporting requirements. Moreover, as discussed further below, the Commission has set out specific metrics by which it will evaluate the ICT and Weekly Procurement Process. Therefore, the Commission believes that these reporting requirements along with the metrics should be sufficient to meet SeECA's request.

iii. Budget

104. We agree with SeECA concerning collaboration between Entergy and the ICT on the matters involving the ICT's budget. Section 3.2 of the draft ICT Agreement provides as follows:

> Contractor [the ICT] will prepare a draft annual capital and expense budget by July 1 of each calendar year, for the following calendar year for review and approval by Entergy. Entergy and Contractor will, at the retail regulator's or FERC's option, conduct a joint meeting with the retail regulators, with jurisdiction over the Entergy Operating Companies, and/or FERC to review and discuss the proposed budget. Entergy and Contractor will endeavor to reach agreement on the required capital and expense budget requirements for the following Contract Year by September 30. In the event the Parties are not able to reach agreement, Contractor may include the areas of disagreement in its periodic reports to FERC and the Retail Regulators, and the budget will [be] based on Contractor's actual costs for the preceding Contract Year. For the first Contract Year, Contractor's total budget for all capital and operations and maintenance expenditures shall be [need to negotiate a number].

105. The Commission finds that this provision may allow Entergy to exercise significant control over the ICT's budget and does not sufficiently safeguard against the ICT's compensation being affected by its treatment of Entergy. We recognize that no entity will perform the ICT functions if the compensation is not adequate. However, we

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

find that the provision allowing the ICT to provide the details of the disagreement in its reports to the Commission if it and Entergy cannot agree on a budget does not go far enough. Further, we also think that the provision in section 3.2 of the draft ICT Agreement providing that Entergy and the ICT will meet with the Commission and retail regulators "at the retail regulator's or FERC's option" does not adequately safeguard undue influence being asserted over the ICT in the budget process. Entergy's being allowed to veto the ICT budget would place the ICT's independence in question. Therefore, we require Entergy to initially negotiate with SPP what the cost arrangement will be for ICT services (*e.g.*, a fixed amount, a formula) and file it in its executed ICT Agreement. We also require Entergy to revise the ICT Agreement to say that if there are disputes between it and the ICT that cannot be resolved, then within 15 days, Entergy will file with the Commission asking us to resolve the dispute. However, the Commission does not believe that it is necessary to provide for a full stakeholder review of the ICT's budget. This could create additional costs and delays.

iv. <u>Data</u>

106. The Commission is concerned about Entergy's data access provisions. First, we agree with SeECA's assertion that the contract limits the ICT's access to Entergy's data. Section 8.2 of the draft ICT Agreement provides that

> Entergy shall supply to Contractor, both initially and throughout the Term, all Data that Contractor deems reasonably necessary to perform the functions required to be performed under this Agreement. The Parties shall agree upon the reasonably necessary data and the format and manner in which it shall be provided prior to the Effective Date.

107. SeECA contends that the fact that Entergy and the ICT must agree on the reasonably necessary data will inhibit the ICT's free access to Entergy's data and will not improve transparency of transmission information on Entergy's system. Although Entergy has provided a non-exclusive list of data and reports that the ICT may request from Entergy in Addendum A to Attachment S and which Entergy must provide, we do not find this to be sufficient. In order for the ICT to perform its functions in an independent, transparent and reliable manner, it must have unfettered access to all information necessary to perform the functions it has undertaken under contract. Therefore, we will require Entergy to provide explicitly that the ICT will have full access to any data it requests in performing its functions in the executed ICT Agreement. Since the ICT will be independent of market participants, it will have no incentive to abuse this access to information. However, if Entergy believes that the ICT is making inappropriate use of this access to information, Entergy will be protected by its ability under the contract to bring the dispute to the Commission.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

108. We note that the interrelationship of these various provisions is not immediately obvious upon reading the draft ICT Agreement. Entergy is therefore required to reference section 6.1[66] and Addendum A of Attachment S in section 8.2 of the executed ICT Agreement.

109. The Commission is further concerned about the failure of Entergy's data retention system, which led to the loss of nine months of AFC data, as reported on October 31, 2005. Therefore, the Commission proposes that users of Entergy's transmission and data systems form a Users Group to assess how the Entergy transmission and data (IT) systems are performing, especially in terms of data access, quality and retention. The ICT and IT experts from Entergy will be required to meet quarterly with the Users Group so both Entergy and the ICT are made aware of any problems with these systems and have the opportunity to discuss proposed solutions with the Users. The ICT must provide the Commission and Entergy's retail regulators with the results of these meetings in its next scheduled report (to be discussed more fully below).

110. Further, the ICT and the Users Group should conduct annual reviews of error rates associated with Entergy data in accordance with the metrics discussed below,[67] including any relevant information. The ICT or the Users Group can then recommend changes to Entergy IT systems and IT resource allocations to this Commission and/or Entergy's state regulators, as appropriate. Any complaints made with the ICT associated with Entergy's data systems (including any resolution of such complaints) must be posted on OASIS within 24 hours. Entergy must notify the Commission, the ICT and the Users Group within 15 days if Entergy discovers that it has lost data, or reported inaccurate data, or otherwise believes that it has mismanaged data. The ICT must then post such information on Entergy's OASIS within 24 hours. For any data errors reported by Entergy, the ICT must advise the Commission and Entergy's retail regulators in its next scheduled report as to whether Entergy has remedied the problem, and if not, whether and when Entergy proposes to implement an appropriate remedy. The ICT must further inform Entergy's regulators as to whether it believes that Entergy's proposed remedy is adequate to remedy the data error that occurred and to avert any such data errors in the future.

---

[66] Section 6.1 of Attachment S gives the Commission authority to resolve any disputes over what data Entergy must provide to the ICT.

[67] *See, infra* P 304.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

111. We believe that the User's Group would be a good way to address concerns raised by Entergy's transmission customers that they lack sufficient feedback from Entergy after they have been denied transmission service. However, we also recognize that certain data necessary to respond to these customers may be commercially sensitive. Therefore, we invite the Users Group to propose to the Commission an appropriate means by which they could be given access to inputs into the processes and models under the direction of the ICT.

112. SeECA further requests that the Commission give the ICT authority to audit Entergy's books and records and that the ICT's books and records be reviewed by an independent auditor. This is unnecessary, expensive, and would be an inappropriate delegation of the Commission's authority to audit Entergy's books and records. As explained above, if there is a dispute about the ICT's budget, either Entergy or the ICT may request that the Commission resolve it. Further, the Commission, or Entergy's retail regulators, may request to meet with Entergy and the ICT if a concern arises.

v. **Miscellaneous**

113. SeECA also asserts that section 1.2 of the draft ICT Agreement permits Entergy to influence the ICT's key personnel. Section 1.2 provides that "Contractor [ICT] will assign to the performance of the Services the key personnel referred to in Attachment B **(to be developed with Contractor.)**"[68] Attachment B does not yet contain any names of key personnel. In its answer, Entergy states that Entergy cannot veto the ICT's decisions on key matters and that only one person will be identified in Attachment B, Bruce Rew.[69] Even though Entergy has identified that only one person in Attachment B at this time, the Commission notes that there is no preclusion from other personnel being identified in the ICT Agreement as key personnel.

114. It is not clear from the draft ICT Agreement language that Entergy will not have influence over the ICT's decision regarding key personnel. Section 1.2 merely states that the ICT will assign performance to certain key personnel. Further, Entergy has stated that this list is to be developed *with* the ICT, rather than *by* the ICT. The Commission

---

[68] Emphasis in original.

[69] Mr. Rew has been an SPP employee since 1990 and is currently the Director of Engineering for the SPP RTO. His responsibilities include engineering functions related to transmission reliability, planning, and expansion. They also include power flow analysis and model development, stability analysis, available transfer capability calculations, and reliability criteria compliance.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

understands that there may be need for clarity as to which ICT personnel to contact regarding services rendered under the ICT Agreement. However, to protect the ICT's independence, we require Entergy to modify its executed ICT Agreement to make clear that it will not have unilateral veto authority over the ICT's decisions on this matter.

115. In another matter related to the ICT, we are concerned about Entergy's decision to exclude the Boston Pacific consulting firm from performing services under the ICT Agreement. Section 12.4 of the draft ICT Agreement provides that:

> Unless authorized in writing by Entergy, the Contractor shall not use any agent or contractor that is not independent of Entergy to perform any services under this Agreement and shall not disclose any information obtained pursuant to this Agreement to such agent or contractor. For purposes of this Agreement, the consulting firm of Boston Pacific shall not be deemed to be independent of Entergy and therefore shall not perform any such services or receive any such information.

Entergy has failed to justify the express exclusion of Boston Pacific as not independent of Entergy. Boston Pacific being the independent market monitor for the SPP RTO does not necessarily have an impact on its independence from either Entergy or the ICT. In fact, as the SPP RTO's independent market monitor, it is required to be independent of SPP. The Commission is unwilling to approve this aspect of section 12.4 of the draft ICT Agreement at this time. Therefore, we will require Entergy when it files its executed ICT Agreement to more fully support its exclusion of Boston Pacific. In order to approve the proposed exclusion of Boston Pacific, Entergy will need to specifically address what conflicts of interest it has with Boston Pacific.

116. New Orleans' concern that the duties of the ICT could result in a jurisdictional shift between retail regulators and the Commission has been previously addressed by the Commission.[70] Since Entergy's filing indicated that it will select SPP as the ICT, there is no need for us to further clarify this issue. In the Guidance Order, we stated that SPP is already a public utility and we did not need to address whether SPP's performance of the ICT functions would provide an independent basis for deeming it to be a public utility.[71] We also noted that the *pro forma* OATT defines Transmission Provider as a "public utility (or its Designated Agent) that owns, controls, or operates facilities used for the transmission of electric energy in interstate commerce and provides transmission service

---

[70] *See Id.* at P 38; Clarification Order at P 19-20.

[71] Guidance Order at P 37.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

under the tariff."[72] Based on the authority Entergy has proposed to grant the ICT, Entergy would not be transferring operational control over its transmission facilities to the ICT. Similarly, service over the Entergy transmission system will continue to be taken under Entergy's OATT, not an OATT filed by the ICT. While Entergy is transferring certain functions to the ICT, Entergy will continue to be the Transmission Provider under its OATT. The presence of SPP as the ICT will therefore not change the existing balance of jurisdiction between this Commission and Entergy's retail regulators.

4. Dispute Resolution

a. Entergy Proposal

117. In general, Attachment S provides that disputes about the implementation of or compliance with that attachment may be resolved under the dispute resolution procedures of section 12 of the OATT, subject to the mutual agreement of the parties to the dispute.[73] However, Entergy has posed several specific dispute resolution processes as well.

118. Section 4.3 of Attachment S is the main dispute resolution provision. It provides that, if the ICT believes that certain Required Information submitted by Entergy does not meet tariff requirements, reliability criteria, other applicable standards, or is otherwise inconsistent with Entergy's obligation to provide transmission and interconnection service on a nondiscriminatory basis, the ICT and Entergy should meet to try to resolve the matter. Section 4.3 further provides that if the matter cannot be resolved informally, Entergy's position shall control pending resolution of the dispute, unless the Transmission Service, Transmission Planning, and Interconnection Service Protocols provide otherwise.[74] Attachment S also provides a method for resolving disputes that cannot be resolved informally, which consists of several steps to be taken by the ICT including posting a notice of the disagreement on Entergy's OASIS site, discussing the issue with Market Participants at the next stakeholder meeting, and informing interested government agencies, including the Commission, of the existence of the dispute and recommending any appropriate action to resolve the dispute.

---

[72] *Id.* at P 38.

[73] Attachment S § 10(b).

[74] *Id.* § 4.3(a).

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

119. One area in which the ICT's position controls during dispute resolution is during the AFC process.[75] As stated above, the ICT will have authority to direct Entergy to modify the AFC software, Base Case Models or data inputs to ensure that the AFC values are calculated in a manner consistent with the AFC criteria posted on OASIS. If the ICT and Entergy cannot agree on a modification to the AFC Software, Base Case Models or data inputs proposed by the ICT, the ICT's position shall control and shall be used to evaluate transmission service requests pending resolution of any such disagreement.

120. Regarding disputes over access to data or information, section 6.1(c) of Attachment S states that either Entergy or the ICT may request that the Commission resolve that dispute. Further, section 6.2.2 states that the ICT and the party from whom the information has been requested may submit, by mutual agreement, any dispute for resolution under the dispute resolution provisions of section 12 of the OATT. If the party from whom the data or other information has been requested does not agree to use of the dispute resolution provisions of section 12 of the OATT, or has not contested the request with the Commission, the ICT will report such dispute to the interested government agencies.

121. If Entergy and the ICT are not able to agree on the ICT budget, section 3 of the draft ICT Agreement states that the budget will be based on SPP's actual costs for the preceding Contract Year.

122. Section 9 of Attachment S states that the ICT and Entergy shall reach agreement on budgeting and funding designed to ensure, among other things, that the ICT has sufficient funding to discharge its responsibilities and obligations as ICT and that the terms of payment of the ICT do not result in inappropriate incentives to find in favor of one Market Participant, or Entergy, over another Market Participant. If disputes arise over the budgeting or funding of the ICT, either party may request that the Commission resolve them.

123. With regard to System Impact Studies and Facilities Studies, if Entergy and the ICT do not agree, Entergy proposes that the ICT will modify the draft System Impact Study or Facilities Study to identify the areas of disagreement and will provide the modified report to the transmission customer by posting on OASIS.[76] Similarly, the Interconnection Service Protocol states that if there is a dispute between Entergy and the ICT that cannot be resolved regarding the Feasibility Study or the Interconnection System

---

[75] Transmission Service Protocol, § 8.3.

[76] *Id.* §§ 7.1.4, 7.2.3.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

Impact Study, the ICT will modify the draft Feasibility Study report to identify the areas of disagreement and will provide this Feasibility Study report to the Interconnection Customer. If the Transmission Provider, the ICT and the Interconnection Customer ultimately cannot agree on the final Interconnection Feasibility Study report, section 13.5 of the Large Generator Interconnection Procedures (LGIP) will apply.

124. Finally, if the ICT and Entergy cannot agree, if the interconnection customer does not accept the final Interconnection Facilities Study, or if Entergy and the Interconnection Customer cannot agree on the terms and conditions of the Large Generator Interconnection Agreement (LGIA), the parties may attempt to resolve the dispute under section 13.5 of the LGIP or the interconnection customer may request that Entergy file an unexecuted LGIA with the Commission in accordance with section 11.3 of the LGIP.

125. With regard to disputes concerning the Weekly Procurement Process, Entergy's filing states that if the ICT disagrees with any aspect of the Weekly Procurement Process modeling, it shall develop a proposal to remedy that aspect of the modeling and advise Weekly Operations of its finding. If the ICT and Weekly Operations do not agree on a remedy proposed by the ICT, then the procedures of Attachment S of the OATT shall apply to that dispute.

b. <u>Comments</u>

126. Calpine argues that, under section 4.3 of Attachment S, if Entergy disagrees with the ICT's recommendations, (for example, with Entergy's data input methodology), the burden is on the ICT to invoke the dispute resolution procedures in Attachment S. Calpine points out that, if those procedures fail to produce a resolution, "the ICT shall inform Interested Government Agencies of the existence of the dispute and recommend any appropriate action to resolve the dispute."[77] For however long such a dispute remains unresolved, Entergy would continue to use whatever methodology it wishes, including data inputs for the Base Plan that would necessarily reflect Entergy's interests.[78] Further, the TDU Intervenors state that the dispute resolution procedures of

[77] Attachment S, § 4.3(b) (iii).

[78] According to Calpine, under Entergy's Planning Protocol, the ICT may review and validate the data inputs provided by Entergy, but it has no authority to change the data inputs. During the June 30, 2005 ICT technical conference, however, Entergy stated that the ICT does have the authority to make changes pending dispute resolution (Calpine at 21-22). Given the importance of this issue, Calpine claims that Entergy should clearly specify in its Transmission Planning Protocol that the ICT does have this authority, if that indeed is Entergy's intent.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

section 4.3 of Attachment S conflict with what Entergy said at the June 30 technical conference. They assert that at the technical conference, Entergy representatives and the SPP representative stated that the decisions of the ICT would control pending resolution of a dispute. Calpine, the TDU Intervenors and the Generator Coalition request that the Commission require Entergy to allow the ICT's decisions to control pending dispute resolution.

c. Entergy Answer

127. Entergy asserts that its approach is consistent with RTO practices. Entergy contends that only in disputes with a long lead time will Entergy's position control pending resolution, and that in these circumstances, there is adequate time to use normal dispute resolution procedures. Further, Entergy maintains that the intervenors' main concern appears to be disputes about the AFC process, and that for those disputes, the ICT's position will control during the dispute resolution process.

d. Commission Determination

128. The Commission accepts Entergy's proposal to generally provide for dispute resolution in accordance with section 12 of the OATT. With respect to dispute resolution under section 4.3 of Attachment S, the tariff language is not clear as to whether the procedures under section 4.3(b) are to be performed simultaneously or sequentially. The Commission interprets Entergy's inclusion of "on an expeditious basis" to mean that each individual subsection under section 4.3(b) will be performed as soon as possible and not in sequence. In other words, the Commission expects that the ICT will inform this Commission and any relevant retail regulator of the dispute as soon as practicable, which in many cases will be before the ICT discusses the issue at a stakeholder meeting. The ICT may inform the Commission when it expects to discuss the issue with market participants. We direct Entergy to file tariff sheets clarifying this process within 60 days of the date of this order. Further, section 4.3(c) states that with regard to disputes over a specific request for interconnection service, if the matter cannot be resolved informally, either the customer or Entergy may request that the Commission resolve the dispute. We conclude that the ICT must be able to bring such disputes to the attention of the Commission and thus we require Entergy to modify section 4.3(c) accordingly.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

129. Separate from the issue of whether the Required Information[79] meets tariff requirements, section 4.3 of Attachment S also provides that the ICT is to resolve disputes as to whether this information is "inconsistent with [Entergy's] obligation to provide transmission and interconnection service on a non-discriminatory basis."[80] Therefore, if the ICT believes that Required Information submitted to it by Entergy is inconsistent with Entergy's obligations, regardless of whether it satisfies tariff requirements, the ICT is required to attempt to resolve the dispute. Finally, under section 4.3(d), a market participant may request that the Commission resolve the dispute if it falls under the Commission's jurisdiction.

130. We find that the procedures in section 4.3 of Attachment S, as modified, as well as the requirement that the criteria used in granting or denying transmission service be approved by the Commission, are a sufficient safeguard against Entergy's influence over the ICT in granting and denying transmission service. Thus, the requirements we impose should address the concerns expressed by Calpine, TDU Intervenors, and the Generator Coalition.

131. Section 4 of Attachment S further provides that, unless otherwise stated in the Transmission Service, Transmission Planning, or Interconnection Service Protocols, Entergy's position will prevail pending dispute resolution. With regard to evaluating short-term transmission service under the AFC process, Entergy's filing proposes that the ICT's position will prevail pending dispute resolution. However, with respect to other matters, Entergy's position will prevail. Entergy asserts that this is consistent with RTO practices.[81] The Commission has allowed the Midwest Independent Transmission

---

[79] Section 4.1(a) of Attachment S states that Required Information consists of data inputs, criteria, studies, or other information that the ICT will require from Entergy in order to perform the functions of the ICT.

[80] Attachment S § 4.3(a).

[81] Entergy at 16, citing, *e.g.*, Agreement of Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc., Midwest ISO, FERC Electric Tariff, First Revised Rate Schedule No. 1, Article Three, Section I.A., Original Sheet No. 60 ("Pending resolution of such disputes, the Owners' [reliability and operating] criteria shall be used by the Midwest ISO until the issue is resolved."), Appendix B, Original Sheet No. 107 ("Until such a dispute is resolved, the Owner's [planning] criteria shall govern."); Appendix B, Original Sheet No. 109 ("the Midwest ISO shall use the [equipment] ratings provided by the Owner unless and until such ratings are changed through the Dispute Resolution process") (MISO Agreement).

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

System Operator, Inc. (Midwest ISO) to provide that the transmission owner's planning criteria govern until a dispute is resolved.[82] However, the ICT is not an RTO and the situation is not quite analogous because, while the ICT provides many of the oversight benefits of an RTO, the ICT does not assume operational control. We agree with Calpine, TDU Intervenors and Generator Coalition that it is reasonable to require the ICT's position controls pending resolution of all disputes under section 4. Because operational control is not being turned over, allowing Entergy's position to prevail pending dispute resolution essentially undermines the ICT's authority. Further, Entergy's proposal that its position control pending dispute resolution is inconsistent with its position concerning AFC disputes. "Required Information" are the data and input requirements supporting the three protocols which detail the critical and core functions that the ICT will perform. Entergy has provided that the ICT's position controls in disputes on those data concerns, but Entergy is not giving the ICT the position of control on matters that fundamentally affect transmission service requests, transmission planning, and interconnection requests. Entergy has not provided a sufficient distinction warranting treating disputes regarding AFC data differently from other data disputes. Therefore, Entergy is directed to include in its compliance filing an amended Section 4 of the Attachment S with the provision that the ICT's position will control for the Planning Protocol pending dispute resolution.

132. Further, in regard to calculating AFC, in *WestConnect*,[83] the Commission stated:

> We preliminarily find that WestConnect [a proposed transmission system operator] will satisfy the requirements of this RTO function[[84]] because WestConnect will determine operating transfer capability, total transmission

---

[82] Agreement of Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc., Midwest ISO, FERC Electric Tariff, First Revised Rate Schedule No. 1, Appendix B, Original Sheet No. 107 ("Until such a dispute is resolved, the Owner's [planning] criteria shall govern.").

[83] *Arizona Public Service Company*, 101 FERC ¶ 61,033 (2002), *order on reh'g*, 101 FERC ¶ 61,350 (2003) (*WestConnect*).

[84] "This function" refers to the requirement that an RTO must be the single OASIS site administrator for all transmission facilities under its control, must independently calculate available transmission capacity and total transmission capability and must base the calculation of available transmission capability values on data developed partially or totally by the RTO. *See* Order No. 2000 at 31,145.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

> capability, and available transmission capability and, if a dispute arises, its determination will prevail pending resolution through the WestConnect ADR process or by this Commission.[[85]]

133. Entergy meets this standard. The Commission stated that the WestConnect proposal satisfied the requirements that an RTO independently calculate available transmission capacity and total transmission capability and base the calculation of available transmission capability values on data developed partially or totally by the RTO. It was silent as to whose position controls pending other disputes. Entergy's dispute resolution procedures are consistent with those approved in RTO applications. Additionally, the TDU Intervenors have not shown where Entergy's statement at the technical conference differs from the provisions in section 4.

134. The Commission finds that section 6.1 of Attachment S is incomplete. Section 6.1 provides that if a dispute arises over access to data or information, either the ICT or Entergy may request that the Commission resolve the dispute. However, it does not make clear whose position controls pending dispute. Entergy must clarify that the ICT's position controls in a dispute over access to data or information for evaluating short-term transmission service requests under the AFC process.

135. With regard to the dispute resolution provision involving budgeting, section 9 of Attachment S and section 3 of the draft ICT Agreement are inconsistent. The draft ICT Agreement states that, in the event of a dispute, the budget will be based on the ICT's actual costs for the preceding contract year, whereas the provision in Attachment S states that if a dispute arises, either party may request that the Commission resolve it. We believe that, taken together, these provisions reflect a fair dispute resolution measure. Therefore, Entergy must clarify that in the event of a budgeting or funding dispute, either party may request that the Commission resolve it, but that pending resolution, the ICT's funding will be based on actual costs for the preceding contract year.

B. Transmission Planning

1. Commission Directives in the Guidance and Clarification Orders

136. As stated above, the Commission's Guidance and Clarification Orders state that the Commission will accept, upon satisfaction of certain requirements, Entergy's transmission pricing proposal to establish two categories (Base Plan and Supplemental)

---

[85] *WestConnect* at P 179.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

of pricing for upgrades to its transmission system. First, Entergy would need to make a satisfactory section 205 filing detailing the enhanced functions the ICT would perform.[86] Second, Entergy had proposed that it would develop the Base Plan with oversight by the ICT; the Commission's Guidance Order said that the ICT must develop the Base Plan, including any inputs and numerical values.[87] Third, the Guidance and Clarification Orders required Entergy to propose and fully support a method for providing Firm Transmission Rights (FTRs) to customers paying for Supplemental Upgrades. The FTRs should protect customers from congestion costs and from curtailment (except in force majeure situations). The Commission's Clarification Order also directed Entergy to work with parties in the proceeding to develop well-defined and tradable rights.[88]

2. Entergy Proposal

137. Entergy's instant proposal includes a Planning Protocol. The Planning Protocol provides that the ICT will create the Base Case Model[89] for the Entergy transmission system. The Base Case Model will include all existing long-term, firm uses of Entergy's transmission system and will be developed with modeling procedures used in developing North American Electric Reliability Council (NERC) multi-regional and Southeastern Electric Reliability Council (SERC) regional models.[90] Entergy would provide the ICT with data inputs necessary for preparation of the Base Case Model. The ICT would

---

[86] ICT would grant or deny requests for transmission service, calculate AFC, administer Entergy's OASIS, and perform an enhanced planning function.

[87] Guidance Order at P 68.

[88] Clarification Order at P 15.

[89] Base Case Model is defined as the annual and seasonal power flow models representing Entergy's transmission system used for reliability assessments, transmission service request studies and economic studies.

[90] Planning Protocol § 5.1. In addition, the ICT will participate in the regional model development process for the SERC region.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

review and validate the data inputs to ensure their consistency with Planning Criteria.[91] Entergy would develop a Construction Plan that would contain all transmission upgrade projects on Entergy's transmission system necessary to satisfy the Planning Criteria. Entergy would then submit the Construction Plan to the ICT. The ICT would perform an independent reliability assessment of Entergy's transmission system and determine whether Entergy's Construction Plan complies with the Planning Criteria. The ICT would then provide Entergy with its conclusions, including any issues that Entergy needs to address. Entergy would then provide a finalized Construction Plan to the ICT for posting on Entergy's OASIS.

138. The ICT would lead an annual Transmission Planning Summit with stakeholders and regulators to review the ICT's independent reliability assessment and Entergy's Construction Plan. Stakeholders could submit comments and suggestions to the ICT which would be publicly available. The ICT and Entergy would review the stakeholder input, and Entergy would provide recommendations regarding the input and a revised Construction Plan, if necessary, that the ICT would post on OASIS.

139. The ICT would develop the Base Plan consistent with the Planning Criteria and could rely on the Construction Plan, input from the Transmission Planning Summit and the ICT's own reliability assessment. This Base Plan would be the basis for the ICT's allocation of costs between Base Plan Upgrades and Supplemental Upgrades. In addition, the ICT would be responsible for identifying opportunities for regional optimization of the Construction Plan with construction plans of individual SPP transmission owners. The ICT would also identify such opportunities to coordinate with other transmission owners that have seams agreements or joint planning processes with Entergy. It would review such optimization opportunities with Entergy, affected transmission owners and stakeholders.

140. If the Base Plan and the Construction Plan are inconsistent, the ICT and Entergy must inform Entergy's retail regulators and the Commission. Based on regulatory feedback, one or both of the plans may be further revised. If the Construction Plan

---

[91] Planning Protocol § 5.2. The term "Planning Criteria" is defined as those criteria, standards and procedures used in developing the Entergy Construction Plan and the ICT Base Plan as set forth in: (1) NERC reliability standards and SERC supplements to those standards; (2) Entergy's local reliability criteria that are provided to the ICT for posting on OASIS; and (3) Entergy's business practices that are related to compliance with NERC, SERC and local reliability criteria. See Planning Protocol § 2.4.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

includes projects that are not in the Base Plan, Entergy may build the projects, subject to siting and permitting requirements. However, if the Base Plan includes projects that are not in the Construction Plan, Entergy is under no obligation to build for purposes of reliability.

3. Comments

141. Calpine and the Generator Coalition argue that Entergy improperly seeks to limit the responsibility and authority of the ICT by retaining control of essential decision-making, such as development of the Base Plan. The Generator Coalition states that Entergy retains too much control and that Entergy has a history of inaccurately reflecting power flows on its system. Calpine asserts that Entergy should not be the entity to develop the inputs and numerical values for the Base Plan. Entergy's Planning Protocol restricts the ICT's ability to deviate from pre-determined criteria. The ICT should have decision-making authority over the construction of new facilities that the ICT determines are necessary for reliability of the transmission system.

142. The East Texas Cooperatives argue that the ICT does not have sufficient independence to modify the planning criteria developed by Entergy because the ICT has very limited ability to modify any business practices or planning criteria that Entergy uses during its planning process. They claim, for example, that the ICT has no authority to initiate formal regulatory action to require the modification of Entergy's planning criteria and that the ICT has only the limited authority to note its disagreements.[92] The East Texas Cooperatives argue that allowing the ICT to only comment as to the sufficiency of the detail of data, the "non-discriminatory" nature of the Transmission Provider's local criteria and business practices, and the screening criteria for Economic Upgrades does not provide transmission customers with assurance that the ICT will act in their best interests or establish the best practices for developing and implementing regional planning criteria.

143. Calpine states that Entergy admits that the ICT's inability to order Entergy to construct new facilities differs from the approach in the SPP RTO.[93] NUCOR states that, if the Commission allows Entergy to develop its own Construction Plan, then Entergy should, at minimum, remove the provision in section 10.3 of the Planning Protocol stating that Entergy will have no obligation to proceed with projects that are in the Base Plan but not in the Construction Plan. It says that Entergy should have to comply with

---

[92] *See* July 20 Filing at 1 (Response to Question No. 111).

[93] *Id.*

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

the Base Plan. Lafayette argues that because the proposal establishes no obligation for Entergy to actually construct the identified "optimal" upgrades, the ICT proposal essentially would carry forward planning processes that already occur in some measure today and that have led to the inadequate transmission system now in place.

4. Entergy's Answer

144. Entergy contends that the parties overstate the influence of the Construction Plan on Entergy's Base Plan because the Planning Protocol requires that the ICT, not Entergy, prepare the Base Plan.[94] In addition, Entergy asserts that the Planning Protocol provides that the ICT is not bound by the Construction Plan, but merely that the ICT may consider the Construction Plan. Further, Entergy claims that this is the process used by SPP to develop base plans.[95]

145. In response to the intervenors' arguments that the ICT should have the authority to order Entergy to construct facilities, Entergy says that this limitation exists in deference to retail regulators. Further, Entergy states that although the ICT cannot order Entergy to construct new facilities, the planning function is still meaningful, because the ICT's conclusions respecting reliability upgrades when creating the Base Plan, and its views on economic upgrades, will have a significant effect on planning and construction decisions.[96] Finally, the purpose of the Base Plan is to determine pricing, not construction.

5. Commission Determination

146. We find that the ICT will independently develop the Base Plan. The development of the Base Plan begins with the ICT's creation of the Base Case Model. We find that it is reasonable for the ICT to begin with a Base Case Model that incorporates existing long-term, firm uses of the transmission system and uses NERC multi-regional and SERC regional models for purposes of reliability. We also find that the Planning Criteria in the proposed Planning Protocol are appropriate, with two modifications. In addition to using NERC reliability standards and SERC supplements to those standards, Entergy proposed that the ICT will use Entergy's local reliability criteria and business practices. It is to this latter part that intervenors object. We believe that both incentive and

---

[94] Entergy Answer at 23, citing Planning Protocol § 8.1.

[95] *Id.*, citing Rew Affidavit at ¶ 12.

[96] *Id.* at 26, citing Arkansas PSC at 2-3.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

opportunity exist for vertically integrated transmission owners to inappropriately favor their own interests through the design of these business practices and local reliability criteria. Accordingly, we believe that Entergy's business practices and local reliability criteria (inputs, assumptions, and methodologies), if the ICT chooses to include this in the Base Plan, should be subject to the scrutiny of stakeholders whose interests may be affected. Accordingly, we will require that the ICT develop a process that makes transparent and takes into account stakeholder objections to any inputs, assumptions and methodologies relied upon in developing the Base Plan. The Planning Protocol provides that the ICT will post the local criteria and business practices on OASIS. Thus, the Commission expects the planning process to be transparent and well understood by market participants. In addition, the Planning Protocol lays out in detail procedures that will be followed for stakeholder and regulator input and for coordinated regional planning. We direct Entergy to modify its agreement accordingly and submit these modifications in the compliance filing required by this order.

147. We note that Entergy proposes to post the Base Plan on its OASIS.[97] We are approving the guidelines and protocols that the ICT must use in developing the Base Plan, and Entergy may not modify these guidelines and protocols without Commission approval. Further, we note that any market participant may file a complaint if the Base Plan does not follow the requirements in Entergy's tariff.

148. With respect to the arguments raised by Calpine, Nucor, and Lafayette concerning differences between the Construction Plan and the Base Plan, we agree with Entergy. The Planning Protocol provides the ICT and affected regulators the opportunity to weigh in on divergences and for Entergy to revise its Construction Plan based on regulatory feedback. This will ensure that any upgrades needed for reliability purposes will be accounted for in the Construction Plan, *i.e.* those reliability upgrades in the Base Plan that are not in the Construction Plan.

C. Reliability Coordinator

1. Entergy's Proposal

149. Entergy proposes that the ICT be the Reliability Coordinator for Entergy's transmission system and for the Control Area. The ICT will perform all functions identified for Reliability Coordinators under Policy 9 and Appendices 9B-9D of NERC's Operating Policies. Entergy would retain all remaining NERC obligations, including obligations associated with its status as Control Area Operator and Transmission

[97] Planning Protocol at § 8.1.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

Provider. Entergy states that this division of duties is not intended to preclude Entergy from taking action necessary to protect the stability of the transmission system, including emergency situations or abnormal conditions that require automatic or immediate manual action to prevent equipment damage or the loss of facilities or supply that could undermine system reliability. The ICT shall have exclusive authority to execute Transmission Loading Relief (TLR) procedures and to declare Energy Emergency Alerts.

2. Comments

150. SeECA contends that Entergy's proposal does not clearly demarcate Entergy's and the ICT's respective responsibilities for system reliability.[98] It asserts that clarifying the roles of the ICT as the Reliability Coordinator and Entergy as the control area operator is critical to preserving system reliability, particularly in emergency situations. SeECA claims that Entergy's admission that the ICT proposal requires clarification in a subsequent filing is an admission that the current ICT proposal fails to clearly distinguish between the ICT's and Entergy's responsibilities regarding system reliability.[99] Although NERC standards should serve as the platform for this distinction, they may not provide the degree of detail necessary to enable decisive reactions to split-second situations. SeECA states that at a minimum, the Commission must hold Entergy to its commitment to detail how Entergy and the ICT will coordinate their reliability-related responsibilities in a future filing. It reserves the right to comment further when that filing is made.

3. Commission Determination

151. In the first paragraph under section 5 of the Attachment S, Entergy states that "[t]he ICT will perform all functions identified for Reliability Coordinators under Policy 9 and appendices 9B-9D of NERC's Operating Policies..." The Commission notes that effective April 1, 2005, NERC Policy 9 and associated appendices were replaced by new NERC Reliability Standards. Therefore we direct Entergy to modify, within 60 days of the date of this order, this language to reference the new reliability standards that are applicable to Reliability Coordinators. We also direct Entergy to make this change elsewhere in the document where the outdated Policy 9 and/or appendices are referenced.

152. In section 5.6(b), Entergy states that "During Phase 1, the ICT and Transmission provider will meet with SERC and/or NERC to establish the process for NERC certification of the ICT as Reliability Coordinator and of ICT personnel as *NERC*

---

[98] SeECA at 17.

[99] New Orleans Technical Conference (June 30, 2005) Tr. at 13.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

Certified System Operators" (emphasis added). In section 5.6(c), Entergy states "Under Phase II, the ICT will initiate the process for having all relevant ICT personnel qualified as *NERC Certified System Operators* (emphasis added). Based on current NERC reliability standards (PER-004-0), the ICT (serving as the Reliability Coordinator) is required to have sufficient staff certified at the *Reliability Coordinator* level, not just the system operator level. Therefore we direct Entergy to revise the above language, within 60 days of the date of this order, in these two sections to state that the ICT must have sufficient staff certified at the Reliability Coordinator level to meet the requirements of NERC Standard PER-004-0.

153. Under section 5.2(b), Entergy states that "the ICT's authority to direct generation redispatch for reliability needs does not extend to unit commitment or other dispatch decisions of generators." In accordance with NERC Reliability Standard IRO-004, Requirements No. R1 and R3, we direct Entergy to clarify that any requirement identified in the day-ahead analysis (including redispatch) shall be coordinated between the ICT, Transmission Operator, and Balancing Authority to solve any problems.

154. Under section 5.2(e), Entergy states that "To ensure the ICT's ability to direct the actions described above, the Transmission Provider and the ICT shall draft a detailed operating protocol that specifies the division of reliability-related functions and the procedures for coordinating these functions. The operating protocol will be included as an attachment to the tariff." The Commission directs Entergy to ensure that these protocols are consistent with all requirements applicable to Reliability Coordinators, Transmission Operators, and Balancing Authorities, under NERC Standards. Entergy must file any necessary revision within 60 days of the date of this order.

155. Regarding SeECA's request for additional clarity, we find that the roles of Entergy and the ICT are clear. The opening paragraph of section 5 of Attachment S states that "The ICT will perform all functions identified for Reliability Coordinators under Policy 9 and Appendices 9B-9D of NERC Operating Policies." In addition, section 5.1 and section 5.2 of the tariff clearly identify the responsibilities and authorities of the ICT and also the authority kept by Entergy.

156. SeECA also cites to the transcript of the June 30, 2005 technical conference, in which Entergy argues that there is a need for redundancy and backstop capabilities between the transmission operator and the reliability coordinator. Entergy stated that this approach is "consistent with the way NERC has viewed the traditional control area operator versus the reliability coordinator."[100] The current NERC reliability standards

[100] *Id.* at 14:12-14.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

clearly require transmission operators to monitor and ensure the reliability of their own systems. Reliability Coordinators are generally responsible for monitoring the reliability of a larger area that may include many control areas. Also, as SeECA itself points out, Entergy states in its tariff, as part of the implementation process, that it plans to develop a Draft Reliability Plan and any additional procedures and policies related to the ICT's assumption of Reliability Coordinator functions. This Plan must clearly state the functions of Entergy's Transmission Operator and Balancing Authority. These materials must be filed under section 205, and commenters will have an opportunity to address any issues at that time. With the modifications we direct above, we are satisfied that the ICT's role as Reliability Coordinator has been properly defined.

D. Transmission Pricing

1. New Investment

a. Commission Directives in the Guidance and Clarification Orders

157. In the Guidance Order, the Commission granted Entergy's request to charge customers directly for Supplemental Upgrades. However, we noted that the transmission rights Entergy proposed to provide in exchange were not sufficiently explained or developed. We directed Entergy to propose, and fully support, a method to provide firm transmission rights to customers who pay for Supplemental Upgrades. We noted in the Clarification Order that, while Entergy does not use Locational Marginal Pricing (LMP), Entergy must develop firm transmission rights that protect these customers from any future congestion costs associated with redispatching generation, and from curtailment except where there is a force majeure situation. The Clarification Order also stated that the transmission rights that the customer receives must be defined with sufficient specificity to allow them to be resold by the customer. We noted that the requirement to define the nature of the rights that customers would receive and to involve the ICT in pricing decisions should address the concerns of the intervenors. Finally, the Guidance and Clarification Orders encouraged Entergy: (1) to work with parties to develop well defined and tradable rights, in the form of firm transmission rights or a comparable form of rights, for customers who pay for Supplemental Upgrades; and (2) together with SPP, to apply in the section 205 filing to remove rate pancaking for transmission between the two systems.

158. Entergy's pricing proposal is set forth in proposed Attachment T (Recovery of New Facilities Costs) to its OATT. Entergy explains that Attachment T was previously submitted in Docket Nos. ER04-699-000 and EL05-52-000 and is now modified to address the ICT Orders. Entergy asserts that because of the 60-day deadline for this

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

filing, it was unable to meet the Commission's directive in the ICT Orders to work with the other parties to develop well defined and tradable rights for customers that are required to pay for Supplemental Upgrades.[101]

b. Assignment of Upgrade Costs

i. Entergy Proposal

159. The pricing and expansion proposal is driven by a Base Plan prepared by the ICT. Base Plan Upgrade investments are investments necessary to: maintain existing long term firm point-to-point service commitments and Network Integration Transmission Service (NITS) commitments (including those necessary to serve load growth requirements); maintain applicable levels of integration of generators qualified at the Network Resource Interconnection Service (NRIS) or NITS levels; meet regional safety and reliability standards; and maintain firm transmission service commitments where the ability to honor such commitments has been degraded due to events that are beyond the control of the Transmission Provider (such as increased loop flows from neighboring regions). The Base Plan upgrade costs will be recovered through Entergy's transmission rates, including Point-to-Point and NITS rates under the OATT, bundled retail rates and grandfathered agreements.

160. All other upgrades are Supplemental Upgrades, which can be constructed to accommodate a request for an "economic upgrade" or a request for specific interconnection or delivery service. Economic upgrade investments are typically designed to reduce congestion on the transmission system (e.g., reduce the delivered price of power for particular loads); increase the transfer capability across, out of or into Entergy's transmission system; or to serve load at a higher level of reliability than is required by the Transmission Planning Protocol.

161. Interconnection and delivery service upgrade investments are designed to provide the customer with the right to physical service under Entergy's OATT and pro forma Large Generator Interconnection Agreement and Procedures.[102] Examples include obtaining Energy Resource Interconnection Service (ERIS) or NRIS service; designating

---

[101] Entergy states that it used stakeholder input that was provided in written form in the prior ICT docket and orally in the several technical conferences convened by the Commission.

[102] Entergy reiterates that because the Entergy system does not use LMP pricing, it does not have financial transmission rights.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

a generator as a Network Resource under NRIS at the request of a Network Customer; and obtaining new or expanded firm point-to-point service. The cost of Supplemental Upgrades necessary to accommodate requests for ERIS, NRIS, NITS and other Supplemental Upgrades,[103] plus any financial compensation due to other customers under the provisions described below, will be paid for by the party requesting service.[104]

ii. Comments

162. Plum Point and TDU Intervenors contend that Entergy's pricing proposal is inconsistent with the Commission's Order No. 2003 and its long-standing pricing policy. Plum Point argues that nothing in Entergy's filing suggests that Entergy should be permitted to depart from Commission policies, especially as the ICT falls short of an independent RTO. TDU Intervenors also contend that the proposal has not been shown to be consistent with or superior to the *pro forma* OATT. They conclude that it discourages investment in transmission infrastructure.

---

[103] The cost of Supplemental Upgrades to accommodate Point-to-Point service requests are to be recovered under the Commission's "higher of" pricing policy. If the Point-to-Point customer pays the rolled-in transmission rate, it will not be deemed to have individually funded the upgrade and will not be entitled to any financial compensation under Attachment T, section 4.3 – Financial Compensation for Long Term Service Sold to Other Customers. In this case, the cost of Supplemental Upgrades for Point-to-Point will be recovered through Entergy's transmission rates, including Point-to-Point and NITS rates under the OATT, bundled retail rates and grandfathered agreements.

[104] Attachment T, section 4.3 states that a customer funding a Supplemental Upgrade will receive financial compensation when the upgraded capacity is used by others or when it is later resold on a long term basis. In addition, to avoid double charging a customer funding a Supplemental Upgrade to qualify for NITS, NRIS or ERIS resource that later obtains Long Term Point-to-Point service using flowgate capacity created by the upgrade, the customer will be reimbursed as if a third party has used that capacity to obtain the service.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

163. TDU Intervenors contend that Entergy's pricing proposal is "and" pricing[105] because the customer is charged the incremental cost of the Supplemental Upgrades and Entergy's rolled-in transmission rate.[106] They also argue that Entergy is unjustified in

---

[105] Where rolling in the costs of network upgrades incurred for an interconnection would have the effect of raising the average embedded cost rate paid by existing customers, the Transmission Provider may elect to charge an incremental cost rate to the interconnection customer and thereby fully insulate existing customers from the costs of any necessary system upgrades. However, under no circumstances may a non-independent Transmission Provider charge an Interconnection Customer both an incremental cost rate and an embedded cost rate associated with existing network transmission facilities; that is "and" pricing. *See Northeast Utilities Service Company* (Re: Public Service Company of New Hampshire), Opinion No. 364-A, 58 FERC ¶ 61,070 (1992), *reh'g denied*, Opinion No. 364-B, 59 FERC ¶ 61,042, *order granting motion to vacate and dismissing request for reh'g*, 59 FERC ¶ 61,089, *aff'd in part and remanded in part sub nom. Northeast Utilities Service Company v. FERC*, 993 F.2d 937 (1st Cir. 1993), *order on remand*, 66 FERC ¶ 61,332, *reh'g denied*, 68 FERC ¶ 61,041 (1994) *pet. denied*; *Pennsylvania Electric Company*, 58 FERC ¶ 61,278, *reh'g denied and pricing policy clarified*, 60 FERC ¶ 61,034, *reh'g denied*, 60 FERC ¶ 61,244 (1992), *aff'd sub nom. Pennsylvania Electric Co. v. FERC*, 11 F.3d 207 (D.C. Cir. 1993) (*Penelec*).

[106] The Commission has allowed independent Transmission Providers to require interconnection customers to pay for network upgrades in cases where the Transmission Provider is independent of market participants and where the transmission provider gives the interconnection customer valuable rights in return. In those cases, the Commission has stated that, unlike a non independent Transmission Provider, a Transmission Provider that is independent would have no incentive to use the cost determination and allocation process to unfairly advantage its own generation. This independence allows the Transmission Provider to use a more creative and flexible approach to competitive energy markets. For example, we have permitted an independent Transmission Provider to require interconnection customers to pay for network upgrades when the Interconnection Customer receives well-defined congestion rights in return. Where the customer receives these rights in exchange for paying for upgrades, and at the same time obtains access to the network in exchange for an embedded cost access fee, the Commission has found that the customer is paying separate charges for separate services; that is, this is not "and" pricing. *See* Order No. 2003-A at P 587. *See also*, *Pennsylvania-New Jersey-Maryland Interconnection*, 81 FERC ¶ 61,257 at 62,259-60 (1997), *order on reh'g and clarification*, 92 FERC ¶ 61,282 at 61,955-56 (2000), *remanded on other grounds sub nom. Atlantic City Elec. Co. v. FERC*, 295 F.3d 1 (D.C. Cir. 2002).

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

expanding the range of Supplemental Upgrades to seven categories, but limiting Base Plan Upgrade Investments to investments necessary to maintain long-term firm delivery service commitments.

164. The TDU Intervenors state that the Commission should judge the ICT proposal on the basis of whether it will promote investment in new transmission infrastructure, and claim it will not. They state that the notion that better "price signals" result from Entergy's proposal with regard to upgrade costs is much less important than the need to ensure continuous and reliable service. They argue that the Entergy transmission system is in serious need of improvements, but that the evidence from SPP shows that pricing proposals such as Entergy's discourage investment.[107]

iii. Entergy Answer

165. Entergy argues that intervenors' challenges to its pricing proposal are collateral attacks on the Guidance Order. It states that the Commission rejected these arguments when it granted Entergy's ICT proposal on a two-year basis. TDU Intervenors' assertion that the economic benefits associated with incremental pricing (e.g., better price signals) should not trump the public's right to continuous and reliable service is illogical and is inconsistent with the Commission's long-standing pricing policy, which supports incremental pricing because it encourages economic investments in the infrastructure.

iv. Commission Determination

166. In the ICT Guidance Order, the Commission stated that it was prepared to grant Entergy's ICT proposal on a two-year basis, subject to certain enhancements and monitoring and reporting conditions. We stated that the proposal was a positive development toward a more independent regime, and directed Entergy to propose, and fully support, under section 205 a method for providing firm transmission rights to customers who pay for Supplemental Upgrades. In the Clarification Order, we stated that these firm transmission rights must protect customers from future congestion costs and from curtailments except in force majeure situations. We directed Entergy to define the firm transmission rights that the customer receives with enough specificity so that they can be resold by the customer. As discussed below, we find that Entergy has complied with these directives, so we will grant Entergy's pricing proposal on a four-year basis subject to certain conditions, as discussed below.

---

[107] TDU Intervenors at 20-21; 28-30.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

167. With respect to the arguments of Plum Point and others that Entergy's proposal to have interconnection customers pay the cost of Supplemental Upgrades is inconsistent with Order No. 2003, the Commission's long-standing pricing policy, and the *pro forma* OATT, we note that we fully addressed these arguments in the Guidance Order. There we stated that, with certain modifications, the proposed ICT will have sufficient oversight authority to allow us to approve Entergy's proposal on a two-year basis. As explained elsewhere in this order, Entergy's proposal, as revised, satisfies these requirements. Also, to maximize regulatory certainty for the parties, we will require that where the generator has been charged for Supplemental Upgrades, it will retain all the meaningful transmission rights provided to it by the ICT as long as it is responsible for paying for the upgrade, even if the ICT ceases to exist. However, the Commission reserves the right to revisit the cost allocation for such upgrades if the ICT Agreement is not renewed. We will leave to Entergy the obligation to explain and fully support on compliance how it will ensure the preservation of those rights if the ICT ceases to function. For example, who would perform the calculations to determine the extent of financial compensation due to Generators for Supplemental Upgrades and how would the Generator be ensured that the compensation it received was fair and equitable and that it is being treated comparably with other similarly situated Generators? Furthermore, the value of the rights at issue here can be greatly influenced by minor changes in the operation of the grid that may be difficult to detect. In the past we have only approved this type of funding mechanism in RTO regions where the independent operation of the grid eliminates any incentive to make such minor changes in ways that would inappropriately advantage one competitor at the expense of another. The ICT's independent oversight of Entergy's operation of its grid adequately addresses this important protection here. However, if the ICT ceases to function and is not replaced by some structure of equal protective value, Entergy will need to satisfy the Commission that these rights will continue to be protected.

168. TDU Intervenors also state that the pricing proposal discourages and obstructs infrastructure investment and undermines the safety and reliability of Entergy's system. We disagree, for the reasons discussed above. In addition, we find that while the proposal may result in a shift in cost responsibility, the incentives that it creates will promote, not discourage, efficient investments. Also, the proposal in no way relieves either Entergy or the ICT from the fundamental obligation to construct and operate the system in a safe and reliable manner.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

c. Firm Transmission Rights

i. Entergy Proposal

169. Entergy proposes that, in exchange for paying for Supplemental Upgrades, the customer will receive the following rights: (1) to schedule reserved point-to-point service on a firm basis over the term of the reservation without having to pay congestion charges; (2) to deliver power from a designated Network Resource to load on a firm basis without having to pay congestion charges under NITS; (3) to request point-to-point service or to designate a generator as a NITS resource up to the level of ERIS requested; and (4) to allow a generator to be designated as a Network Resource by any network customer on Entergy's system without further study once it passes a deliverability test for NITS generators.

ii. Comments

170. Calpine and TDU Intervenors argue that Entergy's pricing proposal should be rejected because Entergy did not meet with stakeholders to develop the firm transmission rights methodology.

171. East Texas Cooperatives contend that Entergy's firm transmission rights proposal is inadequate. They claim that the sheer magnitude of upgrade costs, coupled with the fact that they must be paid up front, create an insurmountable barrier to entry. They suggest that Entergy adopt transmission rights similar to those used by SPP, in which similar study requests are grouped together to determine the most cost-effective approach to constructing needed upgrades.[108] Further, they state that Entergy could greatly enhance its property rights proposal by aligning it more closely with the Commission-approved FTR auction model in PJM Interconnection, LLC (PJM).

iii. Entergy Answer

172. In response to Calpine's and TDU Intervenors' claim that the pricing proposal should be rejected because Entergy failed to meet with stakeholders to develop the firm transmission rights proposal, Entergy argues that there was no time to meet with stakeholders, given the 60-day deadline it was given to develop and file the proposal. It notes that it was not until the issuance of the ICT Clarification Order that it found out that

---

[108] *See* Southwest Power Pool, FERC Electric Tariff (4th Rev. Vol. 1) at Second Revised Sheet No. 419, et seq., Attachment Z: Aggregate Transmission Service Study Procedures.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

it was "directed," as opposed to "encouraged," to meet with stakeholders. Entergy states that this notwithstanding, it developed its firm transmission rights proposal taking into consideration Intervenors' comments about its prior proposal to establish firm transmission rights (e.g., the point-to-point allowance). Intervenors have proposed some modifications, but no entity has identified an alternative form of firm transmission right that could be offered in the form of OATT service under Entergy's tariff. Entergy suggests that the intervenors' recommendations be resolved by the Commission based on the existing record, instead of initiating a lengthy stakeholder process that would only delay implementation of the ICT proposal.[109]

173. Entergy acknowledges that the proposed firm transmission rights are not tradable in the same manner as they are in PJM, but says that is because Entergy does not use LMP. Entergy states that, for this reason, it has no discretion to create resale rights for customers funding Supplemental Upgrades. Likewise, NRIS status cannot be transferred from one generating facility to another under Order No. 2003. It states that it has nonetheless created a financial payment[110] mechanism that compensates a customer when Entergy resells capacity created by the Supplemental Upgrades funded by that customer and later resold by Entergy.

iv. Commission Determination

174. Entergy proposes several methods for providing firm transmission rights to customers paying for Supplemental Upgrades, and for protecting these customers from congestion costs and curtailments. Under Entergy's proposal, a customer will receive the following rights in exchange for paying for Supplemental Upgrades: to schedule point-to-point service on a firm basis without having to pay congestion charges; to deliver power from a Network Resource to load on a firm basis without congestion costs being charged to the interconnection customer; to request point-to-point service or designate the generator as a NITS resource up to the level of ERIS requested; and, if the customer is a

---

[109] Entergy states that no party made a proposal regarding alternative rights at the June 30, 2005 technical conference.

[110] In an answer to intervenor questions following the technical conference, Entergy indicated that it intends to file revised tariff sheets containing a definition of "financial payment." In addition to this change Entergy also agreed to make certain other editorial changes to their tariff sheets in response to intervenor requests. Entergy is required to make all such changes in its compliance filing, to be filed within 30 days of the date of this order.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

Network Customer, to designate a generator as a Network Resource on the Entergy system without further study upon passing a deliverability test for NRIS generators.

175. In response to the arguments made by Calpine and TDU Intervenors about the lack of stakeholder input, we note that the Guidance Order "encouraged" Entergy to meet with the parties in this proceeding to develop a fair compensation method,[111] so Entergy was not on notice that it was "directed" to work with the parties until the Clarification Order was issued, approximately 15 days before the filing date established in the Guidance Order. We find that Entergy has made a good faith effort to incorporate the views of stakeholders in formulating its proposal, given the timeline that we imposed. Furthermore, because we are authorizing Entergy to implement the proposal for only a four-year period, we conclude that the interests of stakeholders have been adequately protected. Further, these parties' concerns have been heard through their comments in this proceeding.

d. Congestion Hedge

i. Entergy Proposal

176. Entergy proposes to establish an hourly redispatch charge for network and point-to-point service based on redispatch through the Weekly Procurement Process. The hourly redispatch charge would apply to: network customers designating NRIS resources as their network resource; network customers obtaining weekly network resource designations based on redispatch through the Weekly Procurement Process; and customers obtaining weekly or daily point-to-point service based on redispatch through the Weekly Procurement Process. The redispatch rate is to be recalculated each week based on the results of the Weekly Procurement Process.

177. However, Entergy has revised Attachment V to explicitly waive redispatch charges for all customers funding Supplemental Upgrades when they are using the flowgate capacity they funded and that flowgate is congested. This protection is provided regardless of whether the customer originally funded the Supplemental Upgrade for Long Term point-to-point, network service for interconnection service (ERIS or NRIS) or as an Economic Upgrade. In addition, Entergy has added Attachment T, section 4.1, which waives congestion charges when a customer uses the capacity of the Supplemental Upgrade it funded. Entergy asserts that with these provisions, it should be clear that customers who pay for Supplemental Upgrades are fully protected from congestion costs that would have been incurred if not for the upgrade.

---

[111] *See* Guidance Order at P 72.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

ii. Comments

178. Several intervenors argue that that Entergy's congestion hedge model is inadequate.[112] Some complain that it is not the same as the Commission-approved PJM RTO firm transmission rights model. East Texas Cooperatives complain that Entergy's firm transmission rights are not calculated for all transactions; are not tradable in any real sense; can be degraded by non-scheduled uses of the transmission system (since load growth and long-term transactions outside the Entergy region that result in loop flows across the participant funded facilities do not pay a credit); have no ongoing value (*i.e.* are limited to a one-time payment); and apply only to the specific, upgraded element (which can result in greater benefits to Entergy and its retail native load than to the customer funding the upgrade). Nucor argues that Entergy's congestion hedge model is inadequate because the firm transmission rights cannot be resold by the customer. It also argues that this model "is not what the Commission had in mind when it stated that the transmission rights a customer receives in return for funding Supplemental Upgrades must be defined with sufficient specificity that they can be resold by the customer." It maintains that, under the firm transmission rights model, only Entergy may sell the physical transmission service and the congestion rights in the case of network service.

179. Generator Coalition asserts that the proposed congestion hedge does not provide customers with equitable compensation because it is limited to when the customer is participating in the Weekly Procurement Process and agrees to pay redispatch costs. Another problem is that the congestion hedge is flowgate-specific, so that if the congestion moves from one flowgate to another along the transaction path, the customer that paid for an upgrade at Flowgate A would still face congestion charges if the congestion appeared at Flowgate B, for example, along a transaction path from Flowgate A to Flowgate C. Generator Coalition adds that Entergy's proposal also limits the opportunity for customers to trade congestion hedges.

180. Lafayette complains that Entergy escapes the costs of its past transmission planning failures by relying on Lafayette for uncompensated redispatch. Lafayette asks that Entergy be directed to compensate it.

181. East Texas Cooperatives state that Entergy's pricing proposal is written in such a way that long-term NITS network resources are automatically qualified as Network Resource Interconnection Service resources.[113] As a result, current NITS resources are

---

[112] *See, e.g.*, Calpine, East Texas Electric Cooperatives and NUCOR.

[113] May 27 Filing at Tab D, Proposed Attachment U, Original Sheet No. 692 at 1.3.3.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

liable for redispatch charges. According to East Texas Cooperatives, Entergy representatives later stated that this tariff language was a "mistake." They state that Entergy has explained to them that there was an error in the filing and that no such automatic reclassification was intended.[114] The East Texas Cooperatives asks that Entergy be required to remedy this mistake.

182. Quachita asserts that Entergy's ICT filing fails to fully explain the additional rights customers funding Supplemental Upgrades will receive or to provide well-defined transmission rights, as required by the Guidance and Clarification Orders.

183. Intervenors complain that Entergy's proposal does not provide financial compensation when the funded capacity is sold to another customer on a short-term basis.[115] East Texas Cooperatives argue that Entergy should establish a property rights market where entities funding Supplemental Upgrades can auction off rights to bidders wishing to obtain a congestion hedge across a particular flowgate. Certain intervenors complain that the financial compensation plan is too limited because funding customers are not compensated unless the upgrades are found to have created "new capacity." East Texas Cooperatives maintain that payment should also be provided where a funded upgrade provides additional benefits to the system, such as reducing load flows on other constrained facilities.

184. TDU Intervenors suggest that the proposed Weekly Procurement Process is illusory because it penalizes transmission customers who obtain resources outside the Weekly Procurement Process and creates a strong bias against long-term point-to-point service or the designation of non-Weekly Procurement Process network resources, especially by Entergy. TDU Intervenors also argue that a network customer that replaces (delists) an existing network resource with a new network resource should receive a credit for the transmission capacity made available by the delisting of the existing resource. They claim this is reasonable because a customer that changes its designation of resources will not impose additional demands on the transmission system.

185. The Generator Coalition contends that Entergy's financial compensation mechanism, which is based on a $/MW payment, does not take into account the term of the transmission service request. A three-year service request should be more valuable

---

[114] *See* East Texas Cooperatives at 15, citing New Orleans Technical Conference (June 30, 2005) Tr. at 117, ln. 7 - 118, ln. 21; *see also* Entergy at 8, n. 6.

[115] *See, e.g.*, SeECA, East Texas Electric Cooperatives and Duke Energy, Plum Point and TDU Intervenors.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

than a one-year request. SeECA claims that the financial compensation does not recognize the nature of some upgrades. For example, not all constraints are related to the actual rating of the facilities being upgraded.

iii. Entergy Answer

186. Entergy explains that it has revised Attachment T to provide that when a customer uses the capacity created by a Supplemental Upgrade that it funded, it will not have to pay a congestion charge. Entergy explains that it does not currently charge interconnection customers for congestion charges, but plans to do so through the Weekly Procurement Process in the future. It has, however, included specific protections in Attachment V to ensure that congestion charges will not be assigned to customers taking Weekly Procurement Process service who have funded Supplemental Upgrades.

187. In response to East Texas Cooperatives' request that an auction be established under which entities can sell their firm transmission rights to any bidder, Entergy states that it has no discretion under the OATT or Order No. 2003 to allow network service and NRIS to be resold by the customer. That is why it has created the functional equivalent of the tradable rights that exist in PJM.

188. Entergy notes that the main criticism of its firm transmission rights model is that compensation is only provided when the capacity created by the funded upgrade is sold on a long-term basis, not a short-term basis. Entergy recognizes that there is a theoretical basis for compensating a funding customer for short-term service. However, it states that it would be impractical at this time to revise the model, since the ICT proposal will only be effective for two years on an experimental basis and such a revision would take significant time and would require complex and costly modifications to the AFC software. Entergy nonetheless states that it would be willing to submit, as part of compliance, a more detailed explanation of the technical changes, time and costs associated with such modification to the AFC software and billing systems if the Commission feels it does not have sufficient information to decide the issue here.

189. Entergy disagrees with TDU Intervenors' argument that the customer should get credit for capacity released by de-listing existing network resources because the customer de-listing the network resource may not have funded the Supplemental Upgrade. In addition, their argument that changing network designations would not impose additional demands on the grid is wrong.

190. Entergy says that East Texas Cooperatives' argument that the proposed firm transmission rights will be eroded by non-scheduled system uses such as loop flow and load growth has merit. Entergy therefore agrees to amend Attachment T, section 4, to provide that to the extent the ICT determines that capacity created by the funded

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

Supplemental Upgrade is being used to support load growth in the next year, the customer will be financially compensated. Entergy however, disagrees that there should be guaranteed compensation if loop flow erodes capacity.[116] Entergy also disagrees with East Texas Cooperatives' assertion that the proposed firm transmission rights have no ongoing value because they are limited to a one time payment. Entergy maintains that its proposed congestion hedge method is consistent with the Order No. 888 approach of making transmission service available on a first come, first served basis. Entergy further explains that under its proposal, the entity initially funding the Supplemental Upgrade will have been fully compensated for that portion of the upgrade that it did not use and any new customers can use the funded capacity only if: (i) there is excess (lumpy) capacity not needed by the original customer; or (ii) the original customer voluntarily relinquishes its right to use the capacity. Entergy also disagrees with East Texas Cooperatives that the entity funding the Supplemental Upgrade should receive compensation for reducing flows on other constrained facilities. According to Entergy, these other facilities have been paid for by all other transmission customers, so any additional revenues resulting from increased flow over those facilities should be credited to those customers.

iv. Commission Determination

191. In the ICT Guidance Order, we recognized that Entergy does not use LMP and therefore does not have financial transmission rights. We concluded that Entergy nonetheless must define firm transmission rights that protect the customer who paid for Supplemental Upgrades from any future congestion costs associated with redispatching generation, and from curtailments except in a force majeure situation. The Guidance Order also required that the transmission rights be specific enough to be resold by the customer. As discussed above, Entergy has revised its Attachment T and Attachment V to ensure that customers funding Supplemental Upgrades will not be assessed congestion charges. Entergy has also revised Attachment T to provide a mechanism that provides financial compensation to a customer when Entergy sells, on a long-term basis, the capacity created by Supplemental Upgrades paid for by the customer.

192. East Texas Cooperatives suggest that Entergy establish an auction where customers could sell firm transmission rights to other customers for periods ranging from one day to the useful life of the facilities. We agree with the East Texas Cooperatives that the auction proposal may have merit. However, we find that it is not appropriate at this time because the time needed for the necessary software and hardware for such an

[116] Entergy notes that in PJM, FTR compensation is not guaranteed from the effects of loop flows.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

auction would preclude a timely start-up of the four-year initial term. Nevertheless, we find that the auction proposal may have merit, and we direct Entergy to evaluate the use of an auction mechanism and include it in its 205 filing if Entergy proposes to extend the ICT proposal and provide firm transmission rights to new interconnection customers on a permanent basis.

193. Intervenors complain that Entergy does not provide for compensation when the funded capacity is sold by Entergy on a short-term basis.[117] The Generator Coalition contends that financial payments should be awarded any time a customer materially uses an upgrade (e.g., long-term or short-term, firm or non-firm, point-to-point or Network, old or new), as opposed to a one time payment for long-term service. East Texas Cooperatives complain that the resale rights offered by Entergy are not tradable in the same manner as they are in PJM, and Nucor complains that the resale rights are inadequate because they cannot be resold by the Network Customer.

194. Entergy acknowledges that intervenors concern has merit and has offered to file a more detailed explanation as to why it believes it is not feasible, for an experiment of just two years in duration, to provide compensation for short-term uses of upgrades. We will accept Entergy's offer to file a detailed explanation of the necessary technical changes needed to provide compensation when the funded capacity is sold on a short-term basis, and the time and cost of establishing such a compensation system. We expect that extending the initial term of the ICT from two years to four years will make it feasible for Entergy to establish compensation when the funded capacity is sold by Entergy on a short-term basis. In the compliance filing, Entergy must also address any other ways in which resale opportunities can be expanded.[118] Entergy must include this detailed explanation in its compliance filing that is due 60 days from the date of this order.

195. East Texas Cooperatives complain that the firm transmission rights have no ongoing value because they are limited to a one-time payment when the capacity is resold to another customer on a long-term basis. They are concerned that once the funded capacity is resold, they may have to fund a second upgrade if they find that they need more capacity over the facility that is now being used by the second customer. Entergy disagrees, stating that the customer is fully compensated for the funded capacity when it is resold and is, therefore, not entitled to any additional compensation.

---

[117] SeECA, Duke Energy.

[118] *See Preventing Undue Discrimination and Preference in Transmission Services*, 112 FERC ¶ 61,299 (2005).

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

196. We accept Entergy's proposal, given that the capacity is sold on a long-term basis. It is up to the customer funding the upgrade to determine whether it will require future use of the capacity created by the upgrade. If it determines that it does not need the capacity, it gives up its rights to that capacity and the capacity is later resold to another customer on a long term basis, the customer who gave up its rights to the capacity should receive no additional compensation.

197. TDU Intervenors argue that a network customer should receive a credit if it replaces an existing generating resource with a new network resource (delisting) because such an action will not increase demand or place new capacity on the system. Entergy opposes any credits on the grounds that the customer may not have funded the upgrade. Entergy also notes that a customer with an existing resource in an import constrained area will place different demands on the system if it replaces that resource with an external resource. We agree that delisting an existing network resource may change the operating characteristics of the grid. Depending on the location of the resource relative to the load center, delisting could, in fact, create or exacerbate congestion problems on the system. Accordingly, we will reject TDU Intervenors' proposal.

198. East Texas Cooperatives argue that the proposed firm transmission rights will be eroded by non-scheduled use of the system, including loop flows and load growth. We will accept Entergy's proposal to amend Attachment T, section 4, to provide compensation to a customer if the ICT determines that the funded capacity is being used to support load growth in the next year. Entergy, however, opposes compensating customers for any effects caused by loop flow, stating that loop flows should be addressed on a regional basis. We agree that loop flows are often beyond the control of the transmission provider, and any reasonable solution to a loop flow problem must be developed on a regional basis, as Entergy suggests. We expect the ICT to coordinate with other utilities in the region to address loop flow and other conditions affecting regional planning and operations.

199. The Generator Coalition complains that the financial payment provision does not adjust for the length of the transmission service request. According to the Generator Coalition, a customer taking longer term service should pay proportionately more than one taking shorter term service. Entergy responds that, if the Generator Coalition is saying that the portion of the rate attributable to the financial compensation is the same in present value terms, it is correct. It goes on to state that, whether service is for one year or three years, the new point-to-point customer is paying for the cost of the previously funded upgrade it is using and will own the rights to it at the end of the point-to-point service, whether or not it renews the service.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

200. We agree in principle that, for long-term service, if (1) the new point-to-point customer pays the full cost of the portion of a previously funded upgrade that its service requires, and (2) the customer that originally funded that upgrade receives a like amount in compensation, then the new customer can be deemed to own, at the end of its point-to-point service, the rights to the portion of the upgrade for which it has paid. Contrary to the views of the Generator Coalition, this principle does not depend on the length of the new point-to-point service request. However, the language of Attachment T that implements this principle is not entirely clear. In particular, section 4.3.4.3 makes reference to "…the 'higher of' calculation in Section 4.3.2." The "higher of" calculation is not discussed in section 4.3.2, and it appears that the referenced section should be 2.2.1, not 4.3.2. We direct Entergy to verify section references and to clarify the provision.

e. Comparability

i. Comments

201. Calpine asserts that Entergy's transmission pricing proposal is unduly discriminatory and harmful to competitive wholesale markets. It states that Entergy provides preferential treatment to itself and its affiliates with regard to the quality and type of transmission service and treatment of network upgrade costs. It also alleges that, under Entergy's proposal, merchant generators competing with Entergy will have to pay the cost of all Supplemental Upgrades, while the cost of Supplemental Upgrades constructed by Entergy on behalf of its native load customers are eligible for recovery through its bundled retail rates. Calpine says that virtually all native load is being served by Entergy-owned generation despite the availability of more economical and more fuel-efficient merchant generation and that the network upgrade costs associated with Entergy's generation will be rolled-in by design. Calpine adds that, in contrast, almost no merchant generation has been designated as a network resource by network customers. Given this disparity of cost treatment, Entergy's pricing proposal actually provides incentives to maintain the status quo.

202. Similarly, the TDU Intervenors assert that Entergy's transmission pricing proposal allows Entergy to escape responsibility for funding system upgrades while leaving the other interconnection and delivery service customers to bear a disproportionate amount of upgrade costs. They also contend that the Weekly Procurement Process will eliminate Entergy's need to designate new Network Resources on behalf of its native load. Plum Point argues that Commission acceptance of Entergy's pricing policy would allow Entergy to bar new market entrants because new entrants would be faced with burdensome and unduly discriminatory cost treatment of the network upgrades that they fund.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

ii. Entergy's Answer

203. In response to the comparability arguments raised by Calpine and TDU Intervenors, Entergy states that Attachment T, section 2.4, unequivocally states that Attachment T applies to the Transmission Provider and its affiliates. Entergy also contends that the costs it pays for Supplemental Upgrades on behalf of its native load are paid for by retail ratepayers through Entergy's bundled retail rates because they are the entities on whose behalf Entergy requests the service. Entergy contends that the costs of these types of upgrades are not rolled into OATT rates because OATT customers did not cause them to be incurred. In response to Calpine's claim that the pricing proposal may harm competitors, Entergy says that these upgrades promote rather than hinder competition because they allow Entergy to buy more power from merchant generators on a short-term or long-term basis when it is economic to do so. Entergy maintains that not every merchant generator will be required to pay for Supplemental Upgrades if it is located in an area where no new facilities are needed. TDU Intervenors' argument that the Weekly Procurement Process will eliminate Entergy's need to designate new Network Resources is not correct. According to Entergy, the Weekly Procurement Process addresses weekly requests for power, largely for displacement purposes, and will not affect longer term purchases that may require Supplemental Upgrades.

iii. Commission Determination

204. We reject the comparability arguments raised by Calpine, Plum Point and TDU Intervenors. These arguments, including allegations of preferential treatment, barriers to entry for new entrants, disparate cost treatment, and the effects of Weekly Procurement Process on new Network Resources, were addressed in the Guidance and Clarification Orders. With regard to the allegation that Supplemental Upgrades funded by Entergy will be rolled into retail rates, or that Entergy will otherwise avoid costs responsibility for funding Supplemental Upgrades, we note that, when Entergy incurs costs on behalf of its retail load, recovering those costs from retail customers is appropriate. Thus, we find that Entergy's proposal satisfies our requirement for comparable treatment.

2. Previously Incurred Interconnection Costs

a. Commission Directives in the Guidance and Clarification Orders

205. Under Entergy's pricing proposal, the ICT would review any past costs related to interconnecting a generating facility (cost for direct interconnection facilities, Required Upgrades and Optional Upgrades), and would apply certain criteria to determine whether the facilities and upgrades would have been classified as Base Plan or Supplemental Upgrades at the time their service request was made. If a generator has paid Entergy for

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

facilities the ICT says would have been classified as Base Plan, Entergy would refund the remaining amounts to the generator and roll the refund amount into Entergy's transmission rate, including the calculation of its OATT rate. Payments made for what the ICT says would have been Supplemental Upgrades counting toward ERIS-level integration would be considered to be the generator's responsibility, and Entergy would cease providing refunds or credits associated with the upgrades. Payments made for what the ICT says would have been Supplemental Upgrades contributing to either NRIS- or NITS-level integration would be considered to be incremental rates paid by the interconnecting customer. Entergy would cease providing refunds; however, the customer would be entitled to an allowance for point-to-point service for the remaining uncredited portion of its payments.

206. The Commission expressed certain concerns with this aspect of Entergy's proposal in the Guidance Order. We stated that Entergy had not adequately explained the proposal and that the ICT must determine that the appropriate data inputs were used in performing the System Impact and Facilities Studies.[119] The Guidance Order explained that it was unclear how the ICT would be able to go back and reevaluate the validity of the input data to ascertain that the upgrade is being properly classified.[120] Moreover, the Commission expressed concern about whether it was appropriate to retroactively re-examine and re-allocate costs that affect underlying contractual commitments and financial guarantees. The Guidance Order also expressed concern about reopening contracts containing differing legal standards. As a result of all of these concerns, the Commission was unwilling to approve Entergy's proposal regarding previously incurred interconnection costs at the time and required Entergy to fully address the Commission's concerns in the section 205 filing.[121]

b. <u>Entergy Proposal</u>

207. Entergy states that for two jurisdictions, New Orleans and the State of Louisiana, Entergy's cost-benefit analysis shows a net cost to ratepayers for the ICT proposal without approval of its proposal regarding previously incurred interconnection costs. Entergy asserts, therefore, that rejection of this proposal might affect the viability of the entire ICT proposal.

---

[119] Guidance Order at P 69.

[120] *Id.* at P 70.

[121] *Id.* at P 71.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

208. Entergy filed proposed tariff sheets covering the recovery of new facilities costs (Base Plan and Supplemental Upgrades). Section 5 of the proposed Attachment T addresses the role of the ICT in evaluating previously incurred interconnection costs. It provides that the ICT will conduct a one-time analysis of prior interconnection costs to determine the correct classification of these facilities as either Supplemental Upgrades or Base Plan Upgrades. The analysis would be done after the ICT completes its first summer Base Case Model (expected to be for 2006). It would cover facilities constructed by Entergy from January 1, 1997 to the effective date of the proposed tariff sheets for which credits are still due. Facilities that the ICT would review fall into three categories: (1) "direct interconnections;" (2) "Required Upgrades;" and (3) "Optional Upgrades." "Direct interconnection facilities" are those required to connect the generator to the grid. "Required Upgrades" are those additional facilities required to maintain system reliability while accommodating the interconnection of the generator. "Optional Upgrades" are upgrades that the generator chooses to fund to alleviate local constraints to improve prospects for transmission service requests.

209. The ICT would use a three-step process to determine the classification of these facilities. First, the ICT will identify those direct interconnection facilities that do not contribute to meeting NERC, SERC or local reliability criteria and therefore would not have been part of the Base Plan. There are two categories of such direct interconnection facilities: (1) a green-field facility that does not connect to any distribution circuits or load-serving facilities;[122] and (2) an existing facility that was reconfigured to accommodate the new generator but that provides no new nodal capacity. If the ICT determines that a particular facility falls into one of these two categories, it will be classified as a Supplemental Upgrade.

210. Second, the ICT will evaluate Required Upgrades to determine whether, based on the Interconnection Agreement (IA) and studies conducted at the time of the IA, the upgrade would have been required for short circuit and/or stability protection, if the new generator were not there, or if the upgrade would have been required for additional current capability absent the new generator. If the ICT finds that that was the case, it will classify the facilities as Base Plan, as appropriate.

211. Third, for all facilities that the ICT cannot classify using the initial review in the foregoing two steps, it will perform a further study using its first Summer Base Plan model. This study will determine whether the upgrade is *currently* required in order for

[122] A green-field facility is a facility that is constructed at a site at which no other source is located, or that totally replaces the process or production equipment at an existing facility.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

the Entergy transmission system to meet planning and reliability standards specified in the Planning Protocol. The ICT would make this determination by referring to the first summer Base Case Model that it prepares for the transmission system under the Planning Protocol. Using that Base Case Model of the Entergy transmission system, the ICT will determine whether applicable planning and reliability standards could be met in the absence of the upgrade in question. If it determines that these standards could be met without the upgrade in question, it will classify that upgrade as a Supplemental Upgrade.

212. To make this determination, the ICT will remove all upgrades from the specified Base Case Model and determine whether there would be any overloads on the system that were not present in the specified Base Case Model or that were more severe than in the Base Case Model. If not, then no further analysis will be performed, and none of the identified upgrades will be deemed to have been needed for reliable service on the transmission system.

213. If, however, there are new overloads, or overloads that are made more severe by the removal of the upgrades, then the ICT will sequentially add each of the upgrades back into the model (with the IA date used to determine the order), and determine in each instance whether the addition of a particular upgrade eliminated or significantly reduced any of the overloads. Entergy explains that if the answer is "yes," the upgrade will be classified as Base Plan; if the answer is "no," the upgrade will be classified as Supplemental.

214. If the ICT cannot make the determination using pre-existing system conditions and criteria, it will evaluate the effect of the upgrade on current system reliability. Entergy asserts that this analysis will provide additional protection to the generator because it avoids a retrospective analysis. Entergy adds that it has reviewed this procedure with SPP, and SPP has indicated that it is feasible and reasonable, and that SPP can implement it within 90 days of the completion of the Base Case model. Entergy claims that the proposal is generous to customers because it allows their upgrades to be judged against the system as it exists today rather than at the time their service request was made. Entergy declares that this effectively allows upgrades to receive Base Plan credit beyond the three year window applicable to new Supplemental Upgrades and gives customers credit for any changes in system conditions that have caused their facilities to become needed for reliability.

215. Section 3.3 of Attachment T provides that, if the pricing proposal terminates after two years, customers that were allocated Supplemental Upgrades during the two-year period would continue to pay those costs and, in addition, the provisions of Attachment T necessary to provide firm transmission rights, and the associated congestion hedges, to such customers would remain in effect. Attachment T § 3.3. Any new requests for service submitted after termination will not be subject to Attachment T.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

c. Comments

216. The Louisiana PSC asserts that the Commission should approve Entergy's proposal to have the ICT independently review the classification of previously incurred interconnection costs. It claims that if the proposal is not approved by the Commission, native load ratepayers in Louisiana and in the New Orleans will incur net costs for the ICT and, thus, it would be very difficult for the Louisiana PSC to find approval of the ICT is in the public interest. New Orleans states that its support of the ICT proposal is conditioned on its assumption that currently projected costs and benefits are maintained and that New Orleans ratepayers will not be burdened with any significant additional costs associated with implementing the ICT. New Orleans states that Entergy projects increased costs for New Orleans retail ratepayers as a result of the operation of the ICT but that this negative is expected to be offset by the positive benefits accruing from Entergy's transmission pricing proposal, including the treatment of already incurred interconnection costs and optional upgrades and the treatment of investments to qualify new NRIS or NITS resources. New Orleans states that it believes that in the long term the ICT will support better use of Entergy's transmission system, facilitating access to lower-priced sources of power for New Orleans retail ratepayers.

217. Calpine states that it objects to either the ICT or Entergy being able to retroactively re-classify previously incurred interconnection costs. Dow argues that Entergy has failed to set forth a sustainable legal basis for modifying the contracts. Dow contends that unlike in the *Duke Hinds*[123] line of cases, Entergy is proposing to modify existing agreements to incorporate an entirely new pricing policy that did not exist at the time the IAs were executed. Dow also contends that the Commission rejected this type of retroactive application in Order No. 2003, stating that "[f]or previously accepted individual agreements, the Commission's interconnection case law and policies govern."[124] Dow also claims that Entergy's proposal fails to address the Commission's concerns about lack of clarity and certainty.

218. Dow states that its circumstances present a case in point. It asserts that certain upgrades to the Entergy transmission system may be required to improve deliverability from certain Dow facilities and that it has entered into a Facility Study Agreement with

---

[123] *Entergy Services, Inc.*, 98 FERC ¶ 61,290 (2002) (*Duke Hinds I*), *order on reh'g*, *Duke Hinds, LLC*, 102 FERC ¶ 61,068 (2003) (*Duke Hinds II*), *reh'g pending*; *Wrightsville Power Facility, L.L.C.*, 102 FERC ¶ 61,212 (2003) (Wrightsville), *reh'g pending*.

[124] Dow Chemical at 8, citing Order No. 2003 at P 911 (citations omitted).

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

Entergy to determine the nature and extent of such upgrade facilities. Dow asserts that, under its existing IA with Entergy, Dow can ascertain, with a reasonable degree of certainty, the circumstances under which it will be able to recover the investments it may make to fund these upgrades. However, Dow will have no way of knowing with certainty in advance whether the upgrade will be designated a Base Plan project or a Supplemental Upgrade if the Commission allows Entergy to amend existing interconnection agreements. It may be years before it will know when it will recover its investment if the Commission accepts the "retroactive" application of Entergy's pricing policy.

219. Finally, Dow protests the Attachment T statement that customers will continue to be bound by previous cost allocations under that attachment if the ICT model is terminated after the initial period.

220. Duke Energy states that Entergy's proposal to review previously incurred interconnection costs does not address the concerns raised by the Guidance Order. Entergy fails to address the Commission's concerns that "the ICT would simply review the [studies] previously conducted by Entergy" rather than "be[ing] the entity that determines that the appropriate data inputs were used in performing the necessary studies."[125] Entergy fails to address this concern altogether, stating only that its proposal addresses this concern because the ICT will prepare the new Base Plan Model. However, Duke Energy argues, neither the new Base Plan Model nor the ICT's involvement in its preparation has any bearing on whether the ICT can independently assess each IA and the studies prepared by Entergy at the time of the IA because the ICT will be obligated to reclassify facilities that either fall within predefined categories or are shown by initial Entergy studies to be required for short circuit and/or stability protection or for additional current capability.

221. If the Commission does not reject the proposal, Duke Energy requests that it be modified as follows: First, the Commission should eliminate the proposed automatic reclassifications as well as the proposed audits of Entergy's application of its own then-effective criteria. The Commission should require that previously constructed facilities be tested only against the new Base Plan Model, since this is the only model that will be developed independently. Second, the test should include assumptions about generation dispatch that are consistent with the assumptions that are used to study interconnection requests, *i.e.*, with the affected generator's output assumed to be delivered to the grid.

---

[125] Duke Energy at 5, citing Guidance Order at P 69.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

Third, the Commission should eliminate the proposed materiality standard.[126] Fourth, the Commission should require that the ICT retest customer-funded upgrades against future Base Plan Models. Duke Energy states that, over time, as load grows and transmission patterns change, upgrades that did not provide reliability benefits may begin to do so. At that time, the facilities should be re-classified as Base Plan Upgrades, and customers that funded the facilities should be made whole for the benefits received over the remaining service life of the facility. Fifth, the Commission must ensure that upgrades reclassified as Supplemental Upgrades furnish the customer that funded them with the same benefits that may be provided by new facilities that are so classified, such as financial compensation reflecting third party use. Sixth, the Commission should reject Entergy's proposal to limit financial compensation only to those instances where a third party is purchasing long-term transmission services under Entergy's OATT.

222. Finally, Duke Energy states that if the Commission does not reject the proposal, Entergy must be required to follow the filing requirements of the FPA, including notice and suspension. Entergy proposes that, once a particular upgrade is classified as Supplemental by the ICT, Entergy will immediately cease providing credits, but that it will, at a later date, make a filing under section 205 of the FPA to modify the customer's IA to allow for the termination of credits. Duke Energy argues that section 205 requires that modifications to rate schedules be filed at least sixty days before the proposed effective date. While it concedes that the Commission may waive this requirement to permit an earlier effective date, Duke Energy contends that the Commission's waiver policy strictly enforces the sixty-day notice requirement for a rate increase.[127] In addition, Duke Energy notes that the Commission may suspend proposed rate schedule change for up to five months. It argues that Entergy cannot avoid FPA notice and filing requirements through an OATT amendment to establish the procedure for performing assessments of customer-funded upgrades, or remove these filed rate protections from rate schedules that have been approved by the Commission.

---

[126] *I.e.*, for each identified upgrade, the ICT will determine whether the returning the upgrade to the system configuration in the base case model results in a material reduction of base case overloads. The ICT will be responsible for the determination of materiality. If the ICT finds that returning the upgrade to the system configuration results in a material reduction in Base Case overloads in this analysis, then the ICT will deem the upgrade to be needed for reliable service and thus properly classified as Base Plan.

[127] Duke Energy at 8, citing *Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 at 61,354 (1992).

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

223. The East Texas Cooperatives argue that Entergy cannot rely on the Commission's *Duke Hinds* line of cases to support its proposal to have the ICT examine previously incurred interconnection costs. In the *Duke Hinds* cases, the Commission found that Entergy had engaged in improper "and" pricing (which violated the Commission's long-standing transmission pricing policy) and ordered the appropriate remedy, whereas here, Entergy proposes a new method of pricing transmission interconnections. This does not justify finding that the past method was wrong so as to permit Entergy to revise it.

224. Generator Coalition requests that the Commission reject, with prejudice, Entergy's proposal to "retroactively" apply its proposed transmission pricing because it improperly shifts the costs of existing Network Upgrades and does not sufficiently compensate customers funding Supplemental Upgrades. Generator Coalition alleges that the proposal is faulty in that the ICT would use the effective date of the IA as opposed to when the interconnection request was made in OASIS to determine queue position; the ICT would use the same error-filled studies that Entergy used; and Entergy's proposal to review upgrades sequentially ignores beneficial effects that a group of upgrades may have.

225. Occidental also states that the Commission should summarily reject the proposal for the ICT to review previously incurred interconnection costs. Entergy has failed to address the Commission's concerns that the ICT would not be the entity that determines that the appropriate data inputs were used in performing the system impact and feasibility studies. Occidental states that under Entergy's proposal, the ICT will follow Entergy classifications for required upgrades and review studies conducted at the time of the interconnection agreement.[128]

226. Occidental also states that Entergy did not satisfy the Commission's concern about re-examining and re-allocating these costs. It and Quachita cite Order No. 2003, in which the Commission specifically declined to require retroactive changes to existing interconnection contracts. The Commission's policy is to preserve the sanctity of contracts in all but extreme circumstances.[129] Occidental states that Entergy has not shown an extreme circumstance warranting re-opening the contracts. In addition, Occidental protests Entergy's reliance on the *Duke Hinds* line of cases, stating that those

---

[128] Occidental at 18, citing Attachment T § 5.2.2 and May 27 Filing, Rew Affidavit ¶ 21-23.

[129] Occidental at 19-20, citing *Pub. Utils. Comm. of Cal.*, 99 FERC ¶ 61,087 at 61,383 (2002); Order Nos. 2003, 2003-A, 3002-B.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

cases held that parties to an IA could exercise their rights under express contract provisions to unilaterally seek changes to the contracts under sections 205 and 206 of the FPA under the just and reasonable standard.

227. Finally, Occidental contends that Entergy's proposal to have the new pricing survive modification or termination of the ICT would be contrary to the two-year sunset provision.

228. Quachita asks that the Commission reject Entergy's proposal to "retroactively" apply the proposed transmission pricing to existing IAs because Entergy has not shown that it is just and reasonable. Interconnection customers have undertaken risk and made business and financial decisions based on the understanding that, under the Commission's policy at the time, they would receive repayment of amounts they paid for Network Upgrades.

229. Quachita states that Entergy has not supported, from a cost-benefit standpoint, its assertion that if its proposal regarding previously incurred interconnection costs is not approved by the Commission, the viability of the entire ICT proposal is at risk. Quachita argues that Entergy's unsupported claim about potential harm to the viability of the ICT does not justify deprivation for interconnection customers of the right to be reimbursed by Entergy for upfront payments made to finance Network Upgrades. Quachita adds that it is unclear how Entergy is able to quantify in advance the benefit of the ICT's "independent" review and reclassification of existing upgrades. Quachita argues that if the ICT is to be truly independent, Entergy cannot be in a position to anticipate the results of its review of interconnection costs before that review is actually done.

230. SeECA argues that Entergy has not shown that its proposal to have the ICT reallocate previously incurred interconnection costs is just and reasonable. While section 5.4 of Attachment T would permit the ICT to evaluate prior investments in the transmission system, including upgrades constructed by Entergy to serve its own native load, it does not require the ICT to do so. This is unduly discriminatory because it would require the ICT to re-evaluate third party interconnected generation funded upgrades while only allowing the ICT to re-evaluate transmission upgrades Entergy made on behalf of its native load.

d. <u>Entergy's Answer</u>

231. On the issue of comparability, Entergy responds that section 5.4 of proposed Attachment T to Entergy's OATT provides that the ICT may evaluate other prior investments, including upgrades constructed to serve native load customers, on the

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

transmission system made during the same time frame (post January 1, 1997) as those considered in section 5.1 to determine if they are properly classified as Base Plan or Supplemental Upgrades.

232. Entergy adds that there should be no uncertainty as to what the proposal intends to accomplish or to what it applies. The proposal is prospective; it only applies to yet-to-be-credited amounts. Entergy asserts that it is not proposing to get back any credits already paid to generators. Any facilities with credits still owed that are reclassified as Supplemental Upgrades simply would no longer receive credits going forward. Similarly, Entergy adds, any facilities currently not eligible for credits and deemed to be Base Plan facilities would be given full credits upon reclassification. Entergy states that Duke Energy's concerns are already addressed; section 5.5 of Attachment T provides that if the Commission reverses the ICT's determination once a section 205 filing is made, Entergy will resume crediting, with interest, to make the customer whole.

233. Entergy addresses intervenors' *Mobile-Sierra* objections by responding that it is seeking to have the ICT review only those IAs under which it has reopener rights under section 205 or 206 to request changes under the just and reasonable standard of review. In addition, Entergy responds that it will make a section 205 filing for any revision to an IA to implement an ICT cost allocation determination. The customer can raise any arguments at that time.

234. Entergy states that generators cannot claim that they "relied" on the existing crediting policy in financing their generating facilities. In *Duke Hinds*, the Commission reversed crediting provisions that the generators had agreed to when the generating facilities were financed. Entergy asserts that in both *Duke Hinds* and its ICT proposal, the issue is whether to modify an existing agreement to apply a Commission-approved pricing scheme.

235. Entergy argues that the Commission should reject Dow's and Occidental's request that if the ICT proposal is not renewed at the end of the initial period, any approval of the provision on previously incurred interconnection costs should be rescinded. Entergy asserts that this makes no sense, since the justness and reasonableness of any decision made by the ICT would already have been determined (via the section 205 filing). Once

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

the determinations are approved, there is no basis for revisiting them if the ICT proposal is later modified or terminated.

236. With respect to the scope of the ICT's review, Entergy states that while the ICT will consider prior system studies in certain circumstances, the ICT is not limited to only considering that information. If the ICT cannot make a determination based on the IA and applicable studies, it would conduct additional analysis using the current Base Case Model that the ICT itself prepared. Entergy also adds that any facilities reclassified as Supplemental Upgrades would receive the same firm transmission rights as a new facility that is classified as a Supplemental Upgrade.

e. <u>Commission Determination</u>

237. The Commission accepts, with modification, Entergy's proposal to have the ICT review all previously incurred interconnection costs back to January 1, 1997 involving IAs without *Mobile-Sierra* language, that is, where the IA contemplates that it may be changed under the just and reasonable standard rather than the higher *Mobile-Sierra* "public interest" standard. Our Guidance Order directed Entergy to address certain matters, detailed above, before the Commission would approve Entergy's proposal to have the ICT determine whether particular facilities should be reclassified. Entergy's filing, as modified below, satisfies the Commission's concerns. We clarify that if the ICT finds that any facility should be reclassified, either the transmission customer or Entergy may file with the Commission for consideration of such evidence, as allowed by each individual IA. However, we clarify that, consistent with Entergy's proposal in its petition for declaratory order, the ICT may not analyze previously incurred interconnection costs associated with IAs that are currently pending before the Commission. After the Commission's disposition of these proceedings, either party to the IA may petition the ICT to review the previously incurred interconnection costs, pursuant to that party's IA reopener rights and the procedures set forth below.[130]

238. The Commission will not prejudge the outcome of any ICT review of previously incurred interconnection costs. Therefore, we cannot address the Louisiana PSC's, New Orleans' or Quachita's cost-benefit concerns. They may raise these concerns in individual cases in which a party requests reclassification of facilities.

239. Regarding any subsequent requests by parties to exercise their IA reopener rights to have previously incurred interconnection costs reexamined, we agree with Entergy that a retrospective analysis of cost responsibility based on historical data that may be years

[130] Entergy Petition for Declaratory Order at 22-23.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

old can be complex.[131] Moreover, Entergy itself has acknowledged the problems it has encountered in retaining historical data, and it has also noted that there may not be sufficient historical data available to undertake a retroactive review of cost responsibility for some IAs. In these cases, the Commission believes that the ICT cannot reliably make determinations on previously incurred interconnection costs based on earlier system conditions and criteria. In Attachment T of its filing, Entergy proposes that in these instances the ICT should evaluate the impact of the upgrade based on *current* system reliability. Entergy explains that this current analysis provides additional protections to the customer because it avoids the complexities of a retrospective analysis. Further, Entergy states that it has reviewed this procedure with SPP, and that SPP regards this as both a feasible and reasonable approach and one that SPP can implement within 90 days of the completion of the Base Case model.

240. Because of Entergy's data problems and because of the benefits noted above, we believe that this is the best approach for any subsequent requests to reopen non-*Mobile-Sierra* IAs. Thus, if a party to a non- *Mobile-Sierra* IA subsequently seeks to have a review undertaken of its previously incurred interconnection costs, we will require the ICT to undertake that review, and for the ICT to base its analysis on then-current system conditions and the most recent Base Plan. We direct Entergy to modify its tariff to reflect this requirement within 60 days of the date of this order. We clarify that for any IA that is reviewed by the ICT, the cost responsibility decisions will ultimately be made by the Commission after an appropriate filing with the Commission to reopen the IA.

241. In answer to comments that Entergy did not respond to the Guidance Order's concern that the ICT would not be the entity that determines that the appropriate data inputs were used in performing the system impact and feasibility studies, we believe that our requirement that the ICT evaluate the facilities based on current system conditions satisfies these concerns. Moreover, as stated above, with respect to the classification of facilities as Base Plan or Supplemental Upgrades, the ICT will review and validate the necessary data to ensure that these determinations are consistent with the Planning Criteria approved by the Commission. The key here is that it is the ICT that determines the appropriate classification.

242. Many of the commenters, including Dow, East Texas Cooperatives, and Occidental, raise issues related to the *Duke Hinds* line of cases in support of their requests that this aspect of Entergy's proposal be rejected. The *Duke Hinds* line of cases, however, does not support rejecting Entergy's proposal. The first issue raised in those cases was the appropriate standard to be met (just and reasonable or public interest),

---

[131] Entergy at 31.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

under those IAs, before the Commission would revise them. The Commission found that since those IAs contain provisions that allow either party to unilaterally request changes to the interconnection agreements under section 205 or 206 of the FPA, the just and reasonable standard of review (rather than the "public interest" standard) was appropriate.

243. The Commission further found that we could, under sections 205 and 206 of the FPA, reclassify the facilities at issue correctly under pre-existing Commission pricing policy and thus modify the pricing in these interconnection agreements on a going forward basis. That line of cases concerned whether or not the Commission could modify an interconnection agreement to correctly reflect the classification of those facilities. Similarly, here Entergy requests to be able to modify the IAs under section 205 or 206 of the FPA to reflect its new pricing as approved by this order.

244. A number of intervenors, including Dow and Occidental, argue that Entergy's proposal to have this cost treatment for reclassified facilities outlive the initial term with the ICT makes the Commission's limited term approval meaningless. The Commission does not make a finding on this matter at this time. Thus, the Commission determinations in this order in no way limits parties' contractual rights to unilaterally pursue reopening the IAs in the future.

245. As to the effective date of any reclassification, and the date that Entergy would cease providing credits, we find that the date would be the date granted by the Commission in the applicable section 205 filing. While the ICT's determination may be correct, we agree with Duke Energy that it is Entergy's obligation to make a section 205 filing to effectuate the change and permit Commission review. The Commission's regulations provide for a 60-day notice period. Entergy, of course, can seek waiver of the notice requirement, and the Commission will make a judgment as to the effective date on the merits of the filing. We direct Entergy to make any necessary changes to its proposed tariff sheets to reflect the fact that the effective date on which Entergy may stop providing credits would be the same as the effective date granted by the Commission for the particular contract-specific section 205 filing.

E. Weekly Procurement Process

1. Commission Directives

246. The concept of the Weekly Procurement Process was originally submitted to the Commission by Entergy in a Petition for Declaratory Order (2003 Petition) that sought guidance with respect to the major elements of its proposed Weekly Procurement Process. The Weekly Procurement Process is designed to allow merchant generation and

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

other wholesale suppliers to compete to serve Entergy's native load customers through bids submitted to Entergy's Energy Management Organization (EMO).[132] It also establishes an additional mechanism for granting short-term firm transmission service through redispatch. The Commission provided guidance to Entergy on its proposal.[133] The Commission concluded that the Weekly Procurement Process has the potential to improve Entergy's procurement options if it is properly structured.[134] We also concluded that Entergy should not be required to establish day-ahead and real-time markets, that load serving entities need not be permitted to purchase energy through the Weekly Procurement Process, and that the cost data submitted in the Weekly Procurement Process for Entergy facilities should be based on the variable costs of those facilities. Finally, the Commission found that Entergy's proposal to have Entergy's Transmission Function instead of EMO operate the Weekly Procurement Process may be inconsistent with Order Nos. 888 and 889, and that the interaction between the Weekly Procurement Process and Generator Operating Limits, the predecessor to AFC, and AFCs should be further explored in a technical conference.

2. Entergy Proposal

247. Using the guidance provided by the Commission in the Weekly Procurement Process Guidance Order and input from the December 2003 Technical Conference, Entergy expanded on the Weekly Procurement Process proposal.[135]

---

[132] Under Entergy's current proposal, which is described, bids are no longer submitted to EMO.

[133] 104 FERC ¶ 61,336 (2003) (Weekly Procurement Process Guidance Order).

[134] *Id.* at P 46.

[135] Entergy filed the expanded Weekly Procurement Process proposal as part of its original ICT proposal in its March 31, 2004 section 205 filing in Docket No. ER04-699-000. In order to explore issues raised by the original ICT filing, the Commission and its staff held or participated in a series of technical conferences and meetings in 2004 that also included Weekly Procurement Process issues, as follows: (1) July 29-30, 2004, New Orleans, Louisiana; (2) August 26, 2004, Washington, D.C.; (3) September 21, 2004, Washington, D.C.; (4) October 8, 2004 Jackson, Mississippi; and (5) November 8, 2004, Little Rock, Arkansas. Due to Entergy's filing of the revised ICT proposal in Docket No. ER05-1065-000, the Commission accepted Entergy's petition to withdraw its filing in Docket No. ER04-699-000. *Entergy Services, Inc.*, 111 FERC ¶ 61,503 (2005). The Commission did, however, make the transcripts of the technical conferences, as they

(continued)

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

248. The Weekly Procurement Process will be operated by Entergy's Weekly Operations business unit, which is a part of Entergy's transmission organization. The results of the Weekly Procurement Process optimization will be treated as requests for new point-to-point transmission service and the designation of new Network Resources, including offers of redispatch needed to grant the new service. Weekly Operations will provide the results of the Weekly Procurement Process to the ICT. The ICT will review the requests and grant or deny transmission service under the OATT. Entergy states that because the Weekly Procurement Process allows the simultaneous consideration of transmission system conditions and dispatch alternatives, the grant or denial of transmission service requested through the Weekly Procurement Process will not be limited by AFCs. Entergy states that AFCs will be recalculated by the ICT in accordance with Entergy's OATT to reflect the results of the Weekly Procurement Process.

249. Entergy states that, in response to participants' requests, it has expanded its original Weekly Procurement Process proposal, to allow Network Customers under the Entergy OATT to submit cost information for their existing Network Resources and offers from third party suppliers. Entergy states that Weekly Operations will use the same optimization process for a participating Network Customer as it would use for EMO and will perform the optimization process simultaneously. As a result, the Network Customer will be able to use the Weekly Procurement Process the same way as will Entergy's native load. However, this should not be deemed to be a joint procurement process.

250. Entergy states that, initially, it does not propose to permit its "non-regulated" affiliates (those with market-based rates) to make offers to EMO through the Weekly Procurement Process. EMO will provide cost information (projected variable production costs) for all of its oil and gas units as well as the expected availability of such units for the Weekly Procurement Process Operating Week. EMO will also continue to make short-term and long-term bilateral purchases outside of the Weekly Procurement Process. Entergy states that the terms of the purchase contracts will determine whether energy from these contracts will be scheduled or will be subject to displacement by a resource offered in the Weekly Procurement Process. For example, if a contract has must-take provisions, it is not displaceable and will not be submitted to Weekly Operations by EMO. Thus, the resources for which EMO will submit cost information to Weekly Operations will be Entergy's oil and gas units and displaceable term purchases. EMO will also advise Weekly Operations of its flexibility requirements, including the need for

---

relate to the Weekly Procurement Process, a part of the instant docket so that parties to ER04-699-000 could refer to those materials. *Id.* at P 12.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

Automatic Generation Control, Operating Reserves, and planning reserves for the Weekly Procurement Process Operating Week.

251. Entergy states that participation in the Weekly Procurement Process by suppliers is voluntary. The Weekly Procurement Process protocol permits suppliers to offer a wide range of services. Suppliers can specify the minimum and maximum number of MW that must be scheduled each hour once the unit is committed, the minimum and maximum number of hours the unit must be scheduled each week or day of the week, the minimum and maximum MWh to be scheduled, and the ramp rate and scheduling notice provisions. Entergy states that offers to sell through the Weekly Procurement Process must include start-up costs, a heat rate, a gas index, and a gas basis adder and that they must be consistent with the supplier's rate authority (market-based or cost-based). Suppliers may not offer the same energy to both EMO and to a Participating Network Customer or to more than one Participating Network Customer.

252. Entergy states that the forecast of hourly Network Load for each Weekly Procurement Process Participant will be developed on the same basis on which forecasted hourly Network Loads are developed for use in the AFC process. This will better ensure that the results of the Weekly Procurement Process are consistent with the AFC process, as consistent data will be used.

253. Entergy asserts that the Weekly Procurement Process will provide a basis for offering a new weekly redispatch service under Entergy's OATT. Transmission customers will be able to obtain transmission service on the Entergy system by paying the redispatch costs as determined through the Weekly Procurement Process. Weekly Operations would simulate operations over the Weekly Procurement Process Operating Week using a least-cost, security constrained unit commitment and dispatch methodology to meet the requirements of each Weekly Procurement Process Participant's Network Load, to provide point-to-point transmission service based on redispatch, and to calculate congestion charges. Weekly Operations would use a two-step process. It would run an optimization (Run 1) in which each Participant's bids and resources will be included. For each Network Customer that is not making purchases through the Weekly Procurement Process, this run will include the customer's NITS Network Resources operating at base case operating levels, with any difference between the customer's NITS Network Resources and that customer's expected Network Load modeled as being served from other uncommitted resources that are connected to the transmission system and not included in the Weekly Procurement Process. Weekly Operations would then run a second optimization (Run 2) that would be the same as the first run, except that requests for point-to-point transmission service based on redispatch and a non-participating

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

Network Customer's expected use of NRIS resources will be included. Entergy states that in all cases, the optimization will be based on forecasted weekly gas prices. The ICT will be provided the results of Run 2 and would treat those results as requests for new transmission services.

254. Entergy states that an average per MWh rate for redispatch for a Weekly Procurement Process Operating Week will be calculated by dividing the positive cost difference between Run 2 and Run 1 by the sum for each hour of the week of the MWh of new point-to-point Transmission Service granted through the Weekly Procurement Process and flowing on constrained facilities and the MWh of NRIS resources serving the load of non-participating Network Customers under Run 2 that also are flowing on constrained facilities in that optimization model, but excluding MWh that are exempt from congestion. Entergy asserts that use of an average rate to charge new transmission uses for redispatch is appropriate, given that all service granted through the Weekly Procurement Process will have the same queue priority.

255. Firm point-to-point transmission service customers granted service through redispatch and non-Weekly Procurement Process Participants that take deliveries from NRIS resources during the Weekly Procurement Process Operating Week will be allocated redispatch costs based on their MWh flows on constrained facilities during the Weekly Procurement Process Operating Week. However, these customers also may be allocated congestion hedges in the form of "Exempt Transmission Capacity." A transmission customer will, for each Weekly Procurement Process Operating Week, be allocated Exempt Transmission Capacity for Supplemental Upgrades paid for by that party or its supplier. If the upgrade is an economic upgrade, was constructed to provide NRIS or ERIS interconnection service, or is a "lumpy" upgrade, the Transmission Customer will receive an amount of Exempt Transmission Capacity on the upgraded facility equal to the capacity of the upgrade (excluding any lumpy capacity for which the party receives payment from third parties). If the transmission facility was upgraded to provide long-term firm point-to-point service or to permit designation of an NITS Network Resource, the party can receive Exempt Transmission Capacity to the extent it relinquishes its long-term firm point-to-point rights or NITS Network Resource designation for the Weekly Procurement Process Operating Week. In that case, the party will receive Exempt Transmission Capacity equal to the amount of the upgraded capacity it frees up by relinquishing its firm rights for the week. Entergy states that firm point-to-point rights or NITS Network Resource designation must be relinquished to receive Exempt Transmission Capacity because the customer would otherwise retain the right to use its firm transmission without any obligation to pay for congestion.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

256. Entergy states that a point-to-point transmission service customer or non-Weekly Procurement Process Participant with Exempt Transmission Capacity will be exempted from any congestion costs for its flows on the Supplemental Upgrade associated with the Exempt Transmission Capacity up to the amount of the congestion hedge on that facility. Entergy asserts that Exempt Transmission Capacity provides firm transmission rights that protect customers that pay for Supplemental Upgrades from congestion costs they would face if not for the upgrade.

257. In the case of point-to-point service, the transmission customer will pay the higher of the redispatch charges allocated to it as part of the Weekly Procurement Process (after congestion hedge adjustments) or the embedded cost charge under the Entergy OATT.

258. Entergy states that all revenues collected for redispatch for the week will be allocated to Weekly Procurement Process Participants in proportion to the difference in their production costs under the two optimization runs. Also, Entergy proposes to establish a tracking account that would capture the differences between payments received by point-to-point transmission service customers for redispatch and payments made to suppliers providing the redispatch service. At the end of the year, depending on the balance, the amount will either be credited or charged to the transmission revenue requirement applicable to the rate for long-term firm point-to-point transmission service and the charge for NITS. Entergy claims that its redispatch service is a new service above the Order No. 888 OATT requirement and that these costs are not currently included in Entergy's rates. Entergy asserts that the Commission has previously allowed tracking accounts to ensure adequate cost recovery and, therefore, should approve Entergy's proposal.[136]

259. Entergy states that Weekly Operations will monitor for possible Weekly Procurement Process implementation errors.[137] If Weekly Operations discovers such an error, it may take immediate action to fix it. If Weekly Operations determines that the error will require changes to one or more results of the Weekly Procurement Process, it will notify the ICT. The ICT will independently review all information provided to it as part of a request for transmission service through the Weekly Procurement Process. The ICT also will independently review for Weekly Procurement Process implementation

---

[136] Entergy cites *RockGen Energy, LLC*, 100 FERC ¶ 61,261 at P 22 (2002), which allowed a tracking account associated with new redispatch service.

[137] Implementation errors are any flaw in the design or implementation of the Weekly Procurement Process, including software errors and any violations of transmission constraints due to modeling errors or known operating limitations.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

errors and review the Weekly Procurement Process modeling. To ensure that the OATT requirements regarding queue priority are not violated, the ICT will refuse a request for daily firm point-to-point transmission service based on redispatch if the request would preclude the ICT from accepting a competing request for daily firm point-to-point transmission service with a queue time prior to the time requests are submitted through the Weekly Procurement Process. If the ICT disagrees with any aspect of the Weekly Procurement Process modeling, it will develop a proposal to remedy that aspect of the modeling and advise Weekly Operations of its finding. If the ICT and Weekly Operations do not agree on a remedy proposed by the ICT, then the dispute resolution procedures in Attachment S will apply. Entergy asserts that these provisions are consistent with the approach used by the Midwest ISO to address computer and modeling errors. Entergy states that while these rules were established for RTO and ISO markets, the rules also make sense for the Weekly Procurement Process and should similarly be adopted here.

260. Entergy states that any new Network Resources designated through the Weekly Procurement Process would result in EMO and Participating Network Customers having more designated Network Resources than they did before the Weekly Procurement Process. As a result, Entergy proposes to require EMO and Participating Network Customers to designate an amount of previously approved Network Resources, equal to the amount of new Network Resources identified in the Weekly Procurement Process, as Conditional Network Resources. Entergy explains that Conditional Network Resources effectively will be "de-listed" as Network Resources for the period at issue and that transmission service for the Conditional Network Resources will be available subject to posted AFC values. Entergy states that it has made certain modifications to ensure that for each Weekly Procurement Process Participant, the MW amount of bid-in resources selected in the Weekly Procurement Process in an export constrained area will not exceed the amount that would permit the Weekly Procurement Process to satisfy requirements regarding sufficiency of Network Resources.

3. Comments

261. Calpine and TDU Intervenors claim that the ICT's oversight authority is inadequate, and Calpine asserts that the entire Weekly Procurement Process function should be handled by the ICT. EPSA and Generator Coalition argue that Entergy should modify the Weekly Procurement Process to provide a joint procurement process.

262. Calpine believes that the Weekly Procurement Process model in its current form is an inferior substitute for equitable transmission access coupled with least-cost economic dispatch that includes all available generation in Entergy's footprint. It is concerned with the role that Weekly Operations, a part of Entergy's transmission function, has in the Weekly Procurement Process. It is also concerned that EMO will have access to

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

commercially sensitive information. Calpine recommends three fundamental changes to the Weekly Procurement Process to allow non-affiliated generators with a meaningful opportunity to participate in the Weekly Procurement Process with a reasonable expectation of a fair outcome: (1) that the ICT evaluate the bids received in the Weekly Procurement Process to ensure fairness in the process; (2) that the ICT operate the Weekly Procurement Process optimization models and conduct any necessary studies and evaluations and grant transmission service; (3) that we require greater specificity of products and services, greater disclosure of bid evaluation factors and methods and greater transparency regarding winning bids.

263. Generator Coalition asserts that the Weekly Procurement Process is one of the most important aspects of the ICT filing. However, the Weekly Procurement Process needs further modification. First, there should be a joint procurement process to ensure the most efficient dispatch of generation and use of the transmission system. Second, the Weekly Procurement Process should use a market-clearing mechanism to establish price. Third, Entergy should clarify that all generators participating in the Weekly Procurement Process are subject to the same rules. Fourth, Entergy should use real-time hourly marginal prices that more accurately reflect the cost of redispatch.[138] Generator Coalition states that it understands that these recommendations may be contentious and asks that, if the Commission is not prepared to require them, we separate the Weekly Procurement Process-related issues from the ICT/transmission pricing issues and set the Weekly Procurement Process for settlement conference/stakeholder procedures on a parallel track with the ICT proposal.

264. Nucor asserts that the Weekly Procurement Process should allow demand response resources to submit bids along with generators. Nucor also notes that Entergy has not proposed a market monitor to oversee the operation of the Weekly Procurement Process. Although Nucor recognizes that the Weekly Procurement Process is not a true energy market, it is still a market mechanism that will be operated not by an independent entity, but by EMO and Entergy Transmission. Therefore, the ICT should serve as the market monitor to protect against the exercise of market power and other abuses, to provide assurance to market participants that the markets are sound, and to oversee the safe and reliable operation of the transmission system.

265. SeECA asserts that the Commission should require Entergy to contract with an Independent Market Monitor for the Weekly Procurement Process. The Independent Market Monitor should have broad authority over the Weekly Procurement Process, well beyond oversight of the Entergy Weekly Operations group. The Independent Market

[138] *See also* EPSA at 6.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

Monitor's responsibilities, at a minimum, should include monitoring the Weekly Procurement Process, including the behavior of Weekly Procurement Process participants, third-party suppliers, and the Weekly Procurement Process market design.

266. In addition, SeECA states that Entergy has not provided a non-discriminatory process for Third-Party Suppliers to qualify to provide Automatic Generation Control capability or operating reserves. This may cause the Weekly Procurement Process optimization process to unduly favor the existing Network Resources of the EMO that are currently used to serve the Entergy system's native load customers.

267. SeECA also protests the use of heat rate-based bids. It states that while in theory, this should provide an opportunity for bidders to recover fixed generation costs, in practice it may not provide that opportunity and may actually discourage generators from bidding because there is no obligation for the associated Weekly Procurement Process participant to actually call on the winning bidder for power. This means that unlike in most RTO day-ahead markets, a winning bidder under the Weekly Procurement Process is not guaranteed to at least receive revenue through its start-up cost bid, as it may never be called on to produce any power.

268. Finally, SeECA asserts that Entergy's proposed tracking account for lost redispatch revenues should only be considered in a general review of Entergy's formula rate for transmission service. It claims that this proposal amounts to single-issue ratemaking, which is generally impermissible because it ignores revenue from other sources that would still provide the utility with an opportunity to earn an overall just and reasonable rate of return.

269. The TDU Intervenors assert that the Weekly Procurement Process will allow Entergy to cherry-pick available resources while simultaneously limiting opportunities for other load-serving entities and non-favored sellers to do business with each other. For instance, resources offered to Entergy may not also be offered to other Network Customers, the practical effect of which will be that Entergy will be the preferred buyer.

270. Further, the TDU Intervenors claim that the Weekly Procurement Process will undermine the AFC process because the resources selected through the Weekly Procurement Process will be assured of firm transmission. If a Weekly Procurement Process Participant does not in fact use a resource, the AFCs will not be accurate. They also state that the requirement to submit binding self-schedules would interfere with operational flexibility to respond to changes in system conditions or economic opportunities. The effects of non-binding self-schedules on the AFC calculations as revised after the Weekly Procurement Process optimizations raise serious concerns, especially when the result of the Weekly Procurement Process is the assurance of firm transmission for the resources selected by Entergy. At a minimum, the TDU Intervenors

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

state that the Commission should require that Weekly Procurement Process Participants that do not use self-scheduled resources as submitted for the Weekly Procurement Process pay any redispatch costs that are incurred as a result of the deviation from self-schedules. TDU Intervenors claim that Weekly Operations' ability to correct Weekly Procurement Process implementation errors gives Entergy the ability to discriminatorily adjust Weekly Procurement Process outcomes.

271. The TDU Intervenors ask that certain issues be addressed before the Commission accepts the Weekly Procurement Process. First, they state that the modeling of use by Network Customers not participating in the Weekly Procurement Process in the optimization process is unclear. Second, it is not clear how the Weekly Procurement Process will model Entergy's recent purchases of 900 MW of capacity under "Liquidated Damages" contracts. Finally, they contend that, although Entergy states that the optimization process for itself and other Weekly Procurement Process Participants will occur "simultaneously," Entergy has not said how it will resolve conflicting uses of constrained facilities that may result from the simultaneous optimization runs.

4. Entergy Answer

272. Entergy responds that the role of Weekly Operations is reasonable. Weekly Operations is on the transmission side of the Standards of Conduct and, thus is prohibited from actions that will provide Entergy generation with favorable access to the transmission system. Entergy points out that Weekly Operations' actions will be overseen by the ICT, which can report any concerns to the Commission and to Entergy's retail regulators. TDU Intervenors' concern regarding Weekly Operations' correction of Weekly Procurement Process implementation errors is unfounded because Weekly Operations must make changes in Weekly Procurement Process outcomes to correct the error. Entergy adds that Weekly Operations must notify the ICT of any adjustments to the optimization process and that the ICT can report any concerns to the Commission and to retail regulators.

273. On the subject of the EMO's access to commercially sensitive information, Entergy responds that EMO is responsible for Entergy's regulated wholesale merchant functions as well as the operation and dispatch of Entergy generation. As part of that role, EMO receives bids from suppliers seeking to sell energy that would be used to serve Entergy's customers. Entergy asserts that EMO's role in the Weekly Procurement Process is the same as it is outside of the Weekly Procurement Process.

274. Entergy claims that the ICT's oversight authority over the Weekly Procurement Process is extensive and covers all information provided to Entergy as part of: (1) a request for transmission service through the Weekly Procurement Process; (2) Weekly Procurement Process implementation errors; and (3) the modeling used in the Weekly

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

Procurement Process. If the ICT disagrees with any aspect of Weekly Procurement Process modeling, it can propose a remedy, and if agreement between the ICT and Weekly Operations is not reached, there are dispute resolution procedures. In addition, if the ICT disagrees with aspects of Weekly Procurement Process design, it may report this to the Commission and retail regulators. Entergy also responds that procurement is a fundamental role of load-serving entities, including Entergy, and therefore, should remain Entergy's responsibility, since Entergy is the entity ultimately accountable to its retail regulators.

275. With respect to Nucor's and SeECA's request that the ICT perform a market monitoring function, Entergy responds there is no significant change in market structure that creates a need for market monitoring.

276. Regarding EPSA and Generator Coalition's request that there be a joint procurement process, Entergy answers that the Commission has already determined that the Weekly Procurement Process need not be made available to third party load serving entities to purchase energy. Entergy asserts that it has already amended its proposal to allow other network customers to submit cost information for their existing network resources and offers from third party suppliers. Weekly Operations will use the same optimization process for a network customer seeking to purchase power under the Weekly Procurement Process as is used for EMO, and the process will be performed simultaneously.

277. Entergy says that we should reject TDU Intervenors' various arguments concerning self-schedules and their effect on AFCs and redispatch charges. Entergy claims that the Weekly Procurement Process is consistent with Order No. 888 because transmission service, including designations of additional network resources, will be granted through the Weekly Procurement Process (by the ICT), but there will not be any requirements as to how resources are to be dispatched. The Weekly Procurement Process should not reduce the rights network customers have, including the right to schedule network resources in real time. Entergy states that by submitting self-scheduled resources in the Weekly Procurement Process, a participant will identify resources it does not wish to displace through purchases in the Weekly Procurement Process. The participant's transmission service for such resources prior to the Weekly Procurement Process should not be degraded as a result of that decision. In addition, it will be in a Weekly Procurement Process Participant's best interest to self-schedule only those resources that cannot be displaced by a cheaper alternative. Entergy claims that requiring binding self-schedules would eliminate the flexibility that Weekly Procurement Process Participants require by reducing or eliminating their ability to enter into short-term purchase and sale transactions, to adapt to changes in projected loads and the availability of generation, to adapt to changes in fuel prices, and to efficiently or adequately address

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

QF put rights and merchant generator imbalances. Imposing redispatch charges, as the TDU Intervenors propose, would unjustifiably penalize a Weekly Procurement Process Participant for using this needed flexibility, which Entergy claims is often used to address actions of third parties.

278. In response to parties, Calpine, Generator Coalition, and SeECA, that object to congestion hedges being limited to parties that pay for Supplemental Upgrades, which Entergy calls "exempt transmission capacity," Entergy says that consistent with the Guidance Order, exempt transmission capacity matches the congestion hedge to the upgrade the customer funded. Entergy states that there is no basis to provide a hedge on a congested flowgate for new transmission service when the customer did not pay to upgrade that flowgate.

279. In response to SeECA's objection regarding the level of the bid, Entergy explains that suppliers will be able to ensure that a minimum amount of energy is taken from units selected in the Weekly Procurement Process (by specifying a minimum number of hours a unit must run). Further, suppliers bidding dispatchable products may increase their bid heat rate above actual operating heat rates to reflect an opportunity to recover some capacity costs (a common practice in today's electricity market). According to Entergy, a supplier thus can guarantee a certain level of revenues from a resource selected in the Weekly Procurement Process without a capacity charge or call option fee.

280. Entergy asserts that the Commission should reject SeECA's request that the Commission require Entergy to file a process to provide automatic generation control or operating reserves. Entergy states that it is developing the technical details associated with third party supply of such services and will make the details available before Weekly Procurement Process operations. Entergy does not believe these are the types of business practices or procedures that need to be in an OATT. Separate procurement processes for ancillary services are not needed for generators to supply ancillary services through the Weekly Procurement Process. According to Entergy, generators that provide offers with sufficient flexibility can be selected to provide ancillary services, and those offers may be selected at prices higher than bids that do not provide such flexibility.

281. Entergy asserts that the redispatch rate is calculated and applied correctly. The Weekly Procurement Process is a week-ahead process, and congestion costs should be calculated based on the same time frame. Entergy states that PJM calculates congestion charges for day-ahead transmission service using prices from its day-ahead market, not from the real-time market. Generator Coalition's proposal is equivalent to locational marginal pricing for congestion, which is beyond Entergy's proposal and beyond what Entergy believes its retail regulators support.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

282. In response to Lafayette's argument that the Commission should require SPP and Entergy to compensate parties that provide redispatch service, Entergy says that this is beyond the scope of the proceeding. According to Entergy, SPP's obligation to pay for redispatch under its OATT has nothing to do with the ICT proposal. Any redispatch that is done as a part of the Weekly Procurement Process already has a mechanism to compensate the Weekly Procurement Process Participant for the redispatch service. Entergy adds that Lafayette's request is nothing more than a complaint that should be rejected, since parties cannot include complaints in protests.

283. With respect to Generator Coalition's argument that Entergy should be required to add a market-clearing price mechanism to the Weekly Procurement Process, Entergy responds that the Commission has already determined that Entergy's proposal to use a pay-as-bid structure for the Weekly Procurement Process is justified.

284. Entergy responds to TDU Intervenors' concern regarding the modeling of Liquidated Damages Contracts by stating that the modeling of these agreements in the Weekly Procurement Process will be the same as in the AFC process and that the agreements will be included only to the extent there are firm transmission reservations associated with the agreements.

285. With respect to SeECA's argument that the Tracking Account amounts to single-issue ratemaking, Entergy responds that in order to recover costs in the Tracking Account, Entergy will need to include the costs in its annual update of rate determinants under its OATT or to amend its formula rate for transmission service. Entergy states that SeECA can raise this issue at that time.

286. Entergy states that Calpine's various requests that the Commission require Entergy to increase Weekly Procurement Process transparency should be rejected. The Weekly Procurement Process is a procurement process in the Entergy region, as opposed to in a RTO-wide market, and Entergy is limited to including projected variable production costs for its units and where suppliers are paid on a pay-as-bid basis. According to Entergy, disclosing information at any point, even if it is masked, would allow participants to determine cost data for Entergy units, and this data is highly sensitive. As for arguments related to greater product specificity, Entergy states that it has provided significant feedback to suppliers on product definition through the technical conferences. The bidding parameters are designed to provide suppliers with flexibility to offer various products in the Weekly Procurement Process.

287. Entergy states that the Generator Coalition's argument that units selected in the Weekly Procurement Process should be subject to the same scheduling rules is beyond the scope of the proceeding. Tagging of schedules is an operational issue that is not

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

within the scope of the Weekly Procurement Process (which is used for granting or denying new transmission services).

288. Entergy states that Nucor's request to allow demand response resources to submit bids along with generators should be rejected because bidding demand response is subject to arrangements under retail tariffs and would require procedures to verify demand reductions, adding significant complication.

289. Entergy states that the Commission should not grant EPSA's and Generator Coalition's requests to separate the Weekly Procurement Process from the rest of the ICT because the ICT plays an important role in the Weekly Procurement Process. Entergy also adds that the Weekly Procurement Process is a well-developed proposal that has been before the Commission for some time and that parties have had an opportunity to extensively review and comment on it.

5. Commission Determination

290. Our review of the tariff sheets covering the Weekly Procurement Process, and Entergy's responses, through both the various technical conferences and through its answer filed in this proceeding, indicates that the Weekly Procurement Process appears to be structured adequately to permit merchant generators and other wholesale suppliers to compete to serve loads that participate in the Weekly Procurement Process. With respect to calls by EPSA and Generator Coalition for the Weekly Procurement Process to be a joint procurement process, our earlier orders on the ICT have already determined that Entergy need not establish a joint procurement process at this time.

291. Entergy's proposed structure, in which the EMO and other Weekly Procurement Process Participants submit offers and cost information to Weekly Operations so that Weekly Operations can perform optimization runs (Run 1 and Run 2) to minimize costs, is appropriate. It meets the Commission's Order No. 888 and 889 requirements for functional separation of the merchant and transmission functions. Moreover, we find that the ICT's oversight of transmission-related aspects of the Weekly Procurement Process and its ability to recommend remedies and to report issues to the Commission and to retail regulators will assure that transmission access will be granted on a fair basis. As an independent overseer of transmission service in the Weekly Procurement Process, the ICT will ensure that transmission services granted through the Weekly Procurement Process, is done with rules that are fair to all participants.

292. We also find that the Weekly Procurement Process is sufficiently transparent. Entergy provided interested parties with feedback on product definition at Commission-sponsored meetings in August and September 2004. In addition, Entergy provided information and examples at the various other technical conferences in 2004 as well as at

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

the technical conference held in New Orleans, Louisiana on June 29, 2005. With regard to transparency of prices, we agree with Entergy that disclosure of bid and offer data could lead to strategic bidding behavior, not least-cost bidding strategies. Moreover, we expect that as Entergy and Weekly Procurement Process participants gain experience with various aspects of the procurement process it will evolve and improve over time – including with respect to transparency issues.

293. With respect to Calpine's arguments that the Weekly Procurement Process should be under the ICT, we do not believe that this is necessary. Entergy points out that it is accountable to its retail regulators for its procurement decisions. In addition, the ICT proposal is only being approved for a four-year period. To have the ICT assume full operational responsibility for the Weekly Procurement Process would only delay the implementation of the ICT. We are comfortable with the oversight authority of the ICT with respect to the Weekly Procurement Process and if the ICT thinks Weekly Procurement Process operations are not working or are being administered in an unfair manner, the ICT will inform the Commission and retail regulators.

294. With respect to the arguments regarding congestion hedges being limited to exempt transmission capacity, we note that in the Guidance Order, we stated that firm transmission rights "should protect customers that pay for Supplemental Upgrades from congestion costs that would be faced if not for the upgrade."[139] Limiting the congestion hedge to the exempt transmission capacity meets this requirement.

295. With respect to various other issues, we find as follows. Regarding the Tracking Account, a party can challenge the overall transmission rate when Entergy seeks to flow through (or recover) the costs in the Tracking Account. Regarding the clearing price, the Commission has approved Entergy's pay-as-bid proposal in the Weekly Procurement Process Guidance Order. Lafayette's issue regarding compensating parties for redispatch service (outside of the Weekly Procurement Process) is outside of the scope of the proceeding. This issue is actually a seams issue, and Lafayette is free to file a section 206 complaint. We find that it is appropriate to calculate congestion costs in accordance with the Weekly Procurement Process time frame. Entergy's proposal does not provide for real-time updates to the output of the Weekly Procurement Process. Therefore, congestion pricing based on average costs reflecting the Weekly Procurement Process timeframe is just and reasonable. Regarding the development of additional processes to account for the provision of certain ancillary service, the bidding process implicitly values any ancillary service provided as part of the bid structure. With respect to calls by Nucor for the ICT to serve as a market monitor, if the ICT exercises its oversight

[139] Guidance Order at P 72.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

authority in accordance with our approvals, further expansion of its authority is not necessary. Adding demand response resources to the Weekly Procurement Process, as Nucor suggests, may be attractive in the long-term but will not be necessary for approval at this stage. The Weekly Procurement Process is an improvement over the status quo and should not adversely impact any current demand-side programs that may exist. Nevertheless, the development of enhanced demand response is a goal of this Commission and we encourage Entergy and interested parties to pursue such enhancements to the Weekly Procurement Process over the coming years.

296. Our approval of the entire package of the ICT, Weekly Procurement Process and Entergy's pricing proposal is predicated in large part on Entergy's representations of the substantial benefits associated with the Weekly Procurement Process as discussed in this order. Under Entergy's original timeline, it stated that the Weekly Procurement Process could commence operations by the end of 2006, or 14 months after its original requested action date by the Commission. Therefore, we expect that Entergy will begin Weekly Procurement Process operations approximately 14 months from the date of this order. The Weekly Procurement Process benefits identified by Entergy are central to our decision to approve the ICT and Weekly Procurement Process proposal. Entergy recognized this linkage and its proposal was presented to the Commission as a package. We want to emphasize that our approval of Entergy's ICT and Weekly Procurement Process proposal is based, in part on the benefits associated with the successful implementation of the Weekly Procurement Process. If the Weekly Procurement Process is not operational after 14 months we may reevaluate all of our approvals in the instant order.

F. Measuring the Success of the ICT and Weekly Procurement Process

297. We are approving Entergy's proposal with modification because we find that it is consistent with or superior to the Order No. 888 tariff and should improve transparency of transmission information, enhance transmission access, and relieve transmission congestion.[140] The Commission will require periodic reports to measure the success of the ICT and the Weekly Procurement Process in meeting Entergy's claimed objectives (including the purported benefits) and to ensure that the market participants concerns are being adequately addressed.

298. In the Guidance Order, the Commission stated that yearly reports from the ICT would be important to our decision on whether continuation of the ICT would be just, reasonable and not unduly discriminatory or preferential. We also required the ICT to

[140] *See* Guidance Order at P 11.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

file a comprehensive report assessing the state of Entergy's transmission system operations whether Entergy's proposed transmission pricing ensures that merchant generation seeking to compete in the Entergy footprint is able to do so. This report is to be filed one year after the ICT becomes operational.[141]

299. We are now convinced, however, that additional monitoring and reporting by the ICT, beyond that required in the Guidance Order, are necessary to ensure that the ICT and Weekly Procurement Process are transparent to the Commission, state regulators, and stakeholders. We have reached this conclusion partly because of the failure of Entergy's data retention system resulting in the loss of nine months of AFC data, as reported on October 31, 2005. Additional reporting should lessen the impact of any such possible future occurrences. In addition, we believe that stakeholder input will greatly assist the successful operation of the ICT. More frequent reporting will be useful to any stakeholder process that the ICT will convene, because it will ensure that stakeholders are well-informed and are thus better able to offer useful feedback to the ICT.[142] Accordingly, we will require the ICT to file a publicly available assessment with the Commission and state regulators every twelve months. This assessment should address how the ICT and Weekly Procurement Process are remedying problems that have been identified by transmission customers and other stakeholders and should include metrics for measuring the success of the ICT and Weekly Procurement Process. For example, based upon Entergy's representation of the significant benefits from the Weekly Procurement Process, we believe the resulting customer savings can and will be

---

[141] Guidance Order at P 75.

[142] Entergy's filing mentions four different instances in which the ICT could seek stakeholder input and where we believe that the additional reporting we are requiring would thus be useful. Section 8 of Attachment S states that the ICT may establish such stakeholder process as it deems necessary to solicit the views of Market Participants regarding the functions it performs under Attachment S. Section 9 of the Transmission Service Protocol states that the ICT will develop and chair a stakeholder process to provide the Transmission Provider and Customers with a forum for discussing issues and to ensure that the provision of transmission service under the Tariff is transparent. Section 7 of the Transmission Planning Protocol provides that the ICT will lead the annual Transmission Planning Summit to review the Construction Plan and review the ICT's independent reliability assessment. The ICT and Entergy will then review stakeholder input from the Summit. Section 5.6 of Attachment T says that the ICT will develop appropriate procedures for consulting with individual generation owners during the consideration of previously incurred interconnection costs.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

documented and justified. Similarly, we would expect that more non-firm transmission requests could be accomplished by virtue of the Weekly Procurement Process.

300. We will also require the ICT, in advance of submitting each of these reports, to survey Entergy's transmission customers and obtain their views on how the ICT and Entergy are performing. We will not dictate the means by which the ICT should conduct the survey and whether each survey should cover all of Entergy's transmission customers or a representative subset. However, we will require that the survey be sufficiently comprehensive, in terms of topics covered and number of respondents, to be meaningful for evaluating the ICT and for the stakeholder process.

301. The Commission also intends to have regular meetings with the affected state commissions to discuss the assessments soon after they are issued. Such meetings will further ensure that this Commission receives the feedback we need to gauge the effectiveness of the ICT and the Weekly Procurement Process. Meetings with our fellow regulators should also help to reach consensus on whether the ICT and the Weekly Procurement Process have been successful and should be continued beyond the initial period.

302. The following are issues that the Commission will consider when evaluating the success of the ICT, IT systems and the Weekly Procurement Process. The ICT must include any information or data pertaining to such issues in its periodic reports to the Commission.

303. First, the Commission must evaluate the ICT's success in performing its duties and enhancing transmission access. As discussed infra, the OMOI Audit Report evaluated the computer modeling methodology used by Entergy to create the Generator Operating Limits, the predecessor to the AFC program.[143] OMOI concluded that there were significant errors in Entergy's performance of the Generator Operating Limits and Local Area Limits methodology during an April through September 2003 study period.[144] In addition, many of Entergy's transmission customers say that they have experienced problems with the AFC program similar to those under the Generator Operating Limits program, including unexplained denials of service under the AFC process. These customers argue that Entergy has not provided workpapers or power flow models and thus the customers claim that they cannot discern why transmission requests are denied.

---

[143] *See* Audit Report on Generator Operating Limits, Docket No. PA04-17-000, December 17, 2004.

[144] *Id*. at 2-3.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

Therefore, one of the metrics that the Commission will evaluate is the accuracy rate of posted AFC data compared to that experienced before the ICT. The Commission will also examine whether the number of complaints filed at the Commission during the four year period declines.

304. In addition, there are many complaints about the completeness and accuracy of Entergy's data and the recent loss of AFC data. As stated above, the Commission expects Entergy to work with the Users Group to alleviate any problems in this area. In order to measure whether there are improvements to transmission access and service under the ICT, we require that, in its periodic reports to the Commission the ICT measure the following ICT metrics:

- How many times, if any, Entergy or the ICT loses data during the initial term;
- How many times, if any, users were given inaccurate or incomplete data;
- How often Entergy uses inaccurate modeling assumptions;
- How frequently Entergy fails to timely post or provide required data or posts inaccurate data;
- The number of times transmission users complain that AFC is not available;
- The number of times available AFC when needed is different from posted AFC on the OASIS; and
- The length of time it takes to do interconnection or transmission service studies.

We ask the Users Group to provide the ICT with information that will help the Commission in assessing these issues. We will be ordering the ICT to keep track of these metrics and report to us. Further, we will require the ICT to create a log for each request to change an assumption, whether the request comes from Entergy or a customer or users, in any transmission system model affected by this order. The log should note who made the request, describe the request and what systems are affected, and state the date and time the ICT agrees or disagrees with the change in assumption.

305. As stated above, our approval of Entergy's proposal is predicated in part on Entergy's representations of the substantial benefits associated with the Weekly Procurement Process for both wholesale and retail customers. Therefore, throughout the four-year term, the Commission will evaluate whether the Weekly Procurement Process meets our expectations. First, Entergy has stated that each percentage point of further

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

displacement of Entergy oil and gas generation translates to about $30 million in savings.[145] One thing the Commission will be looking at is the level of savings that Entergy's retail customers enjoy during the four-year period because they are able to buy cheaper power from Independent Power Producers. Further, the Commission will judge the success of the Weekly Procurement Process based on the increase in the number of transactions and volume of energy purchased under the Weekly Procurement Process, especially involving power purchases from non-affiliated entities. Finally, we will consider the amount of non-firm transmission transactions that can be accomplished by virtue of redispatch under the Weekly Procurement Process.

G. Recovery of Costs of the ICT

a. Entergy Proposal

306. Entergy proposes two general categories of costs: costs previously incurred to develop and install an independent entity to operate the Entergy transmission system and costs associated with the start-up and ongoing activities of the ICT (including the Weekly Procurement Process). Entergy does not request recovery of these costs in this filing; instead, it provides a general description of the nature and timing of the cost recovery proposal for information purposes.

307. Entergy asserts that over the last several years, it has undertaken extensive efforts to comply with Order No. 2000. It states that in Docket No. EL99-57-000, Entergy focused on the creation of an independent transmission company that would own and operate Entergy's transmission system. Later, in Docket No. RT01-75-000, Entergy attempted to establish a joint RTO with SPP. Further, it states that its efforts broadened to support the creation of a southeastern RTO - SeTrans. Finally, Entergy asserts that it has worked for the past two years to develop the Weekly Procurement Process and to establish an ICT for its system. It maintains that the deferred costs related to these efforts include, among other things, collaborative process costs (meetings and meeting support, conference calls, and travel), regulatory filings, employee salaries and expenses, and consulting and legal fees.

---

[145] New Orleans Technical Conference (July 29, 2004) Tr. at 39:25-40:2, 55:23-56:2.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

308. Entergy argues that allowing recovery of its prior RTO development costs would be consistent with *AEP*,[146] which established that prudently incurred RTO start-up costs may be recovered despite the failure of the RTO. In *AEP*, the Commission held that American Electric Power Service Corporation (AEP) could recover start-up costs associated with the failed Alliance RTO once AEP had integrated with the PJM.[147] Entergy contends that the Commission reasoned that AEP's investments in the Alliance RTO were "sunk costs" for which "commercial benefits [were] forthcoming" once integration with PJM had been achieved.

309. Entergy states that it incurred a significant amount of RTO development costs while working with SPP, participating in the Southeastern mediation and developing the SeTrans RTO, and that all of these investments were made to comply with the Commission's orders. Entergy asserts that it has deferred its prior RTO development costs and proposes that their recovery be amortized over 20 years. Entergy will seek recovery of these deferred costs in a future section 205 filing to modify, as necessary, Entergy’s formula OATT rates. This section 205 filing will be made not less than sixty days before ICT operations begin.

310. Further, Entergy states that the draft ICT Agreement permits the ICT to recover from Entergy its reasonable operating and capital costs incurred to perform the functions set forth in the draft ICT Agreement. Although these cost recovery provisions are currently being negotiated, Entergy anticipates that it and SPP will agree to a methodology that allows SPP to pass through its actual costs to perform services as the ICT, as established under certain budgeting and billing provisions. Entergy states that it will seek to recover these costs as follows. The expenses billed to Entergy by the ICT will be booked in Account 566, which will then be reflected in Entergy's OATT rates through the annual update to those formula rates. Entergy asserts that because the OATT formula rate already provides for recovery of Account 566, a new section 205 filing is not required to recover those costs.

311. With respect to retail rate recovery, Entergy states that it will seek to recover a pro rata share of these same independent transmission company/RTO development costs and ICT costs in retail rates through the appropriate retail regulatory proceeding or mechanism in each jurisdiction.

---

[146] *American Electric Power Service Corp.*, 104 FERC ¶ 61,013, *reh'g denied*, 105 FERC ¶ 61,081 (2003) (*AEP*).

[147] Entergy at 48, citing *AEP*, 104 FERC at P 23-26.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

b. Commission Determination

312. The Commission will not address this proposal here. Entergy will request recovery of these costs at a future time. At that time, any party may comment on the cost recovery proposal.

V. Procedural Matters

313. In the Guidance and Clarification Orders, the Commission laid out procedural guidelines for Entergy to follow in implementing its ICT proposal. The Clarification Order states that the initial term "will not begin until Entergy's proposals take effect, *i.e.*, the date the ICT becomes operational."[148] The Clarification Order clarified that Entergy must file to install an independent entity with the ICT functions (including the necessary contracts) within 60 days after a Commission order approving the section 205 filing, and the ICT must be installed within 30 days of the date of any Commission order approving that ICT contract filing.

The Commission orders:

(A) Entergy's proposal is accepted in part and modified in part, as discussed in the body of this order.

(B) Within 60 days of the date of this order, Entergy is directed to make a compliance filing, as discussed in the body of this order.

(C) Within 60 days of the date of this order, Entergy is directed to file its contract with the ICT.

By the Commission. Commissioner Brownell concurring with a separate statement attached.

(S E A L)

Magalie R. Salas,
Secretary.

[148] Clarification Order at P 24.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

Appendix A
Comments, Protests, Interventions
and Questions for Technical Conference

Notices of Intervention
Arkansas Public Service Commission (Arkansas PSC)
Louisiana Public Service Commission (Louisiana PSC)
Mississippi Public Service Commission (Mississippi PSC)

Motions to Intervene
American Public Power Association (APPA)
Arkansas Cities & Cooperatives (ACC)
Arkansas Electric Energy Consumers
Calpine Corporation (Calpine)
City of North Little Rock, Arkansas
City of Osceola, Arkansas
City, Water, and Light Plant of Jonesboro, Arkansas
ConocoPhillips Company (ConocoPhillips)
Council of the City of New Orleans (New Orleans)
Dow Chemical Company (Dow)
Duke Energy North America, LLC (Duke Energy)
East Texas Electric Cooperative, Inc., Sam Rayburn G&T Electric Cooperative, Inc., and Tex-La Electric Cooperative of Texas (collectively, East Texas Cooperatives)
Electric Power Supply Association (EPSA)
Empire District Electric Company (Empire)
Independent Generators[149]
Generator Coalition[150]
Lafayette Utilities System (Lafayette)
Louisiana Energy Users Group (LEUG)
Nucor-Yamato Steel Company, Inc. (Nucor-Yamato) and Nucor Steel-Arkansas, a division of Nucor Corporation (Nucor Steel-Arkansas) (collectively Nucor)

---

[149] Cottonwood Energy Company LP, KGen Power Management Inc., NRG Energy, Inc., Suez Energy North America, Inc., and Union Power Partners, LP.

[150] Cottonwood Energy Company L.P., KGen Power Management Inc., NRG Energy, Inc., Suez Energy North America, Inc., and Union Power Partners, LP. (collectively, the Generator Coalition).

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

Occidental Chemical Corp. (Occidental)
Oklahoma Gas and Electric Company (OGE)
Plum Point Energy Associates, LLC (Plum Point)
South Mississippi Electric Power Association (SMEPA)
Southeast Electricity Consumers Association (SeECA)
Southwest Power Pool (SPP)
TDU Intervenors[151]
Williams Power Co. Inc. (Williams)
Quachita Power, LLC (Quachita)

Requests for Technical Conference
Arkansas PSC
Calpine
ConocoPhillips
EPSA
Independent Generators
LEUG
Occidental
SeECA
TDU Intervenors

Answer to Requests for Technical Conference
Entergy

Questions for Technical Conference
Calpine
East Texas Cooperatives
Generator Coalition
Lafayette, LEUG, and MDEA
Occidental
SeECA
TDU Intervenors

---

[151] Arkansas Electric Cooperative Corporation (AECC), Arkansas Cities and Cooperatives, Lafayette, Louisiana Energy and Power Authority (LEPA), Municipal Energy Agency of Mississippi (MEAM), and Mississippi Delta Energy Agency (MDEA) and its members, the Clarksdale Public Utilities Commission of the City of Clarksdale, Mississippi, and the Public Service Commission of Yazoo City of the City of Yazoo City, Mississippi.

20060424-3021 Issued by FERC OSEC 04/24/2006 in Docket#: ER05-1065-000

Comments
Arkansas PSC
ACC
New Orleans
SMEPA
Williams Power

Protests
Calpine
Dow Chemical
Generator Coalition
Lafayette
Nucor-Yamato
Occidental
Plum Point
Quachita
SeECA
TDU Intervenors

Comments and Protests
Duke Energy
East Texas Cooperatives
Louisiana PSC

Comment Out-of-Time
EPSA

Answers
Duke Energy
East Texas Cooperatives
Entergy – August 22, 2005; October 14, 2005; November 21, 2005
Generator Coalition
SeECA

Intervention, Protest and Answer Out-of Time
Missouri Joint Municipal Electric Utility Commission

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Entergy Services, Inc. Docket No. ER-05-1065-000

(Issued April 24, 2006)

Nora Mead BROWNELL, Commissioner *concurring*:

This order represents the "triumph of hope over experience".[152] This is a response to a plethora of complaints and several failed attempts to improve transmission service in the last three years. For the sake of the disappointed customers of Entergy, I hope Entergy is committed to actually fulfilling their responsibilities.

Nora Mead Brownell

[152] "A second marriage is the triumph of hope over experience." -- Samuel Johnson.